



FreeTV
Australia

Submission by Free TV Australia

Review of rental arrangements for
communications towers on Crown land

Independent Pricing and Regulatory Tribunal NSW

April 2019

1 Summary

- This review is an important opportunity to redress the current inequities in the charging framework for communications towers on Crown land.
- The pricing methodology proposed of estimating a floor based on opportunity cost and a cap based on estimated willingness to pay is inappropriate considering the public good nature of free-to-air broadcasting.
- IPART's discussion paper does not adequately differentiate between those providers (like mobile telephony providers) who are able to capture the economic value of the service they provide and users like free-to-air broadcasters that cannot.
- Pricing on the basis of opportunity cost, without taking into account the social value of the positive externalities of free-to-air broadcasting risks creating a pricing structure that, at best, will be a value transfer from broadcasters to the NSW Government. At worst it will make some sites uneconomic and lead to the under-provision of socially beneficial broadcasting services.
- The value that broadcasters derive from these sites has fallen dramatically in recent years, as demonstrated by the falling advertising revenue figures. IPART should specifically take this into account in its pricing methodology.
- Taken together, the inappropriateness of an opportunity cost pricing model, the reductions in the value derived from these sites and the public good characteristics of free-to-air broadcasting mean it is inequitable to continue the current pricing structure for broadcasters.
- Free TV submits that the community group discount rate should be applied to free-to-air broadcasters as a proxy for the value of the positive social externalities stemming from the provision of broadcasting services.
- Free TV also supports the abolition of co-user fees. These do not reflect common commercial practices and amount to "double-dipping" by land agencies.

2 Introduction

Free TV welcomes the opportunity to respond to IPART's review of rental arrangements for communications towers on Crown land.

Free TV represents all of Australia's commercial free-to-air television broadcasters. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. Free-to-air television delivers high-quality Australian programmes including news, current affairs, sports and culture to all Australians for free. 98% of Australian households receive digital terrestrial television.¹

A strong commercial free to air broadcasting industry delivers important public policy outcomes for all Australians and achieves important social and cultural objectives. In order to continue to meet these objectives, it is critical that infrastructure charging reflects the commercial reality of providing free-to-air broadcasting services in the modern media environment.

¹ Australian Video Viewing Report, Quarter 4, 2017.

While the IPART paper discusses the objects of the *Telecommunications Act 1997*, the discussion of the *Broadcasting Services Act 1992* (BSA) is limited to a very brief description of the function of the Act, rather than describing the objects of the Act.

These are set out in section 3 of the Act and include (inter alia):

- (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and
- (aa) to promote the availability to audiences and users throughout Australia of a diverse range of datacasting services; and
- (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs;...”

Free TV strongly urges IPART to consider the consistency of its recommendations with the full set of objects in the BSA. This will be vital to achieve the coherence in policy that is required across all levels of Government in order for these objectives to be met.

3 IPART’s proposed pricing methodology

The approach IPART is considering to estimate efficient rents is to determine an amount “bounded by a user’s willingness to pay and the opportunity cost to the land agency.” In other words, we understand this to mean that a de facto floor price would be set with reference to an estimate of the opportunity cost of the use of the land, capped by an estimate of the willingness-to-pay of users.

In this submission, Free TV raises concerns with the setting of both of these estimates from a whole-of-industry perspective. Individual submissions will be presented from free-to-air broadcasters and their transmission service providers. Accordingly, this submission should be read alongside the other submissions that provide more detail on the specifics of the individual impact of the proposed methodology on free-to-air broadcasters.

3.1 Free-to-air broadcasting is a public good

Commercial free-to-air television is a two-sided market, in which broadcasters act as intermediaries between viewers and advertisers. The business model involves providing a platform of channels which on one-side is attractive to viewers because of the content the channels contain, and on the other-side is attractive to advertisers because of the viewers watching the channels. Commercial broadcasters compete with each other for both viewers and the advertising dollars those viewers attract.

In economic terms, free-to-air television in Australia fits the definition of a public good in that the service is both non-excludable and non-rival, that is:

- there is no cost-effective way to exclude any one viewer from watching programs for free and attempting to do so would be inconsistent with the BSA; and
- free-to-air broadcasts are non-rival in that several individuals can consume broadcast content without diminishing its value to others.

These public good characteristics of the free-to-air model results in what economists term ‘market failure’ that can result in under-provision compared with what is socially optimal in the absence of a government subsidy or other form of support.

In the free-to-air model, broadcasters can only capture the value of providing the platform to advertisers. They cannot capture the value of the broadcast to viewers (as they, by definition, receive the content free of charge). This contrasts with subscription television or

pay-per-view which can capture some of the value to viewers (as well as to advertisers).² As individual viewers are not able to be excluded from receiving a free-to-air broadcast, there is no incentive for them to pay for the cost of free-to-air broadcasting even where they value the service by more than its cost.

This significant difference in the ability to capture the value of providing a service is not discussed in the IPART issues paper. As a result, there is a tendency throughout the paper to inappropriately consider together the charging regime for telecommunications providers and broadcasters. As discussed in this submission, for many reasons the services provided by broadcasters places them much closer to the community sector in terms of the value derived from towers on Crown lands.

Accordingly, if IPART is minded to continue the current structure of pricing and discounting for some users, Free TV submits that commercial free-to-air broadcasters should attract the same discount as for community-based organisations.

3.1.1 There are significant societal benefits from FTA broadcast services

Free-to-air broadcasting confers a wide array of benefits to the Australian economy. These include:

- being the largest contributor to domestic content production in Australia and underpinning the entire production sector, spending over \$1.6 billion a year on Australian programming;
- being responsible for the majority (\$6 out of every \$10) of spending on domestic content;
- contributing \$2.8 billion per year back into the economy through production, payroll, technology, advertising and taxes; and
- employing over 15,000 people in broadcasting and the independent production sector (7,200 of which are directly employed by the broadcasters).³

In addition to these direct benefits, free-to-air television also gives rise to a range of societal benefits—or “positive externalities”.

As IPART is aware, an externality occurs when consumption or production of goods or services impacts on third parties. For example, vaccination programs help protect children too young to be vaccinated (a positive externality) while pollution from a factory may harm people living near the factory (a negative externality). The presence of externalities can mean that markets fail to deliver efficient outcomes.

Free-to-air broadcasting is recognised as giving rise to significant positive externalities. For example, Ofcom in the UK has recognised that the availability and consumption of free-to-air broadcasting generates broader social value including in terms of:

- access and inclusion – for example value derived from universal access and facilitating access to public services;

² The extent to which the value accruing to viewers can be captured will depend on the degree to which the provider engages in price discrimination. If a single price is charged to all viewers, viewers who get greater value than the marginal viewer will get to keep that value. If the provider can charge viewers different prices, the provider can extract more of the value accruing to viewers. Subscription television providers typically bundle different genres of content as a means to engage in this type of price discrimination. The nature of the content that is broadcast is likely to determine whether a free-to-air or subscription television charging model would generate the greater returns.

³ Venture Consulting (2015), “The Value of Free TV: The contribution of commercial Free-to-air television to the Australian economy.”

- quality of life – for example value derived from providing access to services which promote quality of life, perhaps by helping to support or promote work-life balance or family life;
- belonging to a community – for example value derived from allowing people with similar interests to communicate or from participating in your local community;
- cultural understanding – for example value derived from services which reflect and strengthen cultural identities or promote diversity and understanding of other cultures; and
- informed democracy – for example value from the news and current affairs programming provided by our members that facilitates democratic debate.⁴

However, as explained above, these positive externalities cannot be captured by the broadcasters. This has significant implications for the selection of pricing methodologies for infrastructure used in the provision of these services. Models that seek to impose a floor on infrastructure pricing using opportunity cost risks the under-provision of broadcasting services and a reduction in overall social benefit.

That is, unless the opportunity cost pricing model adequately takes into account the positive externalities created by free-to-air broadcasting, there is a significant risk that the rents charged will mean that some transmitters will become uneconomic.

The challenge for regulators around the world in setting prices for infrastructure (and indeed spectrum) is doing so in a manner that takes into account the value of these positive externalities. That is, there would be significant challenges in estimating the discount that would be required to be applied to take into account the public good nature of free-to-air broadcasting (a discount would be required to reflect the fact that broadcasters cannot capture the private benefits to viewers of free-to-air television).

Work previously undertaken for Free TV by CEG has revealed that very few studies have been undertaken that provide a quantitative assessment of the value. In the context of spectrum pricing, that has led regulators to apply a nominal administrative fee for the cost of managing spectrum, rather than seeking to impose harmful opportunity cost pricing models.

Free TV submits that the same approach should apply to the pricing of communications towers on Crown land. In practice, this would mean that free-to-air broadcasters would be charged at the community discount rate, as a proxy for the discount that would need to apply to the opportunity cost to account for the social value of free-to-air broadcasting.

3.2 Value derived from these sites is falling

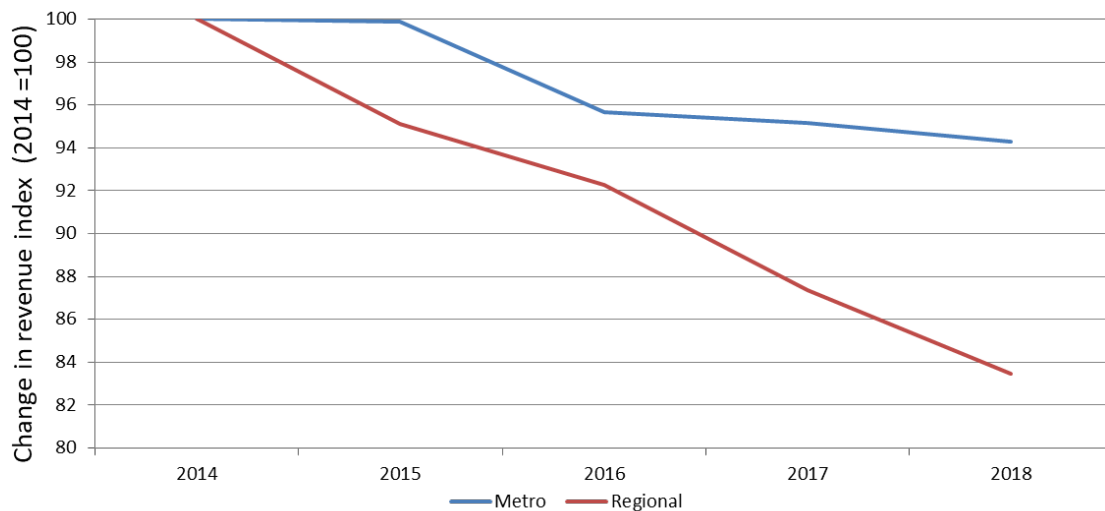
The economic value that commercial free-to-air users derive from the use of these transmission sites has continued to fall in recent years. This can be best demonstrated by an analysis of audited advertising revenue figures for the last five years.

As shown in the graph below, in metro areas revenues have fallen nearly 6 per cent over the last five years. In regional areas, those most heavily impacted by the IPART pricing recommendations, revenue has fallen 17 per cent in the last five years. In absolute terms, regional annual revenue has fallen from \$879 million to \$733.6 million over this period.

In the terms that IPART uses for its pricing methodology, this loss in revenue directly negatively impacts on the economic value that commercial networks can derive from using the transmissions sites. As a result, their 'willingness to pay' is also substantially reduced.

⁴ Ofcom (2006), "Digital Dividend Review Annexes," Annex 7, Capturing consumer and citizen interests, page 12.

Change in revenue - last 5 years



The change in these revenues over time is not currently a factor that IPART proposes to consider in estimating the willingness of users to pay for access to these sites. Further, IPART’s discussion paper does not sufficiently differentiate between telecommunications users and broadcast users of these transmission sites.

While the paper notes the “profitability” of the services provided by the users is likely to differ, it does not provide sufficient analysis of the link between this and the significant difference in the value derived from these sites by different user groups.

The telecommunications industry does not face the revenue challenges described above. More importantly, mobile telephony is not a public good. Mobile network operators are able to capture the benefits associated with the supply of their services in a way that broadcasters cannot, as described in the previous section. As a result, commercial free-to-air broadcasters are more closely matched to community-based organisations in terms of the value derived from these sites and their willingness to pay.

This is particularly the case for those sites which transmit television signals into areas that would otherwise be a reception blackspot. As set out in the Southern Cross Austereo submission, the economics of re-transmission sites that are required to service blackspot areas can be marginal to negative. These sites often do not significantly increase the number of people able to receive a signal and therefore do not materially change the achievable advertising revenue. Again, this means that the economics of these services is much more closely aligned to a community-based organisation than a telecommunications operator.

3.3 Other pricing considerations

3.3.1 Co-user fees amount to double-dipping

Free TV submits that IPART’s final advice to the Minister should explicitly recommend that co-user fees not be levied. Currently, customers of the infrastructure owners pay a fee which will cover some of the owner’s rental fee as well as paying the government agency a co-user fee (being 50 per cent of the primary user fee).

This practice of double-dipping is not reflective of common commercial practice. For sites located on private land the usual practice is for the infrastructure owner only to contract with the landowner and pay a site fee. The infrastructure owner is then free to deal with third parties in relation to access and use of the site, sometimes with the obligation to notify the landlord of such arrangements. This ensures that the party investing in and maintaining the

infrastructure, for example by modifying the structure to accommodate third party equipment, is compensated for that investment. Also, in many cases the primary user passes on some of their rental payments to the co-user.

3.3.2 Rents should take into account total fees paid

Some land management agencies are also charging an additional maintenance fee. This amount is charged to each user in addition to the rental fee, and often comes without any additional benefit or service. The infrastructure owner, who may also be the primary user, is usually obliged to maintain the site despite these additional fees.

Free TV recommends that either the pricing methodology allow for any maintenance fees to be subtracted from the total rent payable, or the maintenance fees should be discontinued. In our view, it would be administratively more efficient for land agencies to be prevented from charging ancillary fees on top of the IPART recommended rental amount.

4 The need for coherence in pricing policy

State and Federal Governments set pricing for infrastructure and spectrum across the broadcasting supply chain. As a result, there is a need to ensure coherence in the methodology that Governments employ in setting prices to ensure that public policy objectives can be realised.

Applying a strict opportunity cost pricing model for communications towers used by broadcasters would not achieve any efficiency benefits but would merely represent a value transfer from free-to-air broadcasters providing a public good, to the NSW Government.

We also note that the prices that IPART recommends are also used as a reference point for the pricing of communications towers in other jurisdictions. This increases the materiality of IPART's determination from a broadcaster's perspective.

The ongoing sustainability of the free-to-air model in Australia necessitates all levels of Government balancing the costs of the obligations imposed on broadcasters against the revenue potential stemming from the access to infrastructure.

In recognition of this, in 2017, the Australian Government took the decision to remove broadcast licence fees and replace it with an interim spectrum charge, based on a per transmitter taxation arrangement. While the new spectrum charge is high by international standards, it was nevertheless recognition of the need to better balance the imposition of costs, obligations and the revenue potential of access to infrastructure/spectrum.

In order to achieve policy coherence across all levels of Government, IPART should recommend a pricing structure that extends the community discount to the free-to-air broadcast sector, in recognition of the falling value derived and the public good nature of the services provided from these sites.