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Mr Brett Everett
Director, Pricing
Independent Pricing and Regulatory Tribunal NSW
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By email: Brett_Everett@ipart.nsw.gov.au

Dear Mr Everett

IPART Draft Report: Rental Arrangements for Communications Towers on Crown Land

Free TV welcomes the opportunity to respond to IPART's Draft Report in relation to the rental arrangement for communications towers on Crown Land.

In summary, Free TV:

- welcomes the findings in the draft report that co-user fees for equipment situated entirely within the primary user's footprint should be limited to a nominal access charge;
- considers that IPART should take into account the social value of the services being provided and retain the rebate arrangements for services that provide community services;
- seeks to ensure that all users benefit from any change from the Draft Report should IPART take the view that a change of approach is required to ensure consistency with the non-discrimination provisions of the *Telecommunications Act 1997*.

Co-user fees

Free TV strongly supports the position adopted in the Draft Report to reform the approach to co-user fees. This was a key issue raised in our submission to the issues paper.

In our view the existing approach of requiring co-users to pay 50 per cent of the primary user's fee represents an unjustifiable double-dip that does not reflect common commercial practice. As we noted in our earlier submission, 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.

The IPART approach of ensuring that co-users who have equipment entirely within the footprint of the primary user only pay a nominal access fee appropriately addresses this issue.

We also note that this IPART's draft recommendation enjoyed strong support at the public forum held in July. Free TV considers that there should be no change to this recommendation in the final report.

Community service rebates

In the Draft Report, IPART recognised that many of the users of communications towers undertake activities that generate positive externalities. Nonetheless, it took the view that the existing rebate framework should be removed, despite the existing rebate arrangements recognising at least some of these community benefits. Free TV considers that this is a retrograde step to the existing rental arrangements.

We note that IPART has a preference for these community benefits to be accounted for by Government subsidies. Free TV acknowledges that pricing services at marginal cost and allowing these pricing signals to encourage efficient resource allocation is often regarded as a desirable public policy approach. Indeed, it can be when the users are able to respond to the pricing signal and resource allocative efficiencies can be realised.

However, in the case of towers that form part of a communications network, there is often little to no ability of users to respond to the pricing signal. The result is pure wealth transfer from the users to the land agency, with no increase in economic efficiency. We maintain that it is an appropriate public policy response to apply a rebate for services that provide a community service, in cases where the user cannot in whole or in part capture the benefit of the services being provided.

This is well illustrated by our members who rely on RBA Holdings Pty Ltd (RBAH) to provide their transmission infrastructure. Commercial regional free-to-air broadcasters rely on RBAH to provide terrestrial digital television services in black spot areas. As Free TV set out in our earlier submission, regional broadcasters are under unprecedented pressure, both in terms of costs and advertising revenue. In addition, RBAH carries the cost of providing transmission services for both the ABC and SBS.

We highlight RBAH as an example of a primary user that does not generate revenue, but nonetheless provides a demonstrable public benefit from broadcasting free-to-air services into areas that otherwise would receive no service. The incremental reach from these blackspot programs does not add meaningfully to revenue to broadcasters (and none in the case of the ABC), but nonetheless the service would be considered vital for those communities served by RBAH.

We therefore submit that the rebate framework should be maintained and extended such that commercial free-to-air broadcasters and/or their transmission providers receive the same 60% rebate as a Regional Telephony Provider.

All users to receive benefit of change of approach

Free TV notes the views of some stakeholders regarding a conflict between the non-discrimination provisions of the *Telecommunications Act 1997* and an approach that benchmarks Crown Land rental to the private market, rather than the rents charged to other users of Crown Land.

We are not in a position to comment on consistency with the Telecommunications Act of IPART's suggested approach. However, we do note that, at a minimum, it would appear appropriate for IPART to publish an aggregate level of rental paid by other users of Crown Land (for example, TransGrid) as a sense check against the primary user charges included in the Draft Report. This would appear the most readily achievable method of demonstrating compliance with the Telecommunications Act.

In any event, Free TV seeks an assurance that any change in approach by IPART from that included in the Draft Report that lowers rental charges is applied consistently across all users.

Contact

If you have any queries or wish to discuss any of the matters raised in this letter, please do not hesitate to contact me on (02) 8968 7100.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Bridget Fair', is positioned below the 'Kind regards,' text.

Bridget Fair
Chief Executive Officer