

INDEPENDENT PRICING AND REGULATORY TRIBUNAL

REVIEW OF REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION  
TOWERS ON CROWN LAND

TRIBUNAL MEMBERS  
DR PETER BOXALL AO - CHAIRMAN  
MR JAMES COX  
MR SIMON DRAPER

Held at 1 Market Street, Sydney

On Monday, 17 June 2013, at 2pm  
.17/06/2013 1  
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1 OPENING REMARKS  
2  
3 THE CHAIRMAN: Welcome and thank you all for coming  
4 to this round table on IPART's review of the rental  
5 arrangements for communication towers on Crown land.  
6  
7 My name is Peter Boxall and I am chair of IPART. I am  
8 joined today by my fellow tribunal members, Jim Cox on  
9 my left, who is also IPART's CEO, and Simon Draper on my  
10 right. Assisting the Tribunal today is IPART's secretariat  
11 member Chen Chou.  
12  
13 I would like to take this opportunity to thank all  
14 those who have taken the time and trouble to make a  
15 submission to this review. Stakeholder submissions are  
16 available to the public on our website. All submissions  
17 received are being carefully considered by us in  
18 developing our findings and our final recommendations.  
19 We will also consider matters raised in the course of  
20 today's proceedings.  
21  
22 The purpose of today's round table is for us to  
23 better stakeholders' views through a structured  
24 discussion. It will allow interested parties the  
25 opportunity to comment on matters arising from our draft  
26 report and from the submissions that we have received.  
27  
28 On the agenda we have three main sessions:  
29 Session 1, the fee schedule, the single user rate  
30 suggested rebates, location categories and SCAX.  
31 Session 2: discounts for co-users and infrastructure  
32 providers.  
33 Section 3: high value sites.  
34  
35 The secretariat will provide a short presentation  
36 before each session to outline the issues. I will then ask  
37 for comments from the participants at the table and then  
38 from members of the audience. I will endeavour to give  
39 everyone who wishes to do so an opportunity to speak  
40 and I request that you limit your comments to five  
41 minutes per intervention.  
42  
43 I should advise you that today's hearing will be  
44 recorded by our transcribers. Therefore, to assist the  
45 transcribers I ask that on each occasion you speak, please  
46 identify yourself and, where applicable, the organisation  
47 with which you are affiliated. I also ask that you speak

1 clearly and loudly.  
2  
3 A copy of the transcript will be made available on our  
4 website next week.  
5  
6 So to get under way I now turn to Chen Chou from the  
7 secretariat to provide a short presentation for the first  
8 session. Chen.  
9  
10 SESSION 1: FEE SCHEDULE: SINGLE USER CATEGORY  
11 AND REBATES, LOCATION CATEGORIES & SCAX  
12  
13 MS CHEN CHOU: Thank you. Good afternoon. To provide  
14 context for the discussion today I would like to firstly  
15 outline the principles that we applied for the review.  
16  
17 Firstly, market return - where rentals should reflect  
18 fair market based commercial returns for the government.  
19  
20 Secondly, administrative efficiency - where rental  
21 arrangements are simple to administer and are  
22 cost-effective.  
23  
24 Thirdly, transparency - where rentals are calculated  
25 in a way that is clear and easy to understand.  
26  
27 Fourthly, consistency - rental arrangements are  
28 applied consistently across different land management  
29 agencies. We also added a fifth principle based on  
30 stakeholder submissions to incorporate external benefits  
31 where possible in the rental arrangement.  
32  
33 Today we would like to discuss three main areas of the  
34 draft report: the fee schedule, based on a single rate  
35 across all location categories. Under this topic we would  
36 also like to discuss treatment of SCAX sites under the fee  
37 schedule.  
38  
39 Secondly, discounts for co-users and infrastructure  
40 providers and thirdly, high value sites.  
41  
42 Firstly the fee schedule. A single rate fee schedule recognises  
43 competitive neutrality between commercial and  
44 government-owned corporations and between businesses.  
45 It also recognises technological convergence and is  
46 transparent. We recognise that reducing the number of  
47 user categories in the fee schedule will have impact on users

1 and we recommend phasing in the proposed fee schedule  
2 over five years.

3  
4 Separately, a schedule of rebates will be available  
5 for groups of users, taking into account the social and  
6 community benefit provided by those users. Eligible users  
7 for rebates include community groups, budget-funded  
8 sector and local service providers in the low-density  
9 location category.

10  
11 The net effect of the rebates for eligible users is  
12 that they will largely be unaffected by the move to the  
13 proposed fee schedule, however, the budget-funded sector  
14 will be affected by the introduction of the Sydney location  
15 category and local service providers will be affected by  
16 the new definition which limits the eligible users to those  
17 providing services in the low-density location.

18  
19 In relation to location categories in the fee  
20 schedule, we propose a new category for Sydney based on  
21 market evidence, with rents being 20 per cent higher than  
22 in the higher density location category. The high  
23 location category includes Newcastle, Central Coast and  
24 Wollongong.

25  
26 On the medium category definition we propose a radius  
27 of 12.5 km from the centre of urban centres as defined by  
28 the ABS. We consider this definition to be reasonable,  
29 transparent and easy to administer.

30  
31 In the low location category we propose a 20 per cent  
32 reduction in the rent based on market evidence and in  
33 relation to SCAX sites, they are part of universal service  
34 obligations as set by the Commonwealth Government. A  
35 discount below the fee schedule could be seen as a subsidy  
36 from the New South Wales government to the  
37 Commonwealth. Our draft recommendation on SCAX  
38 sites is that the rent should be as per the low location  
39 category in the fee schedule. This is consistent with our  
40 other recommendations on the fee schedule which do not  
41 distinguish between different users of the site or business  
42 models of users. Thank you.

43  
44 THE CHAIRMAN: Thank you very much, Chen. Who  
45 would like to start off around the table?

46  
47 MR DAVID McKEAN: I will start. David McKean from Crown

1 Castle. I think just to start off, we need to look at the  
2 rental structure that's currently in place under the  
3 existing fee schedule, which already creates a rental  
4 structure that is about two to three times market and that  
5 is because co-user fees don't apply on private land. So  
6 already two to three times over market.

7  
8 What we have seen through our analysis is that if the  
9 changes are implemented as proposed, our rents will go up  
10 by about 50 per cent overall and then you have also the  
11 incremental increases for all the co-users on the Crown  
12 Castle towers. So we think that the existing regime is  
13 problematic and this actually creates an even more sort of  
14 extreme outcome for the industry and I think that is  
15 reflected in the submissions that have been made across the  
16 board by the industry and behaviour also is suggestive of  
17 the market and the fact is that people are not installing  
18 new tower sites on LMA land and there has been some  
19 evidence provided that suggests there might be but I think  
20 that some of the other industry participants can make their  
21 own submissions on that point.

22  
23 There is also a distinct lack of reference to  
24 section 143(1)(b) in the Crown Lands Act. That is a very  
25 important section. That's actually the law that says that  
26 when you are determining rents you shouldn't take  
27 account of the improvements on the land and that clearly  
28 includes towers. So really through this co-user fee  
29 structure, actually climbing up the tower, if you like, as a  
30 metaphor, really contradicts the express principles set out  
31 in legislation.

32  
33 The other issue that we have is this new Sydney category  
34 of rents, which doesn't distinguish between Bondi and  
35 Camden. Now, there is no land valuation principle that  
36 would suggest you shouldn't distinguish between such a  
37 vast area of land. Certainly for Crown Castle sites there is  
38 a very different rental profile dependent on inner or outer  
39 metro Sydney.

40  
41 So cutting through, you have seen in the submission that  
42 that we have made, when we do our analysis a metro  
43 Sydney site we'd lease for about \$27,000, that is a new site.  
44 With the recommended changes the rental payable to the land  
45 management agencies would be about \$81,000 and that is  
46 just with three users of the tower. So really we are getting  
47 quite out of step with market quite radically. Thank you.

1  
2 THE CHAIRMAN: Thank you very much, David. Dugald?  
3  
4 MR DUGALD GLASCOW: I would agree with what David  
5 was saying, particularly when you apply co-user charging  
6 to site rentals. We find there is little basis for co-user  
7 charging and we would support probably rentals in the  
8 order of around 25K for a Sydney metro site as opposed to  
9 32K and certainly less for high-density and medium-  
10 density and low-density sites. Low density we could  
11 probably support that sort of number but we believe those  
12 are overstated probably by about 25 per cent each.  
13  
14 THE CHAIRMAN: Thank you, Dugald. Somebody over  
15 this side? Donal?  
16  
17 MR DONAL O'SHEA: Thank you. The Crown Lands Act  
18 and section 143(1)(b), we actually do value various types  
19 of land depending on their use, whether it be golf clubs,  
20 marinas, clubs, caravan parks, based on the potential of  
21 the site and the unimproved value of the site. So that is  
22 a practice that is widespread across Crown lands.  
23  
24 The challenge for telecommunication towers is similar  
25 to that challenge and the approach that we want adopted  
26 is to look at the potential of the site and that is a task  
27 that IPART have been challenged with, is to come up with  
28 what is the potential of this site for the use of  
29 telecommunication. The potential of the site needs to take  
30 into account a range of factors. The fact that some of  
31 these sites are now highly developed with extensive use  
32 and extensive infrastructure does reflect realised potential.  
33 The fact that some of the sites are underdeveloped may  
34 reflect under-utilised potential.  
35  
36 If we look at what existed pre-IPART, we had a situation of  
37 peppercorn rents, ad hoc pricing, unlicensed and  
38 unauthorised occupants and former Commonwealth  
39 entities had unfair competitive advantage. If we look at  
40 post-IPART, where we are now, we have a standard fee  
41 schedule, licensed occupants, consistency of approach, a  
42 differential pricing regime based on the available  
43 evidence. The challenges for this IPART review is to build  
44 on those foundations, update the fee schedule and do  
45 other things that the evidence promotes.  
46  
47

1 The absence of the evidence from certain classes of  
2 stakeholders does make the task more difficult. The  
3 absence of the evidence may indicate that there is an  
4 advantage to not disclosing the evidence. The absence of  
5 the evidence may disclose that there is a real gap between  
6 the rental for access to the tower and a ground rental. We  
7 are committed to an evidence-based fair-pricing regime and  
8 a disclosure of all of the evidence will help IPART and  
9 industry achieve that.  
10  
11 THE CHAIRMAN: Thank you, Donal. Tim and then Bob.  
12  
13 MR TIM METCALF: Tim Metcalf, NBNCo. NBNCo has  
14 probably come late to the discussion but I think can present  
15 an interesting insight. Unlike most of the players here,  
16 NBNCo is in the process of building a network, striking  
17 agreements with LMAs and to date we have one agreement  
18 with one agency and in the process of negotiating another  
19 one. I think I can give you an insight into the price signals  
20 that the proposed recommended changes send to a carrier  
21 that is building a network, particularly in the low and  
22 medium-density areas where the fixed wireless network is  
23 proposed to be prevalent, with a mixture of satellite.  
24  
25 On reading the draft recommended changes, NBN felt it  
26 very necessary to voice a view that these proposed  
27 changes cut right into the viability of building sites as a  
28 primary user and certainly at the medium price category,  
29 where sites are deemed to be high value will certainly even  
30 marginalise that more. We're proposing to be a significant  
31 co-user of all infrastructure, not just Crown Castle,  
32 which would probably have 100 sites-plus going there are  
33 Telstra and Optus and of course we don't experience these  
34 costs or imposts when we are collocating in that market.  
35  
36 I think what NBNCo can say is that as we are rolling out  
37 - and we have very few sites on Crown land at the moment  
38 - these price signals will help us determine whether  
39 it's feasible. We will deselect sites based on what we  
40 said to BEM Consulting. We made it clear what our  
41 preferred price range is and where our no-go zone is. So  
42 this, I guess, is an opportunity for us to provide evidence  
43 on how the market will behave at certain price levels as  
44 well. Thank you.  
45  
46 THE CHAIRMAN: Thank you, Tim. Bob.  
47

1 MR BOB JOICE: Bob Joice, Telstra. Unsurprisingly,  
2 Telstra does not agree with the proposed fee structure and  
3 we submit that a percentage of land value is the most  
4 appropriate mechanism.

5  
6 I have read the submissions by some of the smaller  
7 users and they are concerned that a single pricing  
8 structure or single user category will disadvantage them.  
9 They won't be disadvantaged if the LMAs charged them a  
10 rent based on the land they occupy. They generally  
11 smaller parcels of land down to a single square metre, as  
12 occupy carriers can occupy areas of 50 to 100 square  
13 metres, broadcasters up to 200 square metres.

14  
15 My concern is that in setting the prices, which I have  
16 done a quick analysis based upon a typical Telstra  
17 facility, the rents we will be paying in the Sydney  
18 metropolitan area, out as far as Hawkesbury, is \$650 per  
19 square metre per annum. IPART isn't paying that for this  
20 office. Now, that is ridiculous. We've had leasing vacant  
21 land - in high density areas it is \$542 a square metre per  
22 annum. Again, that is premium office space rent. In the  
23 medium category it is \$301. I can lease the best office in  
24 Wollongong for that and I could build the best office in  
25 Tamworth for \$301 and low, \$145, that is what you pay for  
26 industrial space in western Sydney and that is the charge  
27 per square metre for vacant land in the back blocks of  
28 New South Wales. That is absolute rubbish.

29  
30 Nowhere in the pricing structure has any quantity been  
31 established. When you buy a product or service you pay  
32 an amount based upon the amount of service or product  
33 you buy. Nowhere in this analysis does it tell me what I am  
34 getting for my money. So for \$32,511 how much land can I  
35 have? Can I have 10 acres or can I have 10 square metres?  
36 There is no analysis on this. So I don't know how IPART  
37 could accept these rents as being indicative of a reasonable  
38 charge when it is many times the value of the land that is  
39 occupied.

40  
41 Let me move on to rebates. The rebates as structured,  
42 the government can do what it likes as far as the other  
43 users but if it establishes a rebate regime, that will  
44 still offend clause 44 of the schedule 3 of the  
45 Telecommunications Act. It is still discriminatory in its  
46 application to carriers and I won't move on that.

47

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1 Location categories: if you adopt a percentage of  
2 land value you don't need location categories because the  
3 value of the land will be adjusted for where it is in the  
4 state. They do a general determinate land value and will  
5 pay a percentage of that land value.

6  
7 As far as SCAX sites go, they are outside the terms of  
8 reference. They are not communication tower sites. A SCAX  
9 is a small country automatic exchange, it is part of the  
10 fixed-line network, it is not a telecommunication tower  
11 site. In some cases it may have a small pole or antenna  
12 and that achieves the same function as a pit. It is a  
13 method to get that fixed-line service back to a main  
14 exchange. Taken to its logical extension, are the LMAs  
15 now going to charge Telstra for every pit it puts on Crown  
16 land, because it is the same thing. It is a way to return  
17 that traffic back to an exchange.

18  
19 In our submission we actually put a photograph of a  
20 typical SCAX with a small whip antenna on it. To assume  
21 that we are going to be paying \$7,224 when we are already  
22 paying a penalty rate of over \$1,000 per annum for these  
23 sites, in most occasions we are paying less than \$500  
24 per annum. We have thousands of SCAX throughout this  
25 country. If IPART was to agree that we were now to pay  
26 \$7,224, that would contaminate the entire national market  
27 and increase Telstra's costs by tens and tens of millions.  
28 We just cannot sustain that and we won't accept it.

29  
30 THE CHAIRMAN: Thank you, Bob. Anthony.

31  
32 MR ANTHONY GOONAN: Thanks. Anthony Goonan,  
33 Yless4U. I concur with a lot of the remarks made by Telstra.  
34 Our submission sought clarification on what defines a  
35 tower, what defines communications and the treatment in  
36 urban, rural and residential areas.

37  
38 From what we can deduce, the land management agencies  
39 have simply identified some 800 sites across New South  
40 Wales by trawling through the ACMA database and they  
41 really haven't done any value-added over and above that.  
42 I think the SCAX - and there are some 72 SCAX which have  
43 been included - probably because they have been seen.

44  
45 What we don't understand is the basis of the  
46 assumption is that - and, sorry, we are a  
47 telecommunications carrier - that we are the same as

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1 Telstra. So we have a situation at present, based on these  
2 recommendations, where we provide 6 megabit data  
3 services to RFS and SES as a community service, free of  
4 charge, the 6 megs symmetrical and it is for the operational  
5 areas outside of the ACT but we don't charge for those  
6 centres in services. We do it as a community service.  
7

8 Now, under these recommendations we will have to pay  
9 the New South Wales government \$7,224 per annum to  
10 provide these free services. So we will be withdrawing  
11 these free services, these community value-added services,  
12 and because we are classified as a carrier we don't get any  
13 eligible rebates, whereas a budget-funded agency under  
14 the proposals do get up to 60 per cent to 80 per cent of  
15 rebates. So a program as a communications roll-out  
16 sponsored by the government, they have a commercial  
17 advantage over and above any other provider. So we have  
18 taken, since 2005, the decision definitely not to locate on  
19 Crown land parcels. Thank you.  
20

21 THE CHAIRMAN: Thank you, Anthony. Somebody else?  
22

23 MR PETER CHOQUENOT: Peter Choquenot. I think,  
24 from what I can see of this, there seems to be really two  
25 levels of discussion going on here and I think Donal made  
26 a very good point there when he was comparing  
27 telecommunication sites to golf clubs and marinas. They  
28 are value-added land that the government owns and they  
29 have every right to charge rent for them to whoever builds  
30 infrastructure upon them. That is conversation which, for  
31 better or for worse, will go on and value will be reached.  
32

33 The difficulty I have is with the co-user charge. It  
34 is the analogy that I would use, when we look at golf clubs  
35 and marinas, it is dipping into every boat owner and every  
36 golfer that sets foot on those bits of land with a bill  
37 that arrives in the post from the government, unasked for,  
38 unagreed to and unwelcome. It is, from a  
39 telecommunications view, very anticompetitive.  
40

41 I think Bob made a good point that we are charging for  
42 wireless facilities here but not touching the cable ones.  
43 Why don't we dig into the overhead catenary cables, the  
44 pits, the ducts. These things are all generating revenue  
45 for someone. We happen to be using some sites which we  
46 have come to a legal agreement with an infrastructure  
47 owner, who has a legal agreement with the government, and

1 all of a sudden the rules are being shifted on us and it is  
2 unsustainable. We can't vary our contracts with a  
3 relatively small number of customers, the money won't  
4 come from the customers, there isn't enough money in the  
5 profits. Do we start firing people or do we just turn  
6 around and not pay? They are the three choices that are in  
7 front of the small carriers. It is an unsustainable  
8 discussion, as far as we are concerned.  
9

10 THE CHAIRMAN: Thank you, Peter. Who would like to  
11 go next?  
12

13 MR GARY WALLIS: Thank you, Mr Chairman, Gary Wallis  
14 from Broadcast Australia. I think, firstly, we advocated to the  
15 Issues Paper that there should be a single fee for all  
16 users. It is non-discriminatory and it makes sense. As we  
17 caveated that on the basis that it should be linked to the  
18 value of the land and we note that in terms of justifying a  
19 decision for locational-based pricing in terms of medium,  
20 high and low both BEM and IPART did note that that  
21 reflected something to do with the land but to go that  
22 length and then to actually ignore the value of the land  
23 that you are talking about seems to, I guess, prejudice the  
24 argument against those people who are already using the  
25 land.  
26

27 We also feel that the single fee is being pitched and  
28 entirely the wrong level. First and foremost, we have now  
29 taken out Sydney-based sites from the high category and  
30 they have been increased 20 per cent on the basis that  
31 premiums are being paid in those markets and we have not  
32 had any benefit of the evidence that has been relied upon  
33 to come to that conclusion. I suppose no consequential  
34 adjustment is being made to rents in the high area, which  
35 were already set with reference to rents in the Sydney  
36 area. So if you take out the highest rents, there has to  
37 be a consequential reduction in the average rents in the  
38 remaining areas. That has not been reflected in the chart.  
39

40 We also, I guess, believe that the rents themselves  
41 have been, I suppose, extraordinarily overvalued. So if we  
42 think about the analysis that BEM provided in their report  
43 for the value of land in state forest, I think the rent in  
44 the low category for a state forest reflected a yield of  
45 nearly 42,000 per cent. So I think I would like some of  
46 that land if I could buy it and get a yield like that off  
47 it.

1  
2 All of these changes, I suppose - the locational  
3 changes, the concatenation of all the user groups into one  
4 - do raise for us the issue of sovereign risk in respect of  
5 matters of New South Wales and particularly in relation to  
6 Crown lands. There is a distinct link in any organisation  
7 between the price you are prepared to pay for what you are  
8 buying and the terms and conditions that are associated  
9 with that. I believe that Broadcast Australia and a number  
10 of organisations around this table will have taken terms  
11 and conditions and licences from LMAs for the use of  
12 land, rightfully believing that the commercial basis for  
13 how those sort of rents will be determined should be  
14 maintained for the term of that tenure.

15  
16 The changes that IPART are now proposing are so  
17 significant, almost to suggest that the terms of those  
18 agreements themselves are being fundamentally changed.  
19 That being the case, we understand that IPART should be at  
20 liberty to make what recommendations it feels appropriate  
21 for the use of Crown land but in that sense - to the extent  
22 that those are recommendations which are adopted - they  
23 should be adopted only for new or renewed agreements  
24 and that some honouring of existing arrangements should  
25 be contemplated in IPART's recommendations.

26  
27 THE CHAIRMAN: Thank you, Gary. Anybody else?  
28 Donal, can we just get Howard.

29  
30 MR HOWARD GAME: Thank you, Mr Chairman. Howard  
31 Game, Optus. I just wanted to first of all generally endorse  
32 the comments made by the industry representatives around  
33 the table but specifically to pick up on Donal's point about no  
34 evidence being provided. Optus' submission is  
35 confidential. It is confidential because we give specific  
36 locations to the extent that we provide the address, of  
37 recent negotiations, recent commercial leases which have  
38 anything to do with private property in various locations.  
39 That was done specifically to address the previous comments  
40 around the concern that there was no market evidence to  
41 support the industry's claims. As an aside, I'm happy for  
42 the Optus submission to be made non-confidential on the  
43 basis that the addresses are removed, so it is just the  
44 dollar figure we're paying and the location. I would  
45 submit that that demonstrates very clearly that the rentals  
46 that are currently being struck in the marketplace are  
47 significantly below those being recommended.

1  
2 THE CHAIRMAN: Thanks, Howard. Shaun?  
3  
4 MR SHAUN SMITH: Shaun Smith, New South Wales  
5 Government Telco Authority. In regards to the actual rental  
6 rates that have been proposed, I'll leave the market evidence  
7 to Optus and others. With respect to the rebate structure, I  
8 think we welcome the acknowledgement by IPART of the  
9 social and community benefits that the rebates engender.

10  
11 It is important to acknowledge that the work done by  
12 emergency services agencies, essential services agencies,  
13 do provide an economic benefit to the community that far  
14 outweighs the commercial benefit that might flow to land  
15 agencies under this.

16  
17 With respect to the rebate, in our view, the framework  
18 for rebates needs to be clearly articulated by IPART. A  
19 number of different ministers are taking a view on which  
20 agency may get a rebate without any clear framework.  
21 We think that the terms of reference around consistency  
22 and transparency may be at risk.

23  
24 We do struggle with the notion that the Sydney region  
25 extends from the CBD all the way to the Hawkesbury  
26 because there's a significant difference in land values, as  
27 we all know, between the CBD and the far western  
28 suburbs of Sydney.

29  
30 With regards to the infrastructure owners' discount,  
31 one of the things, from our point of view, looking at both  
32 our emergency management responsibilities with regards to  
33 telecommunications and also a bit more broadly in terms of  
34 the impact on the New South Wales community, I think that  
35 anything that discourages investment in rural and regional  
36 New South Wales should be discouraged. Removing the  
37 discount certainly will have a potential to impact the  
38 investment that occurs outside of the Sydney Basin in  
39 particular and it will also have the potential to reduce  
40 the amount of collocation that goes on, which is something  
41 that both the Commonwealth and State Governments have  
42 been advocating for, that increased collocation of carriers  
43 to consistent sites.

44  
45 Just touching again briefly on the SCAX, the New South  
46 Wales Telco Authority has an emergency management role  
47 that exists to facilitate access by carriers to emergency

1 services and emergency services to carrier infrastructure,  
2 to ensure that facilities, such as emergency alerts that  
3 warn people of an impending hazard in their area, are  
4 actually maintained. Anything that puts at risk the actual  
5 service provision to small regional communities would be  
6 something that we wouldn't support. Thank you.  
7

8 THE CHAIRMAN: Thanks, Shaun. I was going to ask now  
9 Martin from Gencom and then Stuart from Parks and Wildlife.  
10

11 MR MARTIN McLEOD: Thank you. I concur pretty much  
12 with what everybody is saying. I have never supported  
13 the co-user fees. I don't believe they're fair and equitable.  
14 The reviewed rates and putting everybody under the same  
15 regime significantly affects the radio communications  
16 industry. We simply could not afford to pay the rates that  
17 are being bandied about. For instance, the current rates  
18 we're expected to pay in the medium area is \$7,000 per  
19 year. The new regime says we've got to pay \$27,000 a year  
20 and co-users still apply. It is just simply not  
21 affordable.  
22

23 There needs to be an understanding of where the two-way  
24 radio industry sits compared to the telcos. We do not  
25 have the customer base. We do not have the exposure to  
26 customers. Our customers are literally in tens, they're  
27 not in thousands or millions. We don't have the subscriber  
28 base.  
29

30 We have a few sites in regional New South Wales. We have  
31 one base station there. At Cabbage Tree Mountain, for  
32 instance, which comes under IPART, or will eventually,  
33 we've got one customer in there, a bus company and that's  
34 what we've got. We pay the site owner \$4,000 a year for  
35 that site. We charge the customer \$4,000 a year for that  
36 site. It is a revenue neutral operation for us. We get to  
37 sell radios but we're not making a profit out of the site.  
38 Under this regime, we're expected to pay \$12,500 to the  
39 South Wales Government as well. Clearly, that is just not  
40 New sustainable. The customer cannot afford to pay that.  
41 That service will be withdrawn. That is going to affect  
42 employment: it has to.  
43

44 The small areas of New South Wales are really going to  
45 suffer as a result of these changes if they go ahead. If  
46 people have read my submission, I'm still very critical of  
47 BEM. They made no effort at all to talk to anybody from

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1 the radio industry. Despite talking to most government  
2 departments, they sought no advice from myself or any of my  
3 colleagues in relation to the costs of operation and that  
4 example I just gave you is pretty typical of a lot of  
5 things our industry does. We have people in Wagga, Forbes,  
6 Tamworth and Gunnedah who have the same thing. They've  
7 got small radio sites. Their revenue is just not there. These  
8 sites will close. There is no other alternative. We don't  
9 have the cost base to be able to spread that amongst our  
10 users. It is as simple as that. Thank you.  
11

12 THE CHAIRMAN: Thanks, Martin. Stuart?  
13

14 MR STUART SCHRAMM: Thank you, Chairman. I would  
15 just like to echo Donal's comments from Lands and also  
16 thank Howard for offering to provide the information on  
17 market rents on sites. I would encourage other infrastructure  
18 providers and carriers to do the same so that we can have a  
19 fair, open and transparent review of what the potential  
20 value of these sites is rather than the land value of  
21 unused sites. Thank you.  
22

23 THE CHAIRMAN: Thanks, Stuart. I was going to ask  
24 Brendan and then Des.  
25

26 MR BRENDAN PARNELL: Thank you, Mr Chairman.  
27 Brendan Parnell from 2KY Broadcasters or Sky Sports Radio.  
28

29 The single user category wasn't supported in our  
30 submission. We supported an increase in the number of  
31 categories as the preference or, if the land management  
32 group suggestion of five categories was endorsed, that the  
33 clarification existed around local service providers to  
34 include narrowcasters.  
35

36 We do have some absolute threshold issues in what has  
37 been proposed around a single price fee if a local service  
38 provider did not include narrowcasters. We're caught on a  
39 range of fronts. Firstly, high value sites, we've got around  
40 seven low and medium density sites which would be  
41 graded there and we have to review whether we sustain  
42 those licences. Likewise, our view is the rebate process lacks  
43 - I think as Shaun put it - clear articulation. It needs  
44 that, firstly. Secondly, there is no capability for a medium  
45 density site for a local service provider such as ourselves  
46 to apply for a rebate. In our view, that is discriminatory  
47 against a local community provider of racing

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1 services; and further, that ministerial discretion really  
2 does need a lot more articulation. We can talk about the  
3 high value sites a little later when we get to that  
4 session.

5  
6 THE CHAIRMAN: Thanks, Brendan. Des, would you like  
7 to say something?

8  
9 MR DES FOSTER: Thank you, Mr Chairman. We represent  
10 high power narrowcasters and low power narrowcasters.  
11 Brendan I think has already spoken on behalf of the  
12 high power narrowcasters. The issue I want to address, if  
13 I may, is the matter of low power narrowcasters.

14  
15 Just to give you an example of what I'm talking about,  
16 I would like to show you a low power narrowcast radio  
17 station, broadcasting station. That's the station.  
18 (Indicates piece of equipment). That's the communication  
19 tower. (Indicates piece of equipment). There are only a  
20 few of these on Crown land but there are hundreds across  
21 New South Wales.

22  
23 Coming back to the point that Donal made earlier on  
24 the absence of evidence, we have provided both the  
25 department and IPART with very clear evidence about the  
26 situation involving these low power services. 90 per cent  
27 of them pay no rent whatsoever. Most of those don't even  
28 have a formal agreement. The more I look at it, the more  
29 I'm convinced that we shouldn't even be here. We never  
30 should have got caught up in this situation in the first  
31 place. I think we're the mice in a roomful of elephants.

32  
33 The critical thing I think is that we should not be in the  
34 system. How we get out of it I don't know. You may well  
35 argue that it is a matter between us and the department  
36 or us and the Minister, but because IPART has actually  
37 recognised now that LPON operators exist, what we are  
38 hoping is that you might give some indication perhaps  
39 that you agree with us, we don't belong here, and then we  
40 can take that up in the other quarters where we must  
41 follow this up.

42  
43 The only reason I believe these few stations have been  
44 caught up is for the reason explained earlier, when they  
45 spoke of a trawl through the ACMA database. Small though  
46 they are, they all have to be licensed and if you look up  
47 the database you'll find a licence for one of these and the

1 coordinates for it and bingo, you have coordinates sitting  
2 in a bit of Crown land. That is all I want to say on the  
3 subject, thank you, but we really would value your help  
4 here.

5  
6 THE CHAIRMAN: Thank you, Des. Stephen.

7  
8 MR STEPHEN HANDLEY: Stephen Handley, ATI Australia.  
9 I should explain that Peter and I are colleagues in our two  
10 companies. ATI owns WBE. We are both a small licensed  
11 carrier and a supplier of radio communications equipment  
12 to other users. We agree with the principles, most  
13 particularly the issues relating to valuation of land and  
14 our initial submission to IPART has an extensive section  
15 prepared by consultants in that area which dealt with how  
16 land should be valued and how valuations should be  
17 determined. I am not going to go into the detail of that,  
18 although I felt it appropriate to refer to it. We  
19 certainly agree that it needs to be related to the value of  
20 the land underneath it, the fees that are charged.

21  
22 The telecommunications industry - that a very wide  
23 range of people in this room participate in - is a  
24 multi-layered economic structure and the concept of one  
25 size fits all just isn't going to work. It may be  
26 administratively efficient and it may be transparent.  
27 However, it is wrong to apply it across the spectrum of the  
28 radio communications industry, to use a term that we're  
29 familiar with.

30  
31 It really isn't economically possible to extract a  
32 premium or any additional fees from small carriers like  
33 ourselves or users like Martin over here. The marketplace  
34 just will not sustain that. The scale of the fees proposed  
35 doesn't reflect any market prices that we've seen and it's  
36 fabulous to hear that Optus have prepared to disclose that  
37 and, for what it's worth, we're happy to do the same thing.

38  
39 The final point I would like to make is that into the  
40 future forcing up the occupation costs of communication  
41 sites must limit the opportunity for competitiveness in the  
42 telecommunications industry, whether you're a licensed  
43 carrier or whether you're a provider of two-way mobile  
44 radio services. The proposed fees, as we've currently seen  
45 them, bear no relationship whatsoever to the capacity of  
46 the industry to earn or to pay those fees.

1 THE CHAIRMAN: Thank you, Stephen. I am now going to  
2 ask Geoff from Forestry and then Steve from BEM and then  
3 have an opportunity for quick follow-up comments around  
4 the table. They need to be quick because there are a  
5 number of people in the audience. Geoff?

6  
7 MR GEOFF COGGINS: Thank you, Mr Chairman. Geoff  
8 Coggins, Forestry Corporation. Our position has probably been  
9 pretty well stated from our other land management agencies and  
10 we do have a comprehensive submission addressed to you.

11  
12 Our concern is really in relation to the loss of the  
13 nine category users or even a simplified version of that  
14 down to one category user. We don't support that.  
15 We can't see the justification for that. In that respect,  
16 the use of rebates to reflect a balance to the budget  
17 sectors or the charitable groups I think is going to  
18 significantly add to the administration and complexity of  
19 the process. We would probably prefer it to remain as it  
20 was. However, we will go with the flow. Thank you.

21  
22 THE CHAIRMAN: Thanks, Geoff. Steve from BEM.

23  
24 MR STEVE ECCLESTON: Steve Eccleston from BEM. I will  
25 be brief. We were charged to analyse the market and we did  
26 that as best we could with the information that was made  
27 available. There have been some comments today that the  
28 evidence gathered was one-sided and I do tend to agree with  
29 that. We certainly contacted as many people as we could.  
30 Not everybody responded in the same manner. We analysed  
31 the information we had as best we could.

32  
33 It is a complex industry and there are various  
34 capacities to pay from all sorts of industry players and we  
35 tried to reflect that in our recommendations. We made  
36 recommendations to IPART and IPART interpreted those and  
37 that is why we're sitting here today discussing the draft  
38 recommendations from IPART.

39  
40 We looked at land values and that's been talked about  
41 by several of the industry players today, but as I say we  
42 did get information from a number of users, not nationally  
43 but more from the government sector. We tried to get  
44 information that was as recent as possible. From the  
45 information that we were provided with, we certainly  
46 couldn't definitely say there was a movement up, sideways  
47 or downwards. That is the conclusion that we reached,

1 essentially, in relation to the market evidence.

2  
3 There were other recommendations that we talked about.  
4 They're in our draft report and they've been interpreted by  
5 IPART and some are different to what we recommended.

6  
7 THE CHAIRMAN: Thanks, Steve. Any follow-up, Donal?

8  
9 MR O'SHEA: Thank you, Chair. I just wanted to clarify  
10 some points that I failed to make initially. New South  
11 Wales Trade and Investment does support a refinement of  
12 their fee classifications, not from nine to one but we  
13 believe from nine to five. We think that can achieve a  
14 better outcome than the application of rebates. We believe  
15 that there is room to consolidate at the top end and for  
16 greater clarification at the middle and the bottom end.  
17 We think that what they can support is a differential  
18 pricing regime.

19  
20 We don't support the use of rebates so extensively as  
21 we feel that they may introduce discretionary decision  
22 making and they may lock in some benefits that aren't  
23 supported by the market. We will again emphasise that the  
24 purpose for which the land is used is the purpose for which  
25 it should be valued. Any other suggestion is not in line  
26 with the Crown Lands Act, the Valuation of Lands Act or  
27 market principles.

28  
29 THE CHAIRMAN: Thanks Donal. Dugald?

30  
31 MR GLASCOW: In response to Steve from BEM, Vodafone is  
32 happy to provide its report which was  
33 commercial-in-confidence. It has a number of rents there.  
34 Those are sitting rents. Those rents have actually gone  
35 down which supports our argument that the fee structure is  
36 incorrect and is not supported by market data. We are  
37 happy to provide that. What is also important here is that  
38 you've got to look at the mobile industry also with the  
39 mobile operators. Back in 2001-2, we had nine operators  
40 out there. We're down to three. Talking about  
41 sustainability, Vodafone lost \$890 million last year. This  
42 is not the cash cow that everybody thinks it is. The cost  
43 of rolling out and developing networks is huge. I thought  
44 I'd make that point.

45  
46 THE CHAIRMAN: Thanks very much, Dugald. Why don't  
47 we call for questions or comments from the floor? Would

1 anybody like to ask a question? There is a microphone  
2 here. Yes.  
3  
4 MR BRIAN SHEARING: Brian Shearing from Shoalhaven City  
5 Council. Shoalhaven Council operates a number of towers on  
6 Crown land and we have spent considerable community money  
7 to develop some of that infrastructure. It is probably a  
8 little bit different in that we are looking for a community  
9 benefit in a lot of that expenditure. We're looking for  
10 the community to have access to the latest technology which  
11 possibly wouldn't be available unless we were investing in  
12 that way. We are looking to support our local businesses  
13 and try and bring businesses into the community, being a  
14 regional area.  
15  
16 We are actually a low socio-economic area. In other  
17 words, we're an area that has a lot of unemployment and has  
18 a lot of aged down there. We need to support those by  
19 bringing industry into the community. This is one of the  
20 ways we do it. We see that the collocation fees would  
21 stifle that bringing of business into the community.  
22  
23 The other area that we are concerned with is the  
24 proliferation of towers across our landscape. Obviously,  
25 we are also quite a unique area as far as tourism is  
26 concerned and we are concerned that we're having towers pop  
27 up here, there and everywhere and one of the ways we do  
28 that is that we spend money on infrastructure and try and  
29 bring everybody on to that. These collocation fees are  
30 likely to stop that and people will be wanting to go on to  
31 private land and set up their own towers and bring others  
32 on to that. We will end up with a whole proliferation of  
33 towers.  
34  
35 Some of the areas where we have towers are not unique.  
36 They may be good sites and we agree with that, they are  
37 good sites, but there are adjacent landowners who can take  
38 advantage of this situation and put towers on their own  
39 sites and we would obviously lose that investment that  
40 we've made because those carriers and others would be  
41 locating towers that we've set up to go on to other towers.  
42 Thank you.  
43  
44 THE CHAIRMAN: Thank you very much, Brian. Would  
45 anybody else from the audience like to ask a question?  
46  
47

1 MR PHIL COLE: Phil Cole, Bathurst Broadcasters,  
2 owner operators of Radio Station 2BS and B-Rock in  
3 Bathurst. The low fee may appear to be a bit of good news  
4 for us given that we've paid a bit more than that this  
5 year. We have gone from an arrangement where for two  
6 broadcast sites we were paying about \$9,500 last year to an  
7 amount of \$17,000 this year, which has been quite a  
8 substantial increase.  
9  
10 We run our B-Rock FM radio station from Mount Ovens  
11 and we've had a great arrangement there which has increased  
12 CPI for nearly 20 years but went up substantially this  
13 year. We operate another service out at Burruga and it  
14 broadcasts to 300 people in that area and we're expected to  
15 pay the same amount pretty much out in that area.  
16  
17 We are hoping that the local service provider might  
18 give consideration that we get there, giving the signal  
19 that goes to just 300 people. We do see that as a  
20 community service and we're hoping that the rebated site  
21 costs might come into play if that remains.  
22  
23 We would be down to somewhere around \$10,234 on the  
24 basis of the costs that have been presented today, ex-GST.  
25 At the moment, we're at around \$15,500. Hopefully, it will  
26 come down even further from what's been said around the  
27 table. We look forward to, hopefully, some good news for  
28 our operations. Thank you.  
29  
30 THE CHAIRMAN: Thanks very much, Phil. Is there  
31 anybody else from the audience? Is there anybody else from  
32 around the table before we move on. We will have Bob,  
33 Anthony and Tim.  
34  
35 MR JOICE: Just a quick question for the three LMAs.  
36 Clearly, you got together and came up with a new radius of  
37 30 kilometres that's consistent even down to the poor  
38 grammar in your submissions. How did you arrive at  
39 30 kilometres from a regional centre as being a justifiable  
40 catchment area when really the only thing in between those  
41 regional centres is going to be a freeway or a main road?  
42  
43 Is it the assumption that the carriers are going to  
44 make baskets of money because of the infrequent use of  
45 mobile phones by the vehicles that travel on that road and  
46 an assumption that in the rural communities that surround  
47 those regional centres there is lots of money to be made

1 and that the carriers should only pay the lowest rate on  
2 sites where they actually lose money?  
3  
4 THE CHAIRMAN: We will give the land management  
5 agencies the chance to answer that. Anthony?  
6  
7 MR GOONAN: Thank you. We would belong to multiple  
8 categories. We are a telecommunications carrier. We fit  
9 under the definition of local service provider and I  
10 presume we would fit under community sponsorship as well.  
11 We really are stuck on the definition of a tower and the  
12 definition of communications. Is being limited to ACMA  
13 registered frequencies the reason why the various sites  
14 have been identified?

15  
16 I don't want to labour this meeting over those issues,  
17 except you can use 60 gigahertz and 80 gigahertz  
18 point-to-point frequencies which provide absolutely  
19 enormous band width and yet, from the definitions I can  
20 see, they wouldn't even be captured. Crown lands wouldn't  
21 even know they were there. Yes, they're limited to three  
22 to five kilometres, but in rural towns the little hill on  
23 the top just outside the town can apply.

24  
25 I think also that the IPART fees since 2005 have  
26 propped up the private market because the private  
27 landowners refer back to the IPART fees. I am assuming if  
28 this goes ahead then that will occur once more. I would  
29 like you to consider changing it around so that those that  
30 place infrastructure in rural and remote areas - a trig  
31 station in the back of a sheep paddock - get it subsidised  
32 to put it there rather than paying a fee. Thank you.

33  
34 THE CHAIRMAN: Thank you, Anthony. Tim.

35  
36 MR METCALF: Thank you. NBNC Co would like to echo Bob's  
37 sentiments about the median density location definition.  
38 30 kilometres bears no linkage to the land value. Really,  
39 I can't ascertain what it bears linkage to. It was a  
40 feature of our submission that it should be drawn back into  
41 the UCL, that's clear, but it becomes very arbitrary when  
42 you're extending very irregular shaped UCLs, particularly  
43 around Maitland where it is very long in distance. There  
44 are lot of features around that medium density that need to  
45 be worked and certainly extending the reach is where we see  
46 it. Low prices now are at \$4,300. After the phase-in it  
47 will push those up to \$15,000. That is a very big change

1 in costs and will impact NBN's decision to employ in some  
2 areas. Thank you.

3  
4 THE CHAIRMAN: Thanks, Tim. Would any of the land  
5 management agencies like to address the issue raised by  
6 Bob? Donal and then Brendan.

7  
8 MR O'SHEA: Thanks, Mr Chair. The 30 kilometres is as  
9 meaningful as the 12.5 kilometres that Telstra have  
10 proposed. I'd just like to draw attention to the fact that  
11 in the low density area the occupation of land is  
12 discounted in the new IPART proposals by up to 80 per cent.  
13 The infrastructure that's applied is a network  
14 infrastructure that relates to the delivery of service and  
15 I'm sure that Telstra and the other providers see the  
16 infrastructure as part of a network.

17  
18 The fact that in some locations it is charged at an  
19 80 per cent discount for me is excessive. The benefits  
20 that derive to the entity are based on delivering that  
21 service. The 30 kilometres is a reasonable spread when you  
22 relate it to the fact that it is close to a large urban  
23 area or close to a main thoroughfare. The way in which  
24 people move and communicate, it seems to me that  
25 30 kilometres is more relevant than a narrow 12.5 kilometre  
26 boundary. The overall discount for low density and medium  
27 density appears to me to be out of kilter with a network  
28 infrastructure.

29  
30 THE CHAIRMAN: Thanks, Donal. We will hear from  
31 Brendan and then we'll move on to the second item on the  
32 agenda. There are two more items, so there will be plenty of  
33 opportunities. Brendan.

34  
35 MR PARNELL: Consistent with Donal's theme earlier about  
36 better distilling the points made, Sky Sport's radio  
37 perspective is if there was a reduction in the user  
38 categories, consistent with the land management group's  
39 recommendation that there are five, is that the local  
40 service provider is expanded to include high-powered open  
41 narrowcast, firstly. Secondly, that if it wasn't included,  
42 that a rebate mechanism would be required for us to sustain  
43 the network that we do throughout New South Wales; and the  
44 third one being that the low power open narrowcast are  
45 excluded, as Des has pointed out.

46  
47 THE CHAIRMAN: Thank you, Brendan. Let 's move on to the

1 second item on the agenda, which is the co-user and  
2 infrastructure provider discounts. Chen.

3  
4 SESSION 2: CO-USER AND INFRASTRUCTURE PROVIDER  
5 DISCOUNTS

6 MS CHOU: Thank you. In the second session we would like  
7 to discuss the co-user and infrastructure providers. In  
8 the draft report we propose that the discount  
9 remains at 50 per cent, as the discount will continue to  
10 encourage collocation. For infrastructure providers we  
11 recommend removing 30 per cent discount but deferring the  
12 removal for at least five years and then implemented over  
13 the next five years.

14  
15 We recognise that there are arguments for and against  
16 removing the infrastructure discount. However, removing the  
17 discount is consistent with our draft recommendation on the  
18 fee schedule and it is consistent with providing  
19 competitive neutrality. I will cover the issue of head  
20 licence arrangements in the session on high value sites.

21  
22 Just on joint ventures, we recommended that joint  
23 ventures are to be considered as one user, as a licensee is  
24 a single legal entity. Thank you.

25  
26 THE CHAIRMAN: Thank you, Chen. Questions or  
27 comments around the table? Would somebody like to start?  
28 Yes, David.

29  
30 MR McKEAN: David McKean, Crown Castle. Just starting  
31 with the co-user fee concept, it is important to note that  
32 co-user fees don't exist on private land, so this is merely  
33 a construct for these land management agencies. As I said  
34 on the last occasion, for better or worse we signed up to  
35 the arrangements that were recommended out of the 2006  
36 review. I am not sure if we are regretting that now  
37 because there is no market evidence to support a co-user  
38 fee construct and what it has done, it has driven a very  
39 extreme outcome on these sites that are driving the users  
40 away from those sites, and certainly we have heard from  
41 NBNCo that they are not building new towers on LMA sites.  
42 So that is not in the interests of users of - it's not just  
43 the communications network providers, it's actually the  
44 people of New South Wales who get the benefit of these  
45 networks. So it's millions of Australians who could  
46 benefit from competitive wireless networks operating in the  
47 market.

1  
2 If we are talking about effectively an increase in  
3 co-user fees through the changes proposed by the fee  
4 schedule, then what we are talking about, to be plain, is  
5 just an increase - a tax on collocation in the industry and  
6 that we should be upfront about what that is and that will  
7 just drive more towers built by single users and also will  
8 increase barriers to entry in the market because there are  
9 a number of players here today who cannot afford to build  
10 those towers themselves, so they rely on players like  
11 Crown Castle to enable them to reduce the cost of entering  
12 the market. That is just dealing with the co-user fee  
13 construct.

14  
15 On the infrastructure provider discount, again there  
16 is no market evidence to suggest that that discount should  
17 be removed and at the previous round table I talked about  
18 the maths of the fact that actually if you wanted to have a  
19 level playing field between a Crown Castle-owned tower and  
20 a Vodafone-owned tower you would need to actually increase  
21 that discount by 20 per cent. So removing that discount  
22 simply removes any incentive for an open access provider to  
23 build infrastructure and therefore minimise the  
24 proliferation of towers in the market.

25  
26 There are a number of issues there. One other point  
27 I would like to make is, just for the record, there has  
28 been some commentary in some of the submissions that  
29 Crown Castle might be a managed services provider. We are  
30 not, we just own the physical infrastructure. We don't  
31 transmit anything from our sites. We are not a carrier, we  
32 are purely a competitively neutral player in the market.

33  
34 Then if you take the changes to the co-user fees  
35 through the increase of rents, effectively, across the  
36 board and the removal of the infrastructure provider  
37 discount, effectively increasing Crown Castle's rent by  
38 about 50 per cent across these sites. Also increasing the  
39 costs for all the co-users. So we are talking about a  
40 very, very substantial change to our operating environment,  
41 where in fact the total rent payable on our sites will be  
42 about four times, on these LMA sites, to other sites we  
43 have got in metro Sydney. So it obviously leads us to the  
44 conclusion that we can't be building towers on LMA land.  
45 So it is self-defeating, that outcome, because it means you  
46 actually have less rent payable to the New South Wales  
47 government through Crown Castle being able to operate in

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1 the market. Thank you.  
2  
3 THE CHAIRMAN: Thank you, David. Who would like to go  
4 next? Gary.  
5  
6 MR WALLIS: Thank you, Chairman. Gary Wallis from  
7 Broadcast Australia. We see the issue of co-user fees and  
8 discounts for infrastructure providers to be linked issues  
9 and, in actual fact, they reflect a flawed concept.  
10 I think the more we try to patch it up to sort of make it  
11 work, the worse it actually gets.  
12  
13 Our view is that if a landlord is receiving a fair and  
14 equitable rent for the use of the land that they have in  
15 their possession for the time being, then there is no need  
16 for any other additional payments.  
17  
18 The argument that was put forward in the BEM report  
19 and has been reflected to an extent in the IPART report is  
20 that the co-user fee arrangement should actually be  
21 encouraged because it is a risk-sharing arrangement.  
22 Broadcast Australia have no problems with risk-sharing  
23 arrangements, to the extent that you could fashion one  
24 whereby there was a concessionary rent that was originally  
25 entered into and then as more people came along or left,  
26 that rent was adjusted so that at the point when the  
27 facility was used to its maximum potential, the landlord  
28 was getting a fair return and, I suppose, at other times we  
29 were paying a concessionary rent for the opportunity that  
30 might be presented by that infrastructure that is on the  
31 site.  
32  
33 The difficulty in that concept is that there is no  
34 market for concessionary rents in New South Wales, as we  
35 build upon the remarks by Crown Castle. We are not aware  
36 of those sorts of arrangements. They are certainly not a  
37 feature in the tenures that we have in our network. As  
38 such, the market evidence that BEM have relied upon is in  
39 actual fact the market-based rents for the highest possible  
40 best use for that site. So every time then that a co-user  
41 fee arrangement is imposed upon the top of that, what you  
42 actually end up with is a windfall gain to the LMA or an  
43 overcompensation to that LMA for the use of that land.  
44 I think the Crown Castle submission had a useful example,  
45 whereby the site in Sydney would be getting a yield of  
46 about \$82,000, which is obscene - egregious, actually.  
47

1 Therefore, I guess if you are going to sort of keep  
2 co-user fees - and that certainly seems to be the intent of  
3 IPART, although we'd encourage you to reconsider that view  
4 - then you can't actually remove the discount for  
5 infrastructure providers. What you end up with is an  
6 instance there where you do result in outcomes of  
7 double-dipping. We recognise that IPART have looked to  
8 implement a proposal that is, I suppose, competitively  
9 neutral and if that is the case, I think the more  
10 appropriate place to look for achieving that outcome is  
11 actually looking at discounts for any primary user who has  
12 someone sharing on their site, such that the rent that is  
13 ultimately paid to the land management agency actually  
14 reflects their contribution to that arrangement.  
15  
16 THE CHAIRMAN: Thank you, Gary. Anybody else around  
17 the table? Bob.  
18  
19 MR JOICE: Bob Joice, Telstra. In the event that IPART  
20 does not accept the Telstra position that rents should be  
21 based on a percentage of land value, the current co-user  
22 discount is grossly inadequate at 50 per cent. If I look  
23 at the rates per square metre for a typical Telstra  
24 telecommunication facility where we lease 50 square metres  
25 of land, in the Sydney metropolitan area that equates to  
26 \$650 per square metre per annum. If we were a co-user -  
27 say we are going onto the Crown Castle site - all we need  
28 to install on the Crown land is a shelter. Our typical  
29 shelters are 7.5 square metres. So if I lease land  
30 sufficient for a shelter of 7.5 square metres and get the  
31 50 per cent discount, I am paying \$2,167 per square metre,  
32 or almost three times the rate that the primary users  
33 charge. How can that be equitable? If the government  
34 wants to stimulate the economy and ensure that  
35 telecommunications are widely disbursed for the benefit of  
36 the community - the economic development of the state -  
37 charging \$2,167 a metre is not going to do it. It is just  
38 grossly - it is extortionist and we can't sustain those  
39 sort of rates. Thank you.  
40  
41 THE CHAIRMAN: Thank you, Bob. Anybody else around  
42 the table?  
43  
44 MR McLEOD: Thank you, Mr Chairman. I just want to point  
45 out that our industry has never supported the co-user fee.  
46 I think the co-user fee was originally invented by the LMAs  
47 to extract as much as they can out of the telcos and

1 unfortunately, like my good friend over here in the  
2 narrowcast people, our radio industry has been caught up in  
3 that. Certainly it is not sustainable from our point of  
4 view and it is certainly, in some cases and in some sites,  
5 as pointed out by our friends at Shoalhaven, there are  
6 other sites that could be used and there could be a  
7 proliferation of towers on non-LMA land as a result of  
8 these changes.

9  
10 A couple of examples in our backyard to reference to  
11 is at our last meeting here Donal mentioned a pristine site  
12 at Nelson Bay called Gan Gan and there are three or four  
13 towers on that wonderful bit of land up there but only two  
14 of them actually reside on Crown land. The others are on  
15 private land. Now, Telstra happens to be one of those poor  
16 people that are sitting on the Crown land. Our good  
17 friends at Crown Castle are not.

18  
19 When it comes to competitiveness, Telstra is at a huge  
20 disadvantage because there is no way that the guys at  
21 Crown Castle will be paying anything like the users would  
22 pay if they had to go onto the Telstra site. At Mount  
23 Sugarloaf in our backyard the same applies - three towers,  
24 one is a BA tower on Mount Sugarloaf that is on Crown land,  
25 one is a TransGrid tower on Crown land, the third is the  
26 NBN television tower, which is on private land. Again,  
27 anybody going on the Crown land sites are hugely  
28 disadvantaged. So people are lining up to go onto the NBN  
29 tower. It is just a cheaper method of doing business, at  
30 the end of the day.

31  
32 So from our perspective, the co-user fee just doesn't  
33 work. It is a non-event. Thank you.

34  
35 THE CHAIRMAN: Thank you, Martin. Anthony.

36  
37 MR GOONAN: Anthony Goonan from Yless4U. Telstra is okay  
38 down at Mount Gillamatong near Braidwood because there they  
39 have chosen to go on private land while the other three  
40 towers, including Broadcast Australia and Optus, are on  
41 public land. The interesting part about the access to that  
42 particular land - and I note that it was also commented in  
43 the Broadcast Australia report - for the last eight years  
44 we have refused to pay the exorbitant fee that is being  
45 requested by the private land owner who owns 360 degrees of  
46 the land that surrounds the Crown parcel of land, because  
47 the Crown road that supports the Crown land is like that

1 (Indicates angle). So we have backpacked our way up and  
2 for the last eight years. It paid us to actually survey  
3 the Crown road, which hadn't been surveyed since 18  
4 something or other, and we make certain we don't  
5 transgress. We have been shot at a couple of times while  
6 we have done that. We have had police protection so that  
7 we couldn't force our telecommunication carrier rights to  
8 enter upon property to service telecommunications  
9 infrastructure.

10  
11 In this case Telstra, located around about 60 metres  
12 away from the other three towers, is on private land.  
13 I understand why they are there. The market consequences  
14 of what has been attempted here are just horrific. It  
15 won't work. Thank you.

16  
17 THE CHAIRMAN: Thank you, Anthony. Dugald.

18  
19 MR GLASCOW: Just an example, also Mount Sugarloaf BA  
20 site: we have got a facility on Mount Sugarloaf, we also  
21 have our equipment inside BA's shelter there yet we are  
22 charged a co-user fee.

23  
24 THE CHAIRMAN: Thank you, Dugald. Somebody from the  
25 land management agency? Donal.

26  
27 MR O'SHEA: Thank you, Mr Chair. When we value a marina  
28 we take into account the number of berthing areas within  
29 that marina. When we value a marina with a lot of spare  
30 space we take into account the potential for the berthing  
31 areas within that marina. A tower is not that different  
32 from the marina concept, it is a practice that we do  
33 whether we are valuing marinas or golf clubs - green fees  
34 come into play.

35  
36 We are in favour of the co-user fee and we are in  
37 favour of the continuation of it. The co-user payments do  
38 subsidise the payments that will otherwise be taken from  
39 the infrastructure providers or the primary users.

40  
41 The co-user fees do operate as a means of helping to  
42 look at what is the value of that site and what are the  
43 benefits derived from that site. To ignore the co-user  
44 fees would be to ignore the value of the site and how it is  
45 being used.

46  
47 We support the withdrawal of the 30 per cent discount

1 for infrastructure providers. The infrastructure provider  
2 gains a benefit from building infrastructure and applying  
3 the infrastructure and leasing that infrastructure or  
4 providing managed services. There is no case that the  
5 infrastructure provider should receive a discount for the  
6 use of public land for that purpose. The infrastructure  
7 providers have the ability to deliver outsourcing  
8 arrangements to the telecommunication providers in a way  
9 that allows them to deliver that service with economies of  
10 scale. The discount of 30 per cent is unwarranted now.

11  
12 THE CHAIRMAN: Thank you, Donal. Peter.

13  
14 MR CHOQUENOT: I can't let that one go by, Donal. Under  
15 what circumstance in any other circumstance do you charge  
16 the end users for using the facility? I can understand a  
17 marina, you charge for the capability that the marina holds  
18 - the number of boats that might be there. How many times  
19 are you going to knock on the boat and take money off the  
20 people that are actually using it? How many times do you  
21 go up to a car park and have a second boom gate taking  
22 money off people as they come and go just because the car  
23 park is on Crown land? It is a very flawed analogy that  
24 one, I would have to say.

25  
26 THE CHAIRMAN: Thank you, Peter. Donal and then David.

27  
28 MR O'SHEA: One issue that is a little bit lost in the  
29 translation of this whole debate - and I am doing a very  
30 poor job of getting it out there - is that the tower owners  
31 and the infrastructure providers actually charge a rent for  
32 the occupation of the infrastructure. We are unaware of  
33 what the quantum of that rent is, which would really inform  
34 our debate. We want a fair, evidence-based rental system.

35  
36 It is not only the land management agency that is  
37 charging a rent for the occupation of public land but yet  
38 we are the bogie man in the room and yet what is being  
39 charged by the other entities is invisible to us. We would  
40 really like visibility over that because, as I said at the  
41 outset, we are after a fair price regime - differential  
42 price regime - based on the evidence. We believe that is  
43 in everybody's interests, both the land management agencies  
44 and the industry. We are unable to achieve that because of  
45 the absence of information.

46  
47 THE CHAIRMAN: Thank you Donal. David.

1  
2 MR McKEAN: Just starting with the evidence point: there  
3 is plenty of evidence before this inquiry that go to access  
4 to land prices. So evidence provided by Optus, Vodafone -  
5 we have actually put in our average rental in metro Sydney  
6 as part of the evidence. You can also just search  
7 registered leases, it is not that complicated. It is  
8 accessible in the market.

9  
10 What is being sought - and I really think, obviously,  
11 this is the elephant on the table - is looking at a profit  
12 share for the tower industry. The arrangements that  
13 Crown Castle has with its customers are irrelevant to this  
14 inquiry. That is the first point.

15  
16 The second point is that is confidential information  
17 and we think it is surprising that government agencies  
18 would ask Crown Castle to breach that information, which is  
19 clearly confidential and not relevant to this inquiry.  
20 That is the first point.

21  
22 On the second point - and this is another way of  
23 thinking about this tower business - because we are in the  
24 tower business, it is different to land management  
25 agencies, I appreciate that, and it is different to the  
26 telecommunication network provider industry. The number  
27 of users that we have on our sites is a measure of the success  
28 that we have as a business because collocation is our  
29 business and the reason that a company like Crown Castle  
30 exists in the market is because the other participants are  
31 not as enthusiastic about collocating people on those  
32 towers. So rather than actually punishing that success in  
33 collocation, it actually should be encouraged because it is  
34 obviously the way to create a more competitive market and  
35 that means you have more competitive products that are  
36 offered to end users and they are actually just people  
37 walking around who get access to different types of  
38 products and services. That is why an independent tower  
39 business exists. Thank you.

40  
41 THE CHAIRMAN: Thank you, David. Other comments  
42 around the corner. Stuart?

43  
44 MR SCHRAMM: Thank you, Chairman. Stuart Schramm,  
45 National Parks. We do encourage and support the  
46 collocation fee. We think that by increasing the value of  
47 the tower to the infrastructure providers, collocaters are



1 actually demonstrating that improved intensity of use of  
2 the site itself and that the value of the site actually  
3 improves and some of that value should accrue to the land  
4 owner.

5  
6 We have talked about car parks and marinas. A lot of  
7 them have fixed capacity but if the tower has excess  
8 capacity and improved intensity of use - or a potential of  
9 intensity of use - then that value in itself increases.  
10 Thank you.

11  
12 THE CHAIRMAN: Thank you, Stuart. Peter and then Gary.

13  
14 MR CHOQUENOT: I didn't understand a word you said  
15 then, Stuart. It is very simple and, Donal, if you want to know  
16 what a tower's worth - guys put some up, hundreds of them  
17 up. I'd applaud you, I'd use them, I'd give you money for  
18 them. Bottom line is these guys are paying for the dirt,  
19 they are putting up the tower. The capacity of the tower  
20 is easily worked out. This is not rocket science. If you  
21 want to get into the business of running towers and making  
22 a few bucks out of it, I'd applaud it. I'd help you do  
23 anything we can. I want more towers.

24  
25 There is a fundamental disconnect here. The cost of  
26 that infrastructure and the value of that infrastructure is  
27 dependent on the number of people using it, obviously. We  
28 are all agreeing with that. The question is how much of  
29 that do you guys, as owners of the land, is warranted to  
30 you. It seems to me that that negotiation is upfront when  
31 the tower is built, not on some airy-fairy concept that  
32 maybe it will get to 100 per cent loading. Negotiate  
33 better, guys, if you want more money. Get into it or build  
34 some towers yourself and show them how to do it.

35  
36 THE CHAIRMAN: Thank you, Peter. Gary.

37  
38 MR WALLIS: Gary Wallis, Broadcast Australia. Peter  
39 probably touched on the argument I was going to have. If  
40 you had two parcels of land side by side, both of them were  
41 100 square metres and one had built a Hills Hoist that was  
42 capable only of carrying a small panel antenna and we were  
43 to build a 150 metre tall broadcast tower next to it that  
44 was capable of accommodating, hypothetically, hundreds of  
45 parties, I don't think our site becomes any more valuable  
46 than the land next to it and why we would have to pay an  
47 additional fee because we made an additional investment in

1 the land is of any relevance, I can't see.

2  
3 THE CHAIRMAN: Thanks, Gary. Tim.

4  
5 MR METCALF: Tim Metcalf, NBNCo. Just one further  
6 observation: the primary users also take responsibility  
7 for access tracks and sometimes that is massively  
8 prohibitive, another big cost. Co-users have to contribute  
9 to that. I guess, for the premium that LMAs are asking for  
10 there is not a lot of skin in the game as well, I think.  
11 Thank you.

12  
13 THE CHAIRMAN: Thank you, Tim. Other comments  
14 around the table. Dugald, Anthony.

15  
16 MR GLASCOW: I just want to get away from towers for a  
17 moment. I think if this had the basis in the conventional  
18 real estate market, and take, for example, serviced office  
19 operators, for example, Servcorp in MLC centre. I don't  
20 see GPT, the owner of MLC Centre, putting their hand out  
21 and taking a fee from every serviced office tenant that  
22 uses Alf Moufarrige, or Servcorp's, facilities there. This  
23 is the sort of principle that the LMAs are talking about.  
24 It doesn't happen.

25  
26 THE CHAIRMAN: Thank you, Dugald. Anthony.

27  
28 MR GOONAN: Anthony Goonan, Yless4U. I particularly  
29 want it noted that Crown Castle do not believe they are in the  
30 telecommunications business, they are in the tower  
31 business. They are not a telecommunications carrier. Our  
32 submission - and those issues that we raise in our  
33 submission - particularly refer to that. What is a tower?  
34 What is communications?

35  
36 I didn't realise that Crown Castle were not a carrier.

37 I just assumed you were. So what they are doing is  
38 building towers on Crown land, soon to be private land  
39 because of the cost of Crown land. We build towers on  
40 private land because of the cost of Crown land.

41  
42 Broadcast Australia made the comment before that if  
43 someone builds a tower - and I have questions over what a  
44 tower is - but if I put up a pole 4.5 metres tall which  
45 fits under the low visual impact provisions of the  
46 Australian Communications and Media Authority in a rural  
47 setting and I don't need DA approval from the local

1 council, nor the state government. And if I am using a  
2 class licence even at 900 megahertz, 2.4 gigahertz,  
3 5.8 megahertz, 24 gigahertz, 60 gigahertz or 80 gigahertz,  
4 where I could have the capacity to outstrip any Broadcast  
5 Australia site in terms of transmission for the technology  
6 that they put in five to 10 years ago, I still am only  
7 building - I am putting up a pole. And as for real estate,  
8 7 square metres on the bottom of a tower, the real estate  
9 I would normally occupy, I would put a little box on the  
10 side of a pole and that will be approximately half a square  
11 metre. Yet even though Yless4U goes and provides  
12 high-speed telecommunication facilities where no-one else  
13 wants to go - and I am talking about the three major  
14 carriers, NBN - and NBN will only cover 4 per cent wireless  
15 - where we make our business is we go out in the little  
16 areas where we have people that need high-speed services  
17 and can't do it because of the latency of satellite. What  
18 we are hearing here is we have been penalised for that. We  
19 will have to pay \$7,200 per annum if we are located on a  
20 Crown land site. I am looking at withdrawing six RFS  
21 services - 6 megabits for duplex - it is how they get their  
22 images out in bushfire season. Thank you.  
23  
24 THE CHAIRMAN: Thank you, Anthony. Any other questions  
25 or comments around the table before I ask the audience? No?  
26 Anybody from the audience on co-user infrastructure  
27 provider discounts?  
28  
29 MR DUFF: Thank you, Chairman. My name is Hamish Duff  
30 from Master Communications, within the two-way radio  
31 industry.  
32  
33 I am a customer of many of the organisations in this  
34 room, I am a customer of Crown Castle, ATI, Gencom, even of  
35 Telstra on occasion. In our industry the co-user fee has a  
36 major impact. The services that we provide to our  
37 customers in the Sydney area, outer metro area and some  
38 regional areas require that we put a radio device or  
39 repeater which is worth about \$5,000 into an existing hut  
40 that uses no extra real estate of any kind and has zero  
41 impact on land use. We often share infrastructure on the  
42 tower itself. It is very common in our industry to share  
43 antennas, share feeders and so forth and yet we are asked  
44 to pay a 50 per cent user fee for the entire site. So we  
45 are using no land space, we are having zero impact and we  
46 are still asked to pay 50 per cent of the fee.  
47

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1  
2 The fee is higher than what we can charge for the  
3 service. That is the current situation. The new situation  
4 takes it beyond all bounds. How can this possibly be? In  
5 terms of market evidence, why won't the land management  
6 agencies refer to the ACMA database? It has a very simple  
7 mechanism. It is called high density, medium density, low  
8 density and regional density. If you need evidence of  
9 usage, you only need to look at regional and low density to  
10 find that there are almost no radio services in these  
11 locations, so again, why are we charged such a high penalty  
12 when there's almost zero market?  
13  
14 The other thing that we need to discuss here is that  
15 when we go in with a licenced two-way radio service, we are  
16 often competing against class licence services.  
17 Class licence services are missing out on the feed because  
18 the land management agencies don't know that they exist.  
19 They don't exist on the ACMA database, so there are no  
20 fees, they're not being caught up in the fee structure, and  
21 yet, because we have a licensed service we have to pay to  
22 ACMA, we get caught up in the co-user fee. Where is the  
23 equity in this? Co-user fees should not exist. Thank you.  
24  
25 THE CHAIRMAN: Thank you, Hamish. Is there anybody  
26 else from the audience?  
27  
28 MR KEITH WILLIAMS: Keith Williams, Metwide Group.  
29 Presently, because of IPART and the positions that you're  
30 putting forward, we are actively pulling away from  
31 everything that we may have to pay an IPART fee for.  
32 We cannot afford it. The fee structures that we've heard  
33 talked about here - years ago I heard about a similar  
34 organisation in America that they used to call the Mafia.  
35 That's basically what we're hearing here. You've got your  
36 hands up our bum and in our back pockets and you're going  
37 through it. Get out of it. Leave our businesses alone and  
38 let us pay reasonable fees and charge reasonable fees.  
39 Thank you.  
40  
41 THE CHAIRMAN: Thank you, Keith. Is there anybody else?  
42 No? Any last comments around the table before we move to  
43 the last item?  
44  
45 MR GOONAN: The reason why I'm presuming that the three  
46 land management agencies haven't caught up with Yless4U is  
47 that - except for two locations - we have purposely chosen

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35

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1 to not be on Crown land because of this very issue. One of  
2 those items is for a radio service that we provide  
3 through our network audio transmission for the local  
4 community and sure enough, one of those must  
5 be on a Crown land site south of Canberra. I have had the  
6 land management agencies chasing me for six years on that  
7 one. I just haven't got around to ACMA telling them to  
8 move it 20 metres to the right and then they'll stop  
9 bothering me. There's something wrong here. Thank you.

10  
11 THE CHAIRMAN: Thank you, Anthony. Let's move on to  
12 the next item on the agenda. High value sites. Chen.

13  
14 SESSION 3: HIGH VALUE SITES

15  
16 MS CHOU: Thank you. High value sites. Market evidence  
17 shows that some sites earn higher rentals than other sites  
18 in the same location category. There is also evidence to  
19 suggest that land with certain qualities contributes  
20 significantly to the value of that site. Our draft  
21 recommendation is that land management agencies should  
22 publish a list of high value sites with the following  
23 qualities: elevation, ease of access, line of sight,  
24 proximity to major highways and availability of alternative  
25 sites.

26  
27 We recommend a head licence arrangement for high value  
28 sites where it is cost effective. This is a more efficient  
29 arrangement as the management agencies would only need to  
30 negotiate with the primary users. Where a head licence  
31 arrangement is not cost effective, we recommend land  
32 management agencies to negotiate with individual co-users  
33 or to charge co-users 50 per cent of the negotiated rent  
34 with primary users. We also recommend an open tender  
35 process for any new high value sites. It is an efficient  
36 way to derive the market value for high value sites.  
37 Thank you.

38  
39 THE CHAIRMAN: Thank you, Chen. High value sites -  
40 comments and questions around the table?

41  
42 MR SMITH: In relation to the heads of terms that have  
43 been put up for consideration of high value sites, one of  
44 the things that seems required, to my mind, to ensure  
45 consistency and transparency as per the terms of reference  
46 is for a clear framework if we are going to adopt high  
47 value sites to be determined, other than those five broad

1 heads of consideration for the land management agencies.

2  
3 I am not entirely sure whether there was a consistent  
4 process that applied across the three separate land  
5 management agencies to come up with a list of high value  
6 sites that are included in the draft report, but without a  
7 clear framework it is going to result in different land  
8 management agencies viewing things differently.

9  
10 In regards to the tender process, I think it  
11 essentially ignores the normal sequence of events that  
12 occurs in these scenarios, where someone will require a  
13 service in a particular area, they'll identify a number of  
14 sites that exist and then they will approach the landowner  
15 seeking access to those sites. It is very rare that  
16 I would see a circumstance working where the LMAs get  
17 together and then work out which are the high value sites  
18 in a particular area and put those out to open tender.

19  
20 I am happy to take comments from my industry partners  
21 in the room but I don't see that process as being the  
22 normal process that would be used in the industry and  
23 I don't actually see how it is going to work particularly  
24 well in this scenario. Thank you.

25  
26 THE CHAIRMAN: Thanks, Shaun. Gary.

27  
28 MR WALLIS: I am not sure that Broadcast Australia  
29 necessarily accepts the presumptions that have been  
30 included on the slides. I'm not sure that any evidence has  
31 been provided to demonstrate that some sites pay a higher  
32 rent based upon their characteristics. As far as the BEM  
33 report went, they said there was some evidence in the  
34 Sydney region, but in actual fact in non-metropolitan areas  
35 it was less conclusive.

36  
37 Our view is that if these characteristics are so  
38 fundamental in determining fair and appropriate rents for  
39 sites, you would find those outcomes spread more widely and  
40 consistently in all areas, not more so in metropolitan  
41 areas and less so in non-metropolitan areas.

42  
43 I share Shaun's view that the criteria that IPART  
44 proposed, whilst an improvement on the concept in the 2005  
45 report which was based upon the number of users, are quite  
46 subjective. I think that that will lead to inconsistent  
47 applications across the LMAs.

1  
2 Broadcast Australia did our own review and we took  
3 those subjective characteristics and tried to define them  
4 and give them ways of being implemented. I think that's  
5 another part of it. If a strategic site concept is to be  
6 useful, it has to be simple and easy to administer.  
7  
8 We then compared the sites that we have with the  
9 Crown Lands Department against our view of those criteria  
10 and we found that there was absolutely no consistency  
11 across the range. As a matter of fact, we had a number of  
12 sites where we couldn't identify any strategic  
13 characteristics. We had a number of sites -  
14 Mount Gillamatong is one, another is Mount Cenn Cruaich -  
15 where the Crown Lands Department can't even provide access  
16 to those sites. It relies upon private arrangements that  
17 either Broadcast Australia owns and controls or they are in  
18 the management of other parties.  
19  
20 We do though have the view - and it was borne out in  
21 the submissions that were made by the LMAs - that the real  
22 focus here is on the number of users on a site.  
23 We undertook a separate analysis based upon the ACMA  
24 database, looking to the number of users on the sites and  
25 those in the immediately surrounding area. The review that  
26 compared the sites that the Crown Lands Department put  
27 forward shows conclusively that the exercise here has been  
28 one in identifying the number of users at a site and there  
29 was no significant correlation at all with the  
30 characteristics that IPART proposed.  
31  
32 I think that begs the question that if a list of sites  
33 is going to be proposed, there needs to be a degree of  
34 scrutiny applied to the sites put forward to determine  
35 whether they actually do qualify with those criteria or  
36 not.  
37  
38 I am also concerned, as proposed as a concept by BEM,  
39 that the determination of a strategic site is a  
40 contribution of both the land management agencies provision  
41 of sites with those certain characteristics and then the  
42 development of the parties who have invested in that land  
43 can't actually be taken into account under the Crown Lands  
44 Act, which strictly forbids any improvements to be taken  
45 account of. That concept would need to be modified if it  
46 was going to apply under the Crown Lands Act.  
47

1  
2 We also consider it commercially inappropriate that  
3 there be a floor price imposed for the negotiations.  
4 I think it was a medium density level, as the LMAs have  
5 proposed, or otherwise. It is pretty inappropriate that  
6 you would go into a negotiation with any party whereby one  
7 of your hands was tied behind your back and they could act  
8 in a way that their downside risk was utterly mitigated  
9 while your upside risk was all the exposure in the  
10 negotiation.  
11  
12 We think that the whole concept should be set aside.  
13 It is administratively difficult to implement. It is  
14 subjective. So far it has been shown that it has not been  
15 consistently applied by the LMAs.  
16  
17 THE CHAIRMAN: Thank you Gary. Bob?  
18  
19 MR JOICE: I would just echo Gary's comments and I might  
20 go a little bit further. There is no such thing as a  
21 strategic site. They're all part of a network. One site  
22 connects to another. If you looked at the qualities chosen  
23 to determine a high value site, you would be excused for  
24 thinking that it was determined by someone who has no idea  
25 how a radio network operates. We choose elevated positions  
26 to propagate the signal far and wide and the higher the  
27 hill, the smaller the tower we have to build: that makes  
28 sense. We need access to it to build it and then to  
29 maintain it. We need line of sight. That's how it works.  
30  
31 Proximity to highways - if we're looking to cover that  
32 area, to provide service to that highway, yes, we'll need  
33 to be near the highway. The available alternative sites,  
34 if they're there well and good. If they're cheaper, we'll  
35 go there. All of these particular categories could apply  
36 to every single mobile site built in this country, every  
37 single one, and this is open to selective abuse by the  
38 LMAs. I see from their list almost every one has got  
39 "hill", "mountain", or "trig" - trigs are always on hills -  
40 as the definition of the location. How surprising, we're  
41 on hills. All right?  
42  
43 Why would a site at Gundagai, for God's sake, be  
44 considered a high value strategic site? It may cover part  
45 of the Hume Highway. It is not a goldmine running by  
46 Gundagai, I'm sorry. The Warrumbungles, Palerang,  
47 Tenterfield, I mean, these are local hilltops, right, and

1 the fact that there may be no other land available apart  
2 from Crown land, that is the only reason those sites are  
3 there. Right now if there was an alternate site, I'll  
4 guarantee all the carriers will go anywhere but Crown land.  
5 We would prefer very much not to be on Crown land. The  
6 current regime is just reinforcing that. Thanks very much.

7  
8 THE CHAIRMAN: Thank you, Bob. Brendan and David.

9  
10 MR PARNELL: Our contention was that there shouldn't be  
11 any high value sites, in our submission, due to that economic  
12 uncertainty. To take Bob's point a little further, we've  
13 got a number of venues which have been classed, even though  
14 they're low density, as high value, they service more sheep  
15 than people, with the local racing service. The economic  
16 validity isn't really stacking up there. To the BA  
17 submission which talked about a clearer framework, as Gary  
18 mentioned, it is a flawed approach to take the one that has  
19 been based more on the number of users that are on each  
20 site.

21  
22 From our perspective, as a narrowcaster, our view is  
23 that it is discriminatory insofar as we can't monetise or  
24 commercialise our signal. Our licence is very limited by  
25 the terms of the content that it has and ACMA, following  
26 that Federal Government inquiry into racing radio services  
27 for regional areas, provided very specific directions about  
28 where we had to be. We don't have any alternatives. In  
29 our view, the high value component is discriminatory from a  
30 narrowcaster's perspective.

31  
32 THE CHAIRMAN: Thank you, Brendan. David.

33  
34 MR McKEAN: We have done an assessment of the Crown  
35 Castle sites that have been identified as high value sites and  
36 supporting the submissions of Broadcast Australia. The  
37 fact is when we look at it, it is just a function of the  
38 number of users that we have on those towers. There were  
39 66 Crown Castle towers that are the subject of this  
40 inquiry. Fifteen are high value. There's nothing special  
41 about them. They're the same types of structures. They've  
42 all been built for a particular purpose, which is to  
43 propagate a signal to end users. We just think this is an  
44 arbitrary line that is open to abuse. Effectively, what  
45 you're talking about is a super profits tax for the tower  
46 business. I think we should just call a spade and spade in  
47 relation to that: that's what this is.

1  
2 The other thing is just in terms of looking at market,  
3 I support Broadcast Australia's point that if you're having  
4 a collar but no cap in your negotiation, it suggests that  
5 the LMAs are not entirely confident of what would happen if  
6 you actually did a proper market based assessment of the  
7 rentals for these sites. I think that is a very  
8 interesting aspect of the submissions that have been made.

9  
10 Just a final point to confirm this, it doesn't appear  
11 that any participant in this inquiry would suggest that a  
12 primary user should be directly liable for co-user fees,  
13 which is a suggestion for these high value sites, or at  
14 least that's how I read part of the draft report. There is  
15 no support on either side of this discussion for that. It  
16 is just completely unrealistic to expect that Crown Castle  
17 or Broadcast Australia or Telstra should be directly liable  
18 for co-user fees and then attempt to recover them from its  
19 customers.

20  
21 The reason for that is that our own customers just  
22 won't pay for that, firstly, and secondly, it is not in  
23 Crown Castle's interests to be an unpaid bank for the New  
24 South Wales Government. Thank you.

25  
26 THE CHAIRMAN: Thank you, David. Tim.

27  
28 MR METCALF: Thanks, Mr Chairman. The high value site was  
29 the second pillar of NBNC's submission. We have concluded  
30 that it is certainly inconsistent with their market  
31 principles in establishing a price, but we're also  
32 intrigued that the agency's reference to high market in  
33 terms of our medium and low prices are actually discounted  
34 against the high values suggests that there's not a great  
35 awareness of what real market price is below a medium as  
36 well. Thank you.

37  
38 THE CHAIRMAN: Thanks, Tim. Donal.

39  
40 MR O'SHEA: Thanks, Mr Chairman. Tower rentals and  
41 land rentals are linked and we are trying to do a market  
42 based assessment of what the true rentals should be, so  
43 that's what this process is about, David, even though you  
44 believe that somehow it is trying to move away from that.

45  
46 The potential for a site for development is a  
47 consideration in deciding whether it is high value or

1 strategic or standard. The demand for location on that  
2 site is a consideration. We cannot ignore the  
3 infrastructure on that site when we're considering its  
4 potential for development. The standard fee schedule has  
5 discounts - and generous discounts - of 53 per cent for  
6 medium density sites and 80 per cent for low density sites.  
7 Some of the sites are located on hilltops. They are scarce  
8 and the demand is high. What would inform this debate -  
9 which is important - is what are the rentals for the  
10 location on the tower and then we can look at the rentals  
11 for the land.  
12  
13 We keep hearing that this is not a market based  
14 approach but the evidence that is available is dominated by  
15 the IPART schedule. The evidence that is lacking is the  
16 tower rental evidence. Until that is disclosed it will  
17 become somewhat of a circular debate, but there is clear  
18 evidence that some towers are more high value and strategic  
19 than others and as such they should be priced accordingly.  
20  
21 THE CHAIRMAN: Thank you, Donal. Stephen?  
22  
23 MR HANDLEY: I referenced in my earlier comments about  
24 the multi-layered nature of the industry that we're in. The  
25 criteria which determine whether a site is a high valued  
26 site may be high value to some users but it is of  
27 absolutely no use whatsoever to others.  
28  
29 It is basically a very serious impediment to the  
30 provision of services, most particularly in rural and  
31 remote areas where there is or there may be a need to  
32 transit a site that is perceived to be a high value site in  
33 order to get on to other areas. To penalise a small  
34 carrier, an operator, who needs to transit a site on the  
35 basis of its proximity to a highway or to a town is  
36 completely irrelevant.  
37  
38 We're in the point-to-point microwave radio business.  
39 I couldn't care if there was a highway nearby, I have no  
40 interest in the town that's nearby, and so it is illogical  
41 to apply that to a site and to every user on the site.  
42 Perhaps one needs to go and reconsider the fundamental  
43 basis for how these things have been determined. Thank  
44 you.  
45  
46 THE CHAIRMAN: Thank you, Stephen. Are there other  
47 comments? Howard.

1  
2 MR GAME: Thank you, Mr Chair. Just to pick up on a  
3 couple of points that have been made, I'd make the  
4 observation that virtually everyone in this room uses a  
5 mobile phone. You expect your phone to work everywhere.  
6 You don't expect it to work more often in certain  
7 locations. You expect a ubiquitous service. The other  
8 observation I would make is that in the mobile network and  
9 in the radio network generally each radio installation has  
10 a finite capacity. It can only carry a certain number of  
11 calls. To somehow decide that some sites are of more value  
12 than others ignores the expectations of the community, the  
13 customers, the people in this room, about the service  
14 they'll obtain and the fee they pay. We don't charge  
15 higher fees for people using their phone in Pitt Street as  
16 opposed to Gulargambone. You charge exactly the same fee.  
17 The high value concept is completely flawed.  
18  
19 The second point I would make is around the tender  
20 process. I think I speak for all the carriers in saying  
21 that if we identify a site that involves a tender, we will  
22 not proceed with that site. Picking up the comment that  
23 Shaun made about the way in which we go about planning  
24 and deploying our networks, he's exactly right. We identify a  
25 need and we go exploring for candidates - in our jargon -  
26 that might meet that need.  
27  
28 Faced with a site where we're going to do that through  
29 a public tender process, we would dismiss it automatically  
30 for two reasons. One is the time frame involved in going  
31 through a tender process and the second is we're basically  
32 putting our hand up and saying, "Hello world. This is a  
33 location Optus would like to build a tower. Who can work  
34 out the highest price you can charge us?" It is completely  
35 inconsistent with the way we go about doing business.  
36 Thank you.  
37  
38 THE CHAIRMAN: Thank you, Howard. Other comments or  
39 questions around the table? Martin.  
40  
41 MR McLEOD: I think there's just something fundamentally  
42 wrong with the way that the LMAs want to value Crown land.  
43 Donal is saying that we want to know how much you're  
44 charging so we can come up with a rent. At the end of the  
45 day, I think that's wrong. I lease premises. My landlord  
46 doesn't say to me, "Oh, how much is your business going to  
47 make so I can charge you the appropriate amount of rent?"

1 That's just wrong.  
2  
3 We all need to get back to tintacks. The investment  
4 is made by people like us, by people like Crown Castle.  
5 The ability for us to earn money on that and the ability  
6 for us to employ people and whatever, shouldn't be in any  
7 relation tied back to how much Crown land can charge us for  
8 the use of that land. I just think that's totally wrong.  
9 Thank you.  
10  
11 THE CHAIRMAN: Thank you, Martin. Any other comments  
12 around the table? Anthony.  
13  
14 MR GOONAN: I agree with Stephen regarding having the  
15 transit at major population centres to get to a remote  
16 centre. In Yless4U's submission we cited the case of  
17 Goulburn. Under the new proposals, transiting Goulburn and  
18 on the Crown land where the towers are on the top of a hill  
19 near Goulburn, it would preclude us from using Goulburn.  
20 The implication of that for us - we're trying to get out to  
21 Hardin, Boorowa, Young, somewhere like that - is that we  
22 need to find another source for our back-hauling, our  
23 interconnect points. In our case, we go in by Canberra and  
24 what we'd have to do is increase the bearer there. In  
25 doing so, we will not be able to provide services at the  
26 same cost as if we were able to pull directly from Goulburn  
27 itself.  
28  
29 What I am saying is that I'm not trying to service  
30 Goulburn per se. I just need to transit Goulburn on a  
31 point-to-point link which doesn't have any customers either  
32 to pick up some back-haul services, data services, or to  
33 get to my customers which are out another 50 to  
34 80 kilometres west of Goulburn, in a very low, remote  
35 population density area of New South Wales. Thank you.  
36  
37 THE CHAIRMAN: Thank you, Anthony. Peter.  
38  
39 MR CHOQUENOT: Just a quick one. I will reinforce what  
40 Martin was saying there. If we are trying to get a  
41 market-based approach to this, the competition, in effect,  
42 to Crown lands is private land and that is a negotiation to  
43 access the land. It has got nothing to do with the value  
44 of the business you are putting on it. Sure a canny  
45 negotiator will try and make some guesses and push your  
46 price along. That's life, that's the way it works.  
47

1  
2 That is the way the world works out there, that you  
3 negotiate for your land when you are going to build a tower  
4 and you pay for your land and off you go. It is as simple  
5 as that. This just seems to me a bizarre construct, lumped  
6 in with the co-user arrangement that doesn't make a scrap  
7 of sense.  
8  
9 THE CHAIRMAN: Thank you, Peter. David.  
10  
11 MR McKEAN: Just to finish off, I think what we have heard  
12 in the inquiry is that the changes that have been proposed  
13 to the fee schedule are too extreme and what I would ask of  
14 the tribunal is that we turn the ship around. There is an  
15 opportunity to change the draft report. When rents and  
16 profit sharing are too extreme, the market will respond to  
17 that. So we have already seen that basically the industry  
18 is not using these sites efficiently or effectively and you  
19 are going to reduce return to the government as a result.  
20  
21 There is no market-based evidence that has been  
22 provided that would support the changes to the fee  
23 schedule. The market evidence suggests that the current  
24 fee schedule is in excess of the market. That is the  
25 evidence before the inquiry. There is no other evidence -  
26 market-based evidence - to support the changes proposed.  
27 So we just respectfully ask the tribunal to consider the  
28 market evidence that has been put before the inquiry, which  
29 would suggest there should be no change to the existing fee  
30 schedule.  
31  
32 THE CHAIRMAN: Thank you, David. Bob.  
33  
34 MR JOICE: Bob Joice, Telstra.  
35  
36 I will read from the BEM report in regard to high  
37 value sites. They say:  
38  
39 In more succinct terms, we consider a high  
40 value site for a particular use or user to  
41 be a site where:  
42 (a) the site provides an important part of  
43 a user's operation  
44 (b) there are few viable alternatives, and  
45 (c) to relocate to one or more alternative  
46 sites would be significantly more costly.  
47

1 That is a great definition for predatory conduct and  
2 I think the Department of Fair Trading would be very  
3 interested to see this sort of conduct being demonstrated  
4 by the LMAs and certainly it will be one of the issues that  
5 will be raised I think in future litigation.

6  
7 THE CHAIRMAN: Thank you, Bob.

8  
9 Any other comments or questions around the table?  
10 Donal and then we will go the floor.

11  
12 MR O'SHEA: Thank you, Mr Chairman.

13  
14 I just thought I should respond to some of the  
15 comments. NSW Trade & Investment want fair market rates.  
16 Our rental regime has been described as punitive and  
17 discriminatory, yet the tower component of the rent remains  
18 unknown. Until that is known, our rentals can't be gauged  
19 in any other context but in that guise it is impossible for  
20 us to make an informed judgment. Strategic sites exist for  
21 some classes of users but not all. I acknowledge that.  
22 The strategic site will have a bigger import for some  
23 businesses and in the application of any strategic site  
24 value that would need to be recognised. Thank you.

25  
26 THE CHAIRMAN: Thank you very much, Donal. Questions  
27 or comments from the audience? Any questions or  
28 comments? Yes.

29  
30 MR DUFF: Thank you, Mr Chairman. Hamish Duff, Master  
31 Communications again.

32  
33 With regard to high-value sites, clearly some sites  
34 have more users than other sites and that is really the  
35 only definition that applies. Unfortunately that doesn't  
36 relate to how in our business the two-way radio business  
37 works. We require a higher return on investment for larger  
38 sites to pay for the many sites that have a much lower  
39 return on investment or in some cases a negative return.

40  
41 Many of the sites that we require to build an entire  
42 network make a loss, so it is unfair for the land  
43 management agencies to cherry pick some sites from others,  
44 to call them a higher return and to say, "You should pay  
45 more for those". How can the agencies review all of our  
46 business practices and understand exactly what we do? They  
47 are not in a position to tell us how to run our business,

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1 they should merely rent the land at the appropriate value  
2 and let us get on with what we do.

3  
4 There is one other comment I meant to make in my last  
5 section and that is that the two-way radio industry is at a  
6 junction point conversion from analog to digital  
7 technology. We are at a point where we would like to  
8 invest in new technology to provide more and better  
9 services across New South Wales. The current regime is an  
10 impediment to that investment. The proposed regime kills  
11 the investment. Thank you.

12  
13 THE CHAIRMAN: Thank you, Hamish. Any other  
14 comments from the audience? Yes, Brian.

15  
16 MR SHEARING: Brian Shearing from Shoalhaven Council  
17 again.

18  
19 One of the sites in Shoalhaven has been forecast as  
20 being a high-value site and yet it is only servicing a  
21 regional area, basically. So there is no correlation  
22 between the possible income versus those criteria. They  
23 don't address the income, they address whether it's high,  
24 whether it's got access. There is no income-based criteria  
25 there. Thank you.

26  
27 THE CHAIRMAN: Thank you, Brian. Yes.

28  
29 MR GRAHAM BARBER: Graham Barber, Optus. I am a  
30 relative newcomer to the telco industry, having worked for  
31 Optus for just over two years but I do have nearly 20 years  
32 experience in the property industry and I have to say I am  
33 a little concerned about some of the concepts that are  
34 being thrown around in the discussions.

35  
36 The talk about needing to know what tower rents people  
37 are paying on the sites is completely irrelevant. You are  
38 leasing a parcel of land. What determines the value of  
39 that land is what other market participants are prepared to  
40 pay for that parcel of land, not to lease space on the  
41 tower. So it is completely irrelevant.

42  
43 The other concern I have is around the co-users. In  
44 your high-value sites you mentioned that IPART recommends  
45 that the co-users deal direct with the primary user, which  
46 is consistent with standard property principles, that if  
47 you have got 100 square metres of office space and you want

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1 to sublease 50 square metres of it, that is your  
2 prerogative as the tenant, and you can do that, so that is  
3 consistent with that. But then with the other sites you  
4 are saying, "Well, as a co-user you have got to pay co-user  
5 fees". IPART's recommendation is completely contradictory  
6 on those two points.  
7

8 The third thing I wanted to say was that, really, you  
9 have got to bring this back to market rates that people are  
10 paying and it seems that there is a lot of talk about  
11 capacity to pay in determining these fee schedules but,  
12 really, to bring it back to the market and what the current  
13 market rents are and I can tell you, working in the  
14 industry, from what I have seen is the rents are on a  
15 downward trajectory and it is not based on the ability to  
16 pay, it is based on the market, what we are paying per  
17 site.  
18

19 CONCLUDING REMARKS

20  
21 THE CHAIRMAN: Anything else? No?

22  
23 Thank you all very much. We all know exactly what you  
24 think, which is good. I would like to thank you on behalf  
25 of the tribunal, this is the second round table for many of

26 you, and also for your submissions. It has been of great  
27 benefit to us. We have resisted the urge to cut in on a  
28 few issues but we will keep that until the final report.  
29

30 In terms of our process from here, we now work on  
31 producing our final report, which we will provide to the  
32 government hopefully by mid July 2013. This report will  
33 include our final recommendations and the government will  
34 then decide if and how they want to implement them. As  
35 these recommendations will be to the government, the  
36 government will make a final decision and in developing the  
37 recommendation we will consider your comments, your  
38 submissions and your comments at the round tables.  
39

40 Just to remind you that the transcript from today will  
41 be on IPART's website within the next week or so and just  
42 to thank you all very much for your attendance and look  
43 forward to seeing you again some time. Thank you.  
44

45 AT 4.04PM THE TRIBUNAL ADJOURNED ACCORDINGLY

46  
47

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