



ICT Decision 2016-1 – dispute determination relating to the allocation of Infinity Broadband Ltd’s position on CUC’s electricity poles

ICT Consultation 2016-1 – costs of reattaching of Infinity Broadband Ltd’s communication cables to CUC’s electricity poles

ICT Consultation 2016-2 – pole attachment reservation fees, permit application process and charging principles

A: Consultation on the appropriateness of the reservation fees relating to the attachment of communication cables to CUC’s electricity poles.

B: Consultation on the permit application process for the attachment of communication cables to CUC’s electricity poles.

C: Consultation on the charging principles relating to the attachment of communication cables to CUC’s electricity poles.

Grand Cayman, 27 April 2016

ICT Consultation 2016-2 – pole attachment reservation fees, permit application process and charging principles

A: CONSULTATION ON THE APPROPRIATENESS OF THE RESERVATION FEES RELATING TO THE ATTACHMENT OF COMMUNICATION CABLES TO CUC’S ELECTRICITY POLES 35

 BACKGROUND..... 35

 PROPOSAL..... 37

 CONSULTATION QUESTIONS 37

B: CONSULTATION ON THE PERMIT APPLICATION PROCESS, INCLUDING MAKE-READY WORK, FOR THE ATTACHMENT OF COMMUNICATION CABLES TO CUC’S ELECTRICITY POLES. 39

 BACKGROUND..... 39

 PROPOSAL A 40

 PROPOSAL B 44

 PROPOSAL C 45

 CONSULTATION QUESTIONS 47

C: CONSULTATION ON CHARGING PRINCIPLES RELATING TO THE ATTACHMENT OF COMMUNICATION CABLES TO CUC’S ELECTRICITY POLES 49

 BACKGROUND..... 49

 PROPOSALS 49

 CONSULTATION QUESTIONS 55

ANNEX 1 – POLE ATTACHMENT POSITIONS 57

ANNEX 2 – PERMIT APPLICATION TIMELINES 58

ICT Consultation 2016-2 – pole attachment reservation fees, permits application process and charging principles

A: CONSULTATION ON THE APPROPRIATENESS OF THE RESERVATION FEES RELATING TO THE ATTACHMENT OF COMMUNICATION CABLES TO CUC'S ELECTRICITY POLES

BACKGROUND

156. Section 69 (2) of the Law states that:

The Authority, in order to promote an efficient, economic and harmonised utilisation of infrastructure, may – [...] (b) inquire into and require modification of any agreement or arrangements entered into between a licensee and another person or licensee which has the effect of limiting either the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.

157. Section 68 (1) and (3) of the Law requires the costs for infrastructure sharing to be “based on cost-orientated rates that are reasonable and arrived at in a transparent manner.” Further, Regulations 6 and 10 of the Infrastructure Sharing Regulations state that, among other things, charges for interconnection or infrastructure sharing shall be “non-discriminatory” and “determined in a transparent manner.”

158. The Authority notes Infinity’s reference to the payment of “reservation fees in respect of the Poles since 2012” (see paragraph 59).

159. The Authority further notes that “reservation fees” do not feature in CUC’s pole sharing arrangements with LIME (**CUC-LIME Pole Sharing Agreement** and **LIME-CUC-DataLink Novation Agreement**) and DataLink (**CUC-DataLink Pole Sharing Agreement**), neither are they stated in the **CUC-Infinity Pole Sharing Agreement**.

160. The Authority understands that “reservation fees” (defined as the “**Quarterly Reserved Space Payment**”) have been introduced in the relevant pole sharing agreements applicable to Infinity (by the **CUC-Infinity Deed of Variation**) and Logic (Appendix C of the **DataLink-Logic Pole Sharing Agreement**) in order to allow for Infinity and Logic to secure exclusive use of what is defined as the “**Reserved Space**” in the Communication Space which is designated for

attachment of the Licensees' communication cables to CUC's electricity poles. Such exclusive use is, however, limited in time to what is defined as "**Build-Out Period**", and which has the following expiry dates of:

- (1) 31 December 2014 in the **CUC-Infinity Deed of Variation**; and
- (2) 31 December 2018 in the **DataLink-Logic Pole Sharing Agreement**.

161. The Authority notes that the introduction of the terms and conditions relating to the "**Reserved Space**" and the "**Quarterly Reserved Space Payment**" by CUC and DataLink in the relevant pole sharing agreements applicable to Infinity and Logic, including the specification of the guaranteed "**Total Minimum Annual Payments**", likely call into question the appropriateness of such charges considering that infrastructure sharing services are to be provided:

at reasonable rates, on terms and conditions which are no less favourable than those provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder and shall be of no less favourable quality than that provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder" (see paragraph 43).

162. Not least, on their face, such charges are likely to be discriminatory as they are not, and have not been, applied to either DataLink or LIME in relation to the provision of the same infrastructure sharing service. In addition, subject to consultation, the Authority does not consider there to be any objective reasons to explain the difference in treatment between the Attachers as highlighted.

163. Indeed, the Authority's initial view is that the operation of the:

"Reserved Space";

"Quarterly Reserved Space Payment"; and,

"Total Minimum Annual Payments",

in the relevant pole sharing agreements applicable to Infinity and Logic, limits the promotion of competition in the provision of ICT services or ICT networks, primarily because the costs related to the "**Reserved Space**" are not incurred by DataLink and LIME, as competitors to Infinity and Logic in the provision of ICT services or ICT networks in the Cayman Islands. In effect, Infinity and Logic experience higher costs relative to DataLink and LIME, in relation to the attachment of their communication cables to CUC's electricity poles, thereby placing them at a competitive disadvantage against DataLink and LIME. This further translates into slimmer profit margins for Infinity and Logic – as a main consequence of certain cost factors applied to Infinity and Logic, and not to DataLink and LIME.

164. In addition, the operation of the "**Total Minimum Annual Payments**" may also act as a disincentive for DataLink to issue pole attachment permits to Infinity and Logic in a timely manner, because the revenue earned by DataLink from such payments appears to be guaranteed irrespective of whether any permit has been granted by DataLink or not. Such mechanism for earning the revenue based on guaranteed payments irrespective of the actual activities being carried out by DataLink, with respect to the provision of pole sharing services, creates a disincentive for DataLink to act efficiently in the provision of its ICT networks and ICT services.

This may also have the effect of restricting the ability of Infinity and Logic to roll out their fibre networks in a timely manner, and therefore reduce the intensity of competition between the Licensees in the provision of ICT networks and ICT services in the Cayman Islands.

PROPOSAL

165. Therefore, subject to consultation, the Authority proposes that all references to the:

“Reserved Space”;

“Quarterly Reserved Space Payment”; and;

“Total Minimum Annual Payments”,

in the pole attachment agreements of Infinity and Logic be struck out, as follows:

- Article 1(f) of the **CUC-Infinity Deed of Variation** (pages 2 through 4), except subsections 1(f)2 and 1(f)3 on page 4;
- Article F under Item 2 – Other Mutual Agreements in Appendix C to the **DataLink-Logic Pole Sharing Agreement**, except subsections F2 and F3.

166. In addition, the Authority holds the initial view, subject to consultation, that where the **“Total Minimum Annual Payments”** made by Infinity or Logic in a given year exceed the total annual payments relating to the **“Quarterly Pole Rental Fees”** paid by Infinity or Logic respectively (the **“exceeding amount”**), the **CUC-Infinity Deed of Variation** and the **DataLink-Logic Pole Sharing Agreement** should be amended to provide for DataLink to reimburse the *exceeding amount*, preferably in form of a credit allowance that is claimed back from the future payments by Infinity and Logic to DataLink for the charges relating to the **“Annual Attachment Fee”**, unless the parties agree otherwise. As stated in paragraph 164 above, the Authority considers that, subject to consultation, the operation of the **“Total Minimum Annual Payments”** creates inefficiencies which are likely to prevent the promotion of competition in the provision of ICT services and ICT networks. The proposal as set out in this paragraph, is aimed at reducing such inefficiencies by removing the referenced disincentive.

CONSULTATION QUESTIONS

167. Therefore, based on the above, the Authority invites all interested parties to submit their comments, with supporting evidence, on:

QUESTION A1: Provide your view as to whether or not the reservation fees, being the *Quarterly Reserved Space Payment*, are appropriate as part of DataLink’s relevant charging principles relating to the attachment by Licensees of communication cables to CUC’s electricity poles.

QUESTION A2: If the reservation fees, being the *Quarterly Reserved Space Payment*, are appropriate as part of DataLink’s relevant charging principles relating to the attachment by Licensees of communication cables to CUC’s electricity poles, provide your view as to whether such charges should apply to all the Attachers of communication cables.

QUESTION A3: If your view is that the reservation fees, being the *Quarterly Reserved Space Payment*, should not apply to all the Attachers, provide the reason and justification for not applying such charges to all the Attachers.

QUESTION A4: If your view is that the reservation fees, being the *Quarterly Reserved Space Payment*, are appropriate as part of relevant charging principles relating to the attachment of communication cables to CUC's electricity poles, provide your view as to what appropriate pricing formula should apply for such charges, including reasons as to why such proposed pricing formula is appropriate.

QUESTION A5: Provide your view on any other issues relating to the operation of the "*Reserved Space*" and the "*Quarterly Reserved Space Payment*" in the pole sharing agreements, including, but not limited to, the reference to the "*Total Minimum Annual Payments*".

QUESTION A6: Provide your view on the appropriate approach to the possible reimbursements by DataLink of the payments made by Infinity and Logic in relation to the "*Total Minimum Annual Payments*", as discussed in paragraph 166 above.

QUESTION A7: Provide your view on any other matters you consider relevant to this consultation.

168. Responses to the public consultation on the above questions relating to the reservation fees, as part of relevant charging principles relating to the attachment of communication cables to CUC's electricity poles, are due by **28 June 2016**.

B: CONSULTATION ON THE PERMIT APPLICATION PROCESS, INCLUDING MAKE-READY WORK, FOR THE ATTACHMENT OF COMMUNICATION CABLES TO CUC'S ELECTRICITY POLES.

BACKGROUND

169. Section 65 (3) of the Law stipulates that a:

licensee to whom [an infrastructure sharing] request is made ... shall, in writing, respond to the request within a period of one month from the date the request is made to him and ... provide the interconnection service in a reasonable time.

170. Section 69 (2) of the Law states that:

The Authority, in order to promote an efficient, economic and harmonised utilisation of infrastructure, may – [...] (b) inquire into and require modification of any agreement or arrangements entered into between a licensee and another person or licensee which has the effect of limiting either the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.

171. Regulation 6 of the Infrastructure Sharing Regulations states that, among other things, “*infrastructure sharing services shall be provided in a manner that [...] enables the development of competition in the provision of public ICT networks and public ICT services in a timely manner*” and “*each licensee has an obligation to [...] provide [...] infrastructure sharing services in good faith.*”

172. The Authority notes DataLink’s claims that: (1) “*current dispute, and recent exchange of correspondence between DataLink and Infinity has actually come about as a result of DataLink identifying a number of breaches of the Infinity Agreement and violations of Applicable Standards*”; (2) “*Infinity, until recently, maintained the position that a red band appearing on a pole meant that Infinity had the right to attach to that pole (without a permit)*”; (3) “*Infinity has now accepted that doing so amounts to a breach of the Infinity Agreement and any attachment made to poles without permits are unauthorised attachments*”; (4) “*Infinity’s breaches have meant that DataLink has had to spend a significant amount of resources on auditing the poles around the island to determine whether permits have been issued for attachments, or unauthorised attachments have been made*”; (5) “*[a]s at today’s date, Logic are attached to over 1274 poles and Infinity are attached to over 926*”; (6) “*[t]he figures are likely to be significantly higher than this in circumstances where attachers were attaching to poles without valid permits*”; and, (7) “*DataLink is still in the process of completing an audit on the pole attachments.*”

173. In addition, the Authority notes DataLink’s submission as part of its response to the Authority’s 26 June 2015 information request, that:⁴⁰

⁴⁰ <http://www.icta.ky/upimages/commonfiles/145951952621July2015DataLinkresponsetoICTA.pdf>

“Since receiving its ICT Licence in 2012, DataLink has attempted to negotiate a replacement Master Joint Use Pole Agreement with LIME and Infinity with a view to ensuring essentially the same terms and conditions for all attaching ICT Licensees.”

174. The Authority further notes that, as referenced in the **CUC Restraining Order application against Logic** judgment (see paragraph 22 above), it was stated by Ms. Byron, Logic’s Technical Project manager, in support of Logic’s position, that *“DataLink was, and remains, extremely slow in responding to Logic’s application for permits [...]”* and that *“it has not been uncommon for DataLink to issue a permit well over a year after the application was made [...]”*. Further, in Logic’s Notice of Grievance (see paragraph 24), Logic expressed its concerns about, among other things, the pole attachment permit application process managed by DataLink, noting that *“some agreements need to be reached that will allow permits to be processed in a reasonable period.”*

PROPOSAL A

175. Subject to consultation, the Authority considers that DataLink should make all reasonable efforts to commit its resources in performing the tasks required for processing the pole attachment permit applications in an efficient and timely manner. The Authority considers that the apparent lack of adequate planning and coordination with the relevant Licensees of the pole attachment process, as referenced by the example in paragraphs 173 and 174 above, is likely to result in an inefficient use of resources and create processing delays giving rise to a significant backlog of unprocessed permit applications. The Authority considers that such a backlog, which delays the Attachers’ access to poles, is detrimental to the efficient roll-out of communication cables across the Cayman Islands which, in turn, detrimentally impacts competition in the provision of ICT networks and ICT services.
176. In addition, the Authority considers that an efficient provider of access to poles operating in a hypothetically competitive market would strive to speed up the permit application process, rather than delay it, given that provider’s opportunities to maximise its revenues by receiving quarterly pole rental payments earlier rather than later. In general, an efficient access provider would ensure that the appropriate allocation of resources is made for the timely processing of permit applications.
177. Further, the Authority notes the FCC’s view on this that:⁴¹

“... the establishment of timelines has expedited the make-ready process considerably in states where timelines have been implemented.

...

Obtaining access to poles and other infrastructure is critical to deployment of telecommunications and broadband services. Therefore, to the extent that access to poles is more burdensome or expensive than necessary, it creates a significant obstacle to making service available and affordable.

...

⁴¹ See paragraphs 5, 6 and 21 in *“In the Matter of Implementation of Section 224 of the Act, Report & Order and Order on Reconsideration”*, WC Docket No. 07-245, FCC 11-50, released April 7, 2011, available at <http://fcc.us/dK05BR>

...adopting a specific timeline for processing pole attachment requests will give necessary guidance to both pole owners and attachers. Evidence in the record reflects that, in the absence of a timeline, pole attachments may be subject to excessive delays. Moreover, having a specific timeline offers certainty to attachers and allows them to make concrete business plans. Beyond generalized problems caused by utility lack of timeliness from initial request through completion, the record shows pervasive and widespread problems of delays in survey work, delays in make-ready performance, delays caused by a lack of coordination of existing attachers, and other issues...

178. Currently, the pole sharing agreements refer to the following timelines relating to permit applications or consents for pole attachments:
- (1) Article VI.C in the **CUC-DataLink Pole Sharing Agreement**, the **CUC-Infinity Pole Sharing Agreement** and the **DataLink-Logic Pole Sharing Agreement**, states that
“Owner Utility shall review and respond to “Minor” Permit Applications – less than ten (10) Attachments/Poles – within ten (10) days of receipt. Owner Utility shall review and respond to “Major” Permit Applications – ten (10) or more Attachments/Poles – within fifteen (15) days of receipt”; while
 - (2) Clause 1.1 (iv) in Article I: Licensee’s Covenants of the **CUC-LIME Pole Sharing Agreement** states, among other things, that
“...The Owner agrees to respond to written requests for consent within twenty one (21) days of receipt and agrees further that such consent shall not be withheld unreasonably.”
179. The Authority notes that the above mentioned section/clause referring to the timelines relating to permit applications or consents for pole attachments, may lead to different interpretations of the relevant process, including the timing for DataLink issuing pole permits for the attachment of communication cables to CUC’s electricity poles.
180. For example, in DataLink’s Response to Logic’s Notice of Grievance (see paragraph 27), DataLink contended, among other things, the following:
“Step 1 is the requirement for the application for and the grant of Permits prior to attachment to the infrastructure. This is a fundamental requirement. DataLink agrees that there is a Review Period of 15 days for pole applications exceeding 10 or more attachments/Poles as outlined in Article VI C. However, Article VI B. notes that this period begins after two things have occurred. The receipt of a properly executed Application for Permit [...] and in addition the Pre-Permit Survey. There is no time limit set in the agreement for the receipt of an application or a Pre-Permit Survey, however, it is clear that an application for a permit is not complete and ready for review (as required in the time limit in VI C.) without both. Pre-Permit Surveys include analysis of all work or operations required by the Applicable Standards or reasonably required by CUC or DataLink to determine the make-ready work necessary to accommodate the attachments applied for [...]. DataLink therefore disagrees [...] that it has 15 days after the receipt of the Permit Application [...] to review and

respond. The timing begins when the required Pre-Permit Survey is complete.

Step 2 is a requirement to review and respond. Step 2 does not mandate anything except a response. It does not mandate the issuance of a permit within any time frame or require a permit to be issued if no make ready work is required within a particular time. DataLink's timing obligation in respect of the reviews arises by implication of a term that it will use reasonable diligence in reviewing and responding, not under a specific term imposing a time limit. What this means is that the time for responding to a permit application will depend on a number of factors prevailing at the time the application is made..."

181. Subject to consultation, the Authority considers that the current timelines, referred to in paragraph 178 above, are inadequate for an efficient and timely completion of the permit application process and an amendment to the relevant sections of the pole sharing agreements is appropriate in order to enable the development of competition in the provision of public ICT networks and public ICT services in a timely manner. Such an amendment would require DataLink to process all the current and future pole attachment permit applications in a timely and efficient manner.

182. Therefore, the Authority proposes that Article VI (*"Permit Application Procedures"*), paragraphs B (*"Review of Permit Application"*) and C (*"Review Period"*) of the **CUC-Infinity Pole Sharing Agreement**, the **CUC-DataLink Pole Sharing Agreement** and the **DataLink-Logic Pole Sharing Agreement**, be replaced as follows (a representative diagram of the timetable is set out at **Annex 2**):

"B. Review of Permit Application.

- *Within **five (5) days** of receipt of a Permit Application, the Owner Utility shall inform the Attaching Utility whether or not such Permit Application is complete and, if such a Permit Application is not complete, what further information is required to make that Permit Application complete. Owner Utility acceptance of the submitted design documents does not relieve the Attaching Utility of full responsibility for any errors and/or omissions in the engineering analysis. For the avoidance of doubt, if no response is received from the Owner Utility within five (5) days then Permit Application shall be deemed to be complete.*

C. Review Period.

- *On receipt of a complete Permit Application, as referenced above under Review of Permit Application, the Owner Utility shall undertake and complete the Pre-Permit Survey within **fifteen (15) days**.*
- *If the Owner Utility is not able to complete the Pre-Permit Survey within fifteen (15) days, or earlier by agreement between the Owner Utility and the Attaching Utility, the Attaching Utility shall be allowed to perform any required work itself or employ a qualified contractor to perform such work, with the objective to complete the Pre-Permit Survey in a timely manner. The costs relating to the performance of Pre-Permit Survey by the Attaching Utility of a qualified contractor employed by the Attaching Utility, shall be borne by the Owner Utility.*

- *After completing the Pre-Permit Survey, as referenced above, the Owner Utility shall review and respond to:*
 - o *a) “Minor” Permit Applications – less than ten (10) Attachments/Poles – within **ten (10) days of receipt**; or,*
 - o *b) “Major” Permit Applications – ten (10) or more Attachments/Poles – within **fifteen (15) days of receipt**,*

and discuss any issues with the Attaching Utility, including engineering or Make-Ready Work requirements associated with the Permit Application.”

183. The Authority considers that the proposed additional step, that the *Owner Utility* responds to a *Permit Application* within 5 days of receipt, is reasonable, given that it involves a straightforward process of verifying whether all the required information, as specified in Attachment A to Appendix B of the **CUC-DataLink Pole Sharing Agreement** (entitled “*Application to Install Private Attachments on Caribbean Utilities Poles*”), Attachment A to Appendix B of the **CUC-Infinity Pole Sharing Agreement** (entitled “*Joint Use Permit Request*”) and the **DataLink-Logic Pole Sharing Agreement** (entitled “*Application to Install Attachments on CUC Poles*”), has been provided (or not).
184. Further, the Authority considers that it is reasonable that the *Owner Utility* commit to undertake and complete the *Pre-Permit Survey* within 15 working days, as the *Owner Utility* should have in place appropriate field inspectors and the relevant administrative processing arrangements to deal with the production of such surveys in a timely manner.
185. Indeed, the Authority notes that there is a provision in the pole sharing agreements for the *Owner Utility* to review and respond to *Permit Applications* within five (5) days of receipt (albeit the *Owner Utility* reserves the right to charge the *Attaching Utility* for any overtime or other applicable costs as a consequence)⁴².
186. In addition, the Authority notes that the section relating to “*Permit Application Procedures*” does not exist in either the **CUC-LIME Pole Sharing Agreement** or the **LIME-CUC-DataLink Novation Agreement**. Instead, the following rules appear to govern the duties and responsibilities relating to, amongst others, new attachments by LIME of its communication cables to CUC’s electricity poles, as stated in clause 1.1(iv) of the **CUC-LIME Pole Sharing Agreement**:

“...not to place on any poles designated by such Permit or Permits any attachments in addition to the attachments covered by the Permits except with the prior written consent of the Owner, but the Licensee may add a single drop wire attachment on any of the said poles in order to serve an adjacent subscriber of the Licensee, and maintain the said attachments and replace any of them that become defective. The Owner agrees to respond to written requests for consent within twenty one (21) days of receipt and agrees further that such consent shall not be withheld unreasonably. With respect to drop wire attachments, the Owner shall also permit such attachments without its prior consent, provided that the

⁴² See Article VI, paragraph D (“Expedited Review”) in the CUC-Infinity Pole Sharing Agreement, CUC-DataLink Pole Sharing Agreement and the DataLink-Logic Pole Sharing Agreement.

Owner receives written notification of the attachment within twenty one (21) days of such attachment.”

187. The Authority, therefore, proposes that the wording in Article VI (“Permit Application Procedures” of the **CUC-Infinity Pole Sharing Agreement**, the **CUC-DataLink Pole Sharing Agreement** and the **DataLink-Logic Pole Sharing Agreement**, as amended and set out in paragraph 182 above, replace the above referenced clause 1.1(iv) of the **CUC-LIME Pole Sharing Agreement/LIME-CUC-DataLink Novation Agreement** where relevant.
188. On that basis, all the Attachers would have the same timetable for processing permit applications set out in their pole sharing agreements with DataLink.

PROPOSAL B

189. The Authority notes that the FCC proposed in its 2010 rules⁴³ regarding, among other things, the use of independent contractors to perform survey and make-ready work, as well as the attachment of facilities on poles. The FCC noted⁴⁴ that

“...although the Local Competition Order established a general principle that attachers may rely upon independent contractors, that order did not differentiate between two different types of work: (a) surveys and make-ready; and (b) post-make-ready attachment of lines. As a result, there have been ongoing disagreements regarding the ability of attachers to use contractors to perform survey and make-ready work under existing law.

...

*...with respect to surveys and communications make-ready work, we propose that: **attachers may use contractors to perform surveys and make-ready work if a utility has failed to perform its obligations within the timeline**, or as otherwise agreed to by the utility. As discussed above, we propose a pole access timeline based in significant part on the approach taken in New York. Within that regulatory framework, the New York Commission gives utilities the option of using their own workers to do the requested work, or to hire outside contractors themselves, or to allow attachers to hire approved outside contractors. Under our proposed approach, utilities likewise would be entitled to rely on their own personnel unless they are unable to complete work within the timeline. If the utility decides to deploy its workforce on other projects or otherwise is unable to meet the deadline, the prospective attacher would be free to use contractors that are approved and certified by the utility.*

...

With respect to actual attachment of facilities to poles, we propose to retain our existing rules. The make-ready process is designed to address the utilities’ safety, reliability and engineering concerns prior to a new attachment. So when that process is complete and facilities are ready to be attached, the utility’s concerns are less pressing, and an attacher’s interest in rolling out properly permitted facilities is proportionally larger.

⁴³ FCC, Order and Further Notice of Proposed Rulemaking, 20 May 2010, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-84A1_Rcd.pdf

⁴⁴ Ibid., paragraphs 58-60.

Therefore, for the post-make-ready attachment of facilities, we retain the existing standard of “same qualifications, in terms of training, as the utilities’ own workers,” and continue to deny utilities the right to pre-designate or co-direct an attachers’s chosed contractor.” [emphasis added]

190. The Authority, subject to consultation, considers that the possibility for Attachers to use qualified contractors for performing various tasks relating to pole attachment process where timelines in the pole attachment process, as set out in paragraph 182, are not met by DataLink, is likely to contribute to a faster rollout of ICT networks and ICT services in the Cayman Islands. Therefore, the Authority proposes that the following paragraph should be added to *Article VI - Permit Application Procedures* in the relevant agreements between the Attachers and DataLink, and to the relevant amended article in the **CUC-LIME Pole Sharing Agreement/LIME-CUC-DataLink Novation Agreement**, as noted in paragraph 187 above:

“Where the timelines as set out above are not met by DataLink, [the Attacher] may use a third-party contractor to perform the required work.”

PROPOSAL C

191. Further, the Authority notes that the **LIME-CUC-DataLink Novation Agreement** added a new article (*‘Article XVI’*) to the **CUC-LIME Pole Sharing Agreement**, entitled *“Make Ready Work/Installation”*, which specifies the principles relating to the following:

- (1) *Estimate for Make-Ready Work.*
- (2) *Payment of Make-Ready Work.*
- (3) *Required Timing of Make-Ready Work.*
- (4) *Scheduling of Make-Ready Work.*
- (5) *Licensee’s Installation/Removal/Maintenance Work.*
- (6) *Time is of the Essence.*

192. The Authority notes that the article relating to *“Make Ready Work/Installation”* also exists in the **CUC-Infinity Pole Sharing Agreement**, the **CUC-DataLink Pole Sharing Agreement** and the **DataLink-Logic Pole Sharing Agreement**.

193. However, the relevant principles specified in the article referring to *“Make Ready Work/Installation”* somewhat differ between all the existing pole sharing agreements, as explained below:

- *“Estimate for Make-Ready Work”* section varies between the agreements, except between the **CUC-Infinity Pole Sharing Agreement** and the **CUC-DataLink Pole Sharing Agreement**.
- *“Payment of Make-Ready Work”* section varies between the agreements, except between the **CUC-Infinity Pole Sharing Agreement** and the **CUC-DataLink Pole Sharing Agreement**.

- “*Required Timing of Make-Ready Work*” section is applicable only in the **LIME-CUC-DataLink Novation Agreement**).
- “*Who May Perform Make-Ready Work*” section is applicable in the **CUC-Infinity Pole Sharing Agreement**, the **CUC-DataLink Pole Sharing Agreement** and the **DataLink-Logic Pole Sharing Agreement** .
- “*Scheduling of Make-Ready Work*” section is applicable in all the existing pole sharing agreements.
- “*Licensee’s Installation/Removal/Maintenance Work*” section varies between the **CUC-LIME Pole Sharing Agreement**, on one side, and the **CUC-Infinity Pole Sharing Agreement** and the **CUC-DataLink Pole Sharing Agreement**, on the other side (these two agreements make reference to “*Attaching Utility’s Installation/Removal/Maintenance Work*”), while the **DataLink-Logic Pole Sharing Agreement** makes no reference to any such section.
- “*Time is of the Essence*” section is applicable only in the **LIME-CUC-DataLink Novation Agreement**.
- “*Refund of Make-Ready costs*” section is applicable only in the **DataLink-Logic Pole Sharing Agreement**.

194. In order to standardise across all the existing pole sharing agreements various sections of the relevant article referring to *Make Ready Work/Installation*, as itemised above, the Authority proposes to amend all the existing agreements by inserting/amending, where required, the appropriate wording in the following sections:

- “*Estimate for Make-Ready Work*”, to be based on the existing wording used in the **CUC-DataLink Pole Sharing Agreement (Article VII)**;
- “*Payment of Make-Ready Work*”, to be based on the existing wording used in the **CUC-DataLink Pole Sharing Agreement (Article VII)**;
- “*Required Timing of Make-Ready Work*”, to be based on the existing wording used in the **LIME-CUC-DataLink Novation Agreement (Article XVI)**;
- “*Who May Perform Make-Ready Work*”, to be based on the existing wording used in the **CUC-DataLink Pole Sharing Agreement (Article VII)**;
- “*Scheduling of Make-Ready Work*”, to be based on the existing wording used in the **CUC-DataLink Pole Sharing Agreement (Article VII)**;
- “*Attaching Utility’s Installation/Removal/Maintenance Work*”, to be based on the existing wording used in the **CUC-DataLink Pole Sharing Agreement (Article VII)**;
- “*Time is of the Essence*”, to be based on the existing wording used in the **LIME-CUC-DataLink Novation Agreement (Article XVI)**; and
- “*Refund of Make-Ready costs*”, to be based on the existing wording used in the **DataLink-Logic Pole Sharing Agreement (Article VII)**.

195. The Authority considers that such amendments to the existing pole sharing agreements are appropriate because they are likely to guarantee that DataLink's infrastructure sharing services are provided "*on terms and conditions which are no less favourable than those provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder and shall be of no less favourable quality than that provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder*" (Regulation 6 (d) of the Infrastructure Sharing Regulations).

CONSULTATION QUESTIONS

196. Therefore, based on the above, the Authority invites all the interested parties to submit their comments, with supporting evidence, on:

QUESTION B1: Provide your view on what is the relevant process for issuing permits for the attachment of communication cables to CUC's electricity poles, including what do you consider to be a reasonable time period in which an entity such as DataLink should process the permit applications.

QUESTION B2: Provide your view on whether or not the proposed amendments to the permit application process as set out at paragraph 182 above are appropriate for issuing permits for the attachment of communication cables to CUC's electricity poles.

QUESTION B3: Provide your view on whether or not the Attachers should be allowed to perform relevant tasks relating to the *Pre-Permit Survey* and *Make-Ready Work*, in cases where timelines in the pole attachment process are not met by DataLink.

QUESTION B4: Provide your view on whether or not the Attachers should be allowed to use qualified contractors for *Pre-Permit Survey* and *Make-Ready Work*, in cases where timelines in the pole attachment process are not met by DataLink, and if so, provide detailed specification of the relevant process for the use of such qualified contractors.

QUESTION B5: Provide your view on whether or not the principles governing the permit application process, including any relevant *Make-Ready Work*, as noted and discussed in paragraphs 178 to 195 above, should be standardised and applied across all the existing, and future, pole sharing agreements.

QUESTION B6: Provide your view on whether or not the relevant sections in the article referring to *Make Ready Work/Installation*, as specified in the existing pole sharing agreements, need to be amended and, if so, provide your view on the proposed amendments in the relevant article referring to *Make Ready Work/Installation* for each of the existing pole sharing agreements, as discussed in paragraphs 191 to 195 above.

QUESTION B7: Provide your view on any other matters you consider relevant to this consultation.

197. Responses to the public consultation on the above questions relating to DataLink's process for issuing permits for the attachment of communication cables to CUC's electricity poles, including the principles governing the performance of the *Pre-Permit Survey* and *Make-Ready Work*, are due by **28 June 2016**.

C: CONSULTATION ON CHARGING PRINCIPLES RELATING TO THE ATTACHMENT OF COMMUNICATION CABLES TO CUC'S ELECTRICITY POLES

BACKGROUND

198. Section 69 (2) of the Law states that:

The Authority, in order to promote an efficient, economic and harmonised utilisation of infrastructure, may – [...] (b) inquire into and require modification of any agreement or arrangements entered into between a licensee and a another person or licensee which has the effect of limiting either the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.

199. Further, section 66 (5) of the Law states that:

Where parties cannot agree upon interconnection [and infrastructure sharing] rates, the Authority may impose such rates.

200. Section 68 (1) and (3) of the Law requires that the costs for infrastructure sharing be “based on cost-orientated rates that are reasonable and arrived at in a transparent manner [...]”. Noting the aforementioned obligation, and that infrastructure sharing services “shall be provided by the responder to the requestor at reasonable rates” (see Regulation 6 (c) of the Infrastructure Sharing Regulations) and shall be “cost-orientated and shall be set to allow the responder to recover a reasonable rate of return on its capital appropriately employed, all attributable operating expenditures, depreciation and a proportionate contribution towards the responder’s fixed and common costs” (see Regulation 6 (h) of the Infrastructure Sharing Regulations), the Authority is consulting on what the appropriate costs for the attachment of communication cables to CUC’s electricity poles more generally are, as provided by the various pole sharing agreements between CUC/DataLink and the *Attachers*.

201. In addition, the Authority notes DataLink’s submission as part of its response to the Authority’s 26 June 2015 information request, that:⁴⁵

“Since receiving its ICT Licence in 2012, DataLink has attempted to negotiate a replacement Master Joint Use Pole Agreement with LIME and Infinity with a view to ensuring essentially the same terms and conditions for all attaching ICT Licensees.”

PROPOSALS

202. Based on the Licensees’ responses to the Authority’s requests for information of 26 June 2015 and 26 August 2015,⁴⁶ it appears that, subject to consultation, the applicable charges relating to the attachment of communication cables to

⁴⁵ <http://www.icta.ky/upimages/commonfiles/145951952621July2015DataLinkresponsetoICTA.pdf>

⁴⁶ See paragraphs 95 through 99.

electricity poles, as specified and implemented through the relevant pole sharing agreements between CUC/DataLink and the Attachers, are unlikely to satisfy the obligations set out in the the Law and applicable regulations (see for example above at paragraph 200).

Applicable charges - summary

203. For example, the definition of “**Annual Attachment Fee**”, as specified in Appendix A of both the **DataLink-Logic Pole Sharing Agreement** and the **CUC-Infinity Pole Sharing Agreement**, is calculated based on two different formulae, which in the Authority’s view cannot be reconciled.
204. The Authority also notes that the definition of “**Space Factor**”, which according to Appendix A of both the **DataLink-Logic Pole Sharing Agreement** and the **CUC-Infinity Pole Sharing Agreement** “*represents an allocation of the total pole height based on the actual space used by the Attachment plus an allocated portion of the unusable space on the pole*”, is derived from a number of factors whose values differ between the two pole sharing agreements, as follows:
- a) “*The space occupied by the Attachment*” is specified as “*one foot*” (or 12 inches) in the **CUC-Infinity Pole Sharing Agreement**, “*six inches*” (or 0.5ft) in the **DataLink-Logic Pole Sharing Agreement** and “*one foot (on a per foot basis)*” in the **CUC-DataLink Pole Sharing Agreement**;
 - b) “*The number of Attachers*” is specified as “*three*” in the **CUC-Infinity Pole Sharing Agreement**, “*four*” in the **DataLink-Logic Pole Sharing Agreement** and “*one (on a per attachment basis)*” in the **CUC-DataLink Pole Sharing Agreement**; and
 - c) “*The weighted average height of wood poles*” is specified as “*38.5 feet*” in the **CUC-Infinity Pole Sharing Agreement**, and “*38.0 feet*” in the **DataLink-Logic Pole Sharing Agreement** and the **CUC-DataLink Pole Sharing Agreement**.
205. Further, the Authority notes that the following formula for calculation of the **Space Factor** applies in the **CUC-Infinity Pole Sharing Agreement**, the **DataLink-Logic Pole Sharing Agreement** and the **CUC-DataLink Pole Sharing Agreement** but not in the **CUC-LIME Pole Sharing Agreement**.⁴⁷

$$\text{Space Factor} = \frac{\text{Space Occupied} + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{Number of Attachers}} \right)}{\text{Pole Height}}$$

206. In addition, one of the main components of the formula specified for calculation of the “**Annual Attachment Fee**” is the “**Net Cost of a Bare Pole**”, which is based on “*the net book value of poles as of the most recent annual financial statements of the Owner Utility divided by the number of poles as of the most recent fiscal year end*”. The Authority notes that the value specified as “**Net Cost of a Bare Pole**” varies between the **CUC-Infinity Pole Sharing Agreement**, the **CUC-DataLink Pole Sharing Agreement** and the **DataLink-Logic Pole Sharing Agreement**.

⁴⁷ *Unusable Space* is specified as 24.5 feet in all three pole sharing agreements.

207. The difference in “**Net Cost of a Bare Pole**” may be due to the different financial years for which the values were calculated at the time the aforementioned pole sharing agreements were executed (November 2005, March 2012 and July 2013 respectively), in which case it may be reasonable to assume that the “**Annual Attachment Fee**” would vary each year in accordance with the change in the net book value of poles in subsequent annual financial statements.
208. However, based on the information received from the Licensees in response to the Authority’s requests for information of 26 June 2015, it appears that the attachment fees did not vary over time, although one would expect it to change if the “**Annual Attachment Fee**” were adjusted in accordance with the change in the net book value of poles. Accordingly, the lack of clarity around the calculation of “**Net Cost of a Bare Pole**” and its variation over time is likely, subject to consultation, lead to the view that the relevant specifications of “**Annual Attachment Fee**” do not comply with Regulations 6 and 10 of the Infrastructure Sharing Regulations.
209. Finally, based on the Licensees’ responses to the Authority’s requests for information of 26 June 2015 and 26 August 2015, the Authority notes that the “**Quarterly Attachment Fee**”, which Licensees are required to pay to DataLink as a recurring charge applicable for attachment of the Licensees’ communication cables to CUC’s electricity poles, differ significantly between the Licensees.
210. The Authority considers that any difference in the “**Quarterly Attachment Fee**”, which is a recurring charge, should be based on transparent and non-discriminatory principles. However, subject to consultation, the difference in values that are specified for the components used in calculation of the “**Space Factor**”, as referenced in paragraphs 204 and 205 above, appears, on its face discriminatory because the Attachers are being charged differently for the provision of the same service, which calls into question the compliance of that charging principle with Regulations 6 and 10 of the Infrastructure Sharing Regulations.
211. The Authority also notes that the **CUC-LIME Pole Sharing Agreement** refers to the “**Attachment Rental**” which is set at “*CI\$2.84 per quarter or part thereof*” and which “*shall be payable from the date of approval by the Owner of the permit granting permission to make the attachment to the said pole*”.⁴⁸ The **CUC-LIME Pole Sharing Agreement** further specifies that the “[v]ariation to the attachment rental may be effected by the Owner from any anniversary of the effective date of this agreement by submitting to the Licensee a new rate calculated from the following formula and supported by documents evidencing the changes in base rates claimed by the Owner”.
212. The Authority notes that the formula applicable to the variation of the “**Attachment Rental**” in the **CUC-LIME Pole Sharing Agreement** appears, on the face of it, and subject to consultation, to have no relationship with the formula applicable to calculation of the “**Annual Attachment Fee**” in the **CUC-Infinity Pole Sharing Agreement** and **DataLink-Logic Pole Sharing Agreement**.

⁴⁸ See clause D of Schedule B in the CUC-LIME Pole Sharing Agreement, available at http://www.icta.ky/upimages/agreement_documents/1417708148CableWirelessAgreementforLicensedOccupancyofCUCPoles1996Redacted.pdf

Appropriate charging principles

213. In relation to the appropriate charging principles for the calculation of pole attachment fees in the **CUC-Infinity Pole Sharing Agreement** and **DataLink-Logic Pole Sharing Agreement**, the Authority further notes that the approach to calculating the “**Quarterly Attachment Fee**” is not based on a forward-looking long-run incremental cost (*FLLRIC*) methodology, which is provided for by Regulation 10 of the Infrastructure Sharing Regulations. This is because the **Net Cost of a Bare Pole**, as the main component in the pricing formula, is “*based on the net book value of poles as of the most recent annual financial statements of the Owner Utility divided by the number of poles as of the most recent fiscal year end*” [emphasis added], as specified in paragraph B of Item 4 – Determination of Annual Attachment Fee in Appendix A of the **DataLink-Logic Pole Sharing Agreement**. The **Net Cost of a Bare Pole** is, therefore, determined using a historic (i.e. backward-looking) costing approach and not a forward-looking costing approach as provided for by Regulation 10 of the Infrastructure Sharing Regulations.
214. The Authority notes that, in reference to Regulation 10 (f) of the Infrastructure Sharing Regulations, a “*forward-looking long-run incremental cost methodology*” has yet to be “*established by the Authority following a public consultative process.*” That said, the Authority considers that the *FLLRIC* methodology may not be the most appropriate cost methodology to use for calculating the relevant charges applicable to pole attachments in any event. For example, section 224d(1) of the US Communications Act of 1934,⁴⁹ relating to pole attachments, states that “*a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way*”. In other words, section 224d(1) describes two possible costing principles, on the lower end, incremental costs and, on the upper end, fully allocated costs.
215. The Authority notes, in this regard, that the costing methodology implemented by the FCC is based on historical or embedded costs (often referred to as fully allocated costs or **FAC**) and not on forward-looking costing principles (such as *FLLRIC*) or replacement costs. A backward-looking costing methodology such as *FAC*, which is used for calculating the relevant charges applicable to pole attachments, will take in to consideration direct actual costs of the labour, capital and materials used exclusively for, and a portion of the indirect or overhead costs associated with, in this case, the provision of the pole sharing service. The forward-looking costing methodology such as *FLLRIC*, on the other hand, is based on the current cost of the modern equivalent asset deployed with the most efficient technology by a hypothetical efficient operator. *FLLRIC* charges would therefore be set on the basis of an efficient cost benchmark, rather than on the Owner Utility’s embedded costs.

⁴⁹ <https://www.law.cornell.edu/uscode/text/47/224>

216. Further, the Authority understands that:

“...the FCC rejected the use of replacement costs and reaffirmed its historical approach. The FCC indicated that the continued use of historical costs accomplishes key statutory objectives of assuring just and reasonable rates for pole attachments while at the same time adding certainty and clarity to negotiations. Furthermore, the FCC rebuffed the suggestion that the agency should strive for consistency between its pole attachment and interconnection policies. According to the FCC, its rules on local competition interconnection agreements utilise forward-looking economic costs because this is the best approach to effectuate the objectives of the 1996 Act “These objectives were to stimulate direct competition in local telecommunications markets, to ensure the efficient use of existing telecommunications network facilities, and to encourage new entrants to make economically rational decisions about whether or how to enter a local telecommunications market.” In this context, the FCC had found the use of a forward-looking cost methodology particularly important, because firms typically compare forward-looking costs with existing market prices, in making decisions about entry, expansion, and price.”⁵⁰

217. Similar to the views expressed by the FCC, the Authority considers that the charging principles relating to the attachment of communication cables to CUC’s electricity poles do not necessarily need to encourage an efficient build or buy decision by an access seeker (i.e. attaching utility), considering the risk that an encouragement to erect new poles, as opposed to the choice of sharing the space available on the existing poles, may result in an inefficient duplication of pole infrastructure. Given that one of the Authority’s functions, as set out in section 9 (3) of the Law, is “to promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure”, the Authority holds the view that an encouragement for the Licensees to erect new poles, as opposed to the choice of purchasing access to existing pole infrastructure, may be contrary to that objective.
218. Noting the above, the Authority considers that, in relation to pole attachments, as long as the charging principles relating to the attachment of communication cables to CUC’s electricity poles are cost-orientated, and therefore comply with the requirements set out at section 68 (3) of the Law and Regulation 6 of the Infrastructure Regulations (see paragraph 200 above), it may not be necessary to establish a *FLLRIC* methodology for the purpose of determining the “**Quarterly Attachment Fee**”.
219. However, it remains open for consultation whether or not the values determined for the **Net Cost of a Bare Pole** in the various pole sharing agreements (see paragraph 205 above) are cost-orientated.
220. The Authority also notes Infinity’s concerns in relation to other charges Infinity has paid and/or will be required to pay in the future, in relation to the pole sharing arrangements that are governed by the **CUC-Infinity Pole Sharing Agreement** and the **CUC-Infinity Deed of Variation**. In particular, Infinity makes reference to the payment for “**Make-Ready Work**” which Infinity divides into “two different types of work: (i) that which is required to strengthen the Pole to take a new attachment

⁵⁰ See page 10 in <http://www.publicpower.org/files/Member/BallerHerbstPrimerPoleAttachments.pdf>

(*Strengthening Make-Ready*); and (ii) that which is required to make the Pole to take the attachment (*Safety Make-Ready*)”.

221. The Authority understands that the costs relating to “**Make-Ready Work**” are non-recurring costs for which DataLink seeks compensation as a result of the work done in preparation for the planned new attachment of communication cables. As such costs are project-specific, and therefore may not be accurately predicted in advance in order to be included in the recurring charge, it appears not to be appropriate to incorporate those costs in the pricing formula for calculating “**Quarterly Attachment Fee**”.
222. However, the Authority considers that, in accordance with Section 68 of the Law, the charging principles relating to “**Make-Ready Work**” should be (1) based on cost-oriented rates that are reasonable and arrived at in a transparent manner having regard to economic feasibility, and (2) sufficiently unbundled such that the Attacher requesting a new pole attachment does not have to pay for network components that are not required for the service to be provided.
223. Make-ready costs represent a large part of the costs which may be passed on indirectly by the attacher to the end users of ICT services. A method consisting in defining the price to pay for make-ready work on a per pole basis, may be considered compatible with Regulation 6 and Regulation 10 of the Infrastructure Sharing Regulations, provided that the price is fixed on the basis of the make-ready costs in such a way that Attachers are not dissuaded from making use of pole infrastructure sharing.
224. However, as noted in paragraph 131 above, Infinity claimed that the highest position in the Communication Space results in higher attaching and maintenance costs relative to the lower positions in which other Licensees are allowed to attach their communication cables. The Authority considers that, subject to consultation, it may be appropriate to establish appropriate costing principles relating to attaching and maintenance costs, which may take into account any necessary adjustments to the existing charges based on the relevant position of each *Attacher* in the Communication Space.
225. In this respect, it is also noted that there may be advantages for the Attacher to be at the top of the Communications Space in that, for example, its communication cable is not potentially subject to interference or damage by other Attachers’ cables potentially ‘dropping down’ or because an Attacher is unlikely to reach, and accidentally damage, the cables at a higher position when it is effectively attaching and maintaining the cables at a lower position. Accordingly, it may be that the top position for the attachment in the Communication Space is the least exposed to the risk of accidental damage as a result of other Attachers’ exercising their rights to attach and maintain their communication cables within the Communication Space.
226. Finally, the Authority considers that DataLink, as an Attacher utilising the Communication Space on CUC’s electricity poles in accordance with its ICT licence granted by the Authority, and as provided for in legislation,⁵¹ should be subject to the same terms and conditions relating to the pole sharing arrangements, including the relevant charging principles, as they apply to all the other Attachers. This principle would ensure that DataLink, as an ICT licensee, is

⁵¹ See, for example, Regulation 6 of the Infrastructure Sharing Regulations.

not treated by CUC more favourably than other ICT licensee in pole sharing arrangements for attachment of communication cables to CUC's electricity poles.

CONSULTATION QUESTIONS

227. Therefore, based on the above, the Authority invites all the interested parties to submit their comments, with supporting evidence, on:

QUESTION C1: Provide your view on whether or not the current pricing formula for calculation of the “Annual Attachment Fee” is appropriate, in particular whether it leads to cost-oriented rates for pole rental services and whether it is in compliance with the FAC costing methodology.

QUESTION C2: Provide your view on whether each of the relevant components of the pricing formula for calculation of the “Annual Attachment Fee”, including but not limited to:

- **“Net Cost of Bare Pole”** - defined as *“the net book value of poles as of the most recent annual financial statements of the Owner Utility divided by the number of poles as of the most recent fiscal year end”*,

- **“Space Factor”** – defined as an *“allocation of the total pole height based on the actual space used by the Attachment plus an allocated portion of the unusable space on the pole”*, including the following parameters which are used for calculation of the relevant *“Space Factor”*:

- *“Unusable space on the pole”*,

- *“Space occupied by the Attachment”*,

- *“Number of Attachments”*; and,

- *“Weighted average height of all poles”⁵² or “Weighted average height of wood poles”⁵³*

- **“Annual Carrying Charge Rate”⁵⁴ or “20 year Levelized Fixed Charge Rate”⁵⁵**,

is appropriately specified or determined in the relevant pole sharing agreements.

QUESTION C3: Provide your view on what charging principles should be implemented in order to ensure that the costs relating to “Make-Ready Work” are cost-oriented and in compliance with the FAC costing methodology.

⁵² As specified in the DataLink-Logic Pole Sharing Agreement.

⁵³ As specified in the CUC-DataLink Pole Sharing Agreement and the CUC-Infinity Pole Sharing Agreement.

⁵⁴ As specified in the DataLink-Logic Pole Sharing Agreement and and the CUC-Infinity Pole Sharing Agreement.

⁵⁵ As specified in the CUC-DataLink Pole Sharing Agreement.

QUESTION C4: Provide your view on whether or not pole attachments charges relating to attaching and maintenance costs should take into account any necessary adjustments based on the relevant position of each Attacher in the Communication Space, and if so, what charging principles should be adopted.

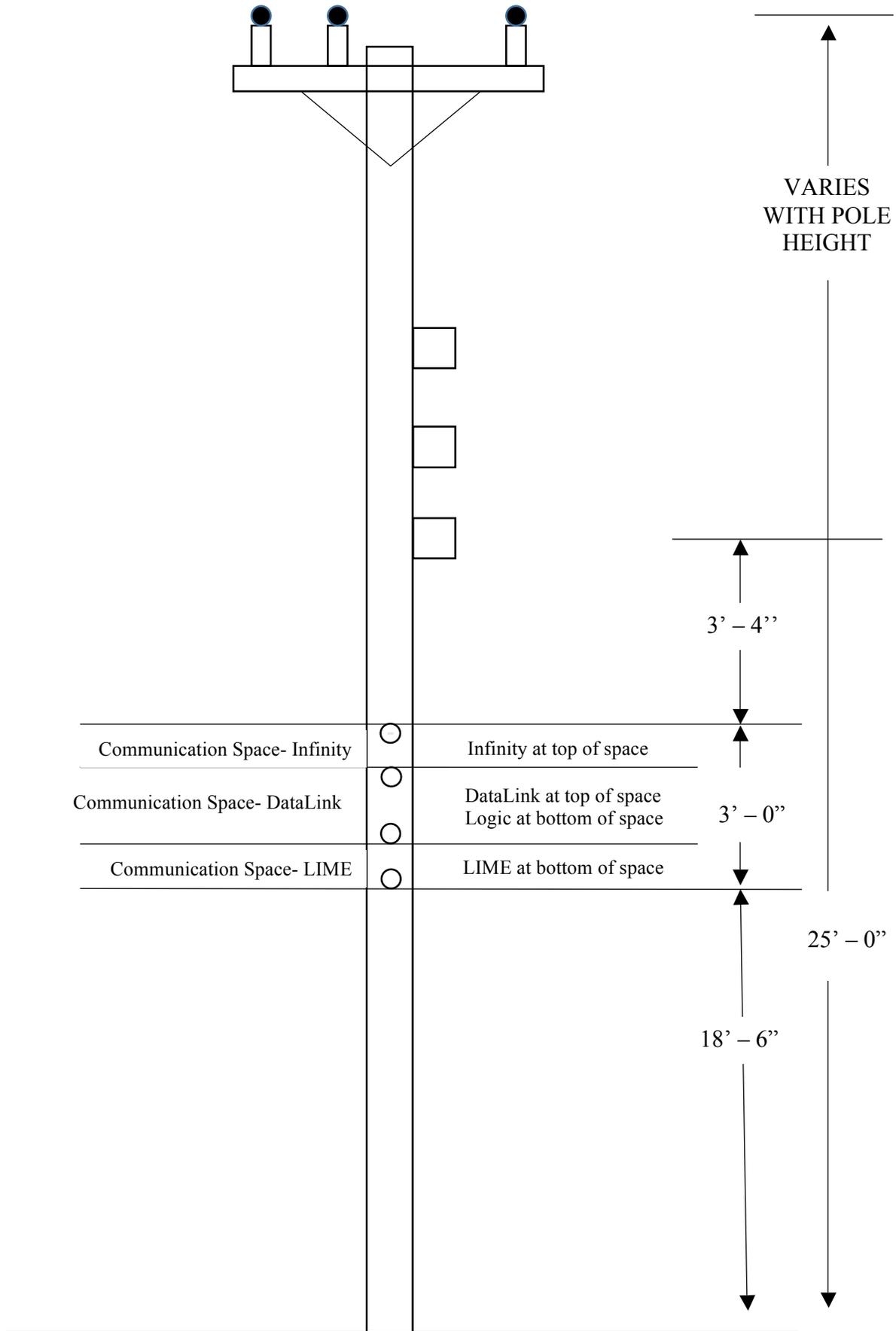
QUESTION C5: Provide your view on any other issues relating to the appropriate charges for and charging principles applied to the attachment of communication cables to CUC's electricity poles.

QUESTION C6: Provide your view on whether or not DataLink should be subject to the same terms and conditions relating to the pole sharing arrangements for attachment of its communication cables to CUC's electricity poles, including the relevant charging principles, as they apply to all the other Attachers.

QUESTION C7: Provide your view on any other matters you consider relevant to this consultation.

228. Responses to the public consultation on the above questions relating to the charging principles applied to the attachment of communication cables to CUC's electricity poles, are due by **28 June 2016**.
229. Pending the outcome of the consultation relating to the charging principles applied to the attachment of communication cables to CUC's electricity poles, the Authority directs that, if not already done, all the concerned parties keep detailed records of pole attachment charges, including all the related billing parameters.

ANNEX 1 – POLE ATTACHMENT POSITIONS



ANNEX 2 – PERMIT APPLICATION TIMELINES

(This is for representational purposes only and should not be relied on as representing the actual proposed timelines – Please see paragraphs 182 for the proposed Permit Application Timelines)

