

**CABLE & WIRELESS**  
CAYMAN ISLANDS LIMITED

**Response to Ofreg Consultation on**  
**ICT 2016 – 2 - Consultation**  
**Part B and Part C (Updated)**

**1. INTRODUCTION**

**1.1** Cable and Wireless (Cayman Islands) Limited, t/a Flow is pleased to provide comments on Ofreg’s Consultation ‘**ICT 2016 – 2 – Consultation Part B and Part C (Updated)**’ (the Consultation Document) published June 2, 2023 with responses required by August 2, 2023.

**1.2** Flow expressly states that failure to address any issue raised in the Consultation Document does not necessarily signify its agreement in whole or in part with any position taken on the matter by Ofreg or respondents. Flow reserves the right to comment on any issue raised in the Consultation Document at a later date.

**2. GENERAL COMMENTS**

**2.1** Flow sets out its responses to the Office’s questions below in a table format.

**2.2** Kindly send any communication in relation to this consultation to:

**Cristina Spratt**  
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### 3. FLOW'S RESPONSE

3.1 Flow's responses to Ofreg's questions are as follows:

Question No.	OFREG'S QUESTION	FLOW'S RESPONSE
<b>Issues Relating to the Permit Application Process, Including Make-Ready Work (Consultation 2016-2 Part B)</b>		
1.	<b>Do you agree with the proposal to require DataLink to ensure that all third-party utilities (i.e. other than DataLink) who attach communications cables to the communications space on CUC utility poles do so on non-discriminatory terms and conditions? If not, explain in detail the reasons why. Please also indicate changes, if any, you suggest should be made to the proposed requirement.</b>	Flow agrees that third-party utilities (i.e. other than DataLink) who attach communications cables to the communications space on CUC utility poles should do so on non-discriminatory terms and conditions.
2.	<b>Do you agree with the proposal to require DataLink to provide its pole attachment services to all attaching utilities on rates, terms and conditions that are no less favourable than the rates, terms and conditions as DataLink provides the same services to itself? If not, explain in detail the reasons why. Please also indicate changes, if any, you suggest should be made to the proposed requirement.</b>	Flow submits that DataLink should be subject to the same terms and conditions as all other attachers, per the non-discrimination requirements in the Regulations.
3.	<b>Do you agree with the proposal that applicants be required to provide a properly-completed Pre-Permit Survey with their applications for a</b>	Flow agrees that applicants provide a properly completed Pre-Permit Survey with their application to attach to a CUC utility pole.

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	<p>permit to attach a communications cable to a CUC utility pole? If not, explain in detail the reasons why. Please also indicate changes, if any, you suggest should be made to the proposed requirement.</p>	
4.	<p>If applicants were to be required to provide a properly completed Pre-Permit Survey with their applications for a permit to attach a communications cable to a CUC utility pole, what would be, in your view, the impact on the time required to provide a quotation to the applicant? Explain in detail the basis for your view.</p>	<p>A properly completed Pre-Permit survey would relieve DataLink from having to commit resources to this activity which has the potential to reduce the time to attach to the poles given that DataLink does not have sufficient capacity to process applications for permits. It would also release resources that would have been assigned to Pre-Permit Survey to other areas of the process, which Flow anticipates should also lessen the time to attach to the poles.</p>
5.	<p>Do you agree with the proposal that Attaching Utilities should be required to accept, reject or otherwise respond to estimates of the Make-Ready Work charges necessary to accommodate the Attaching Utility's attachment within a specific period of time following delivery of the estimate by DataLink? If not, explain in detail the reasons why you disagree. Please also indicate changes, if any, you suggest should be made to the proposed requirement.</p>	<p>Flow agrees that Attaching Utilities be required to accept, reject or otherwise respond to estimates for Make Ready Work charges within a specific period of time or such further time as agreed with DataLink.</p>
6.	<p>What period of time should Attaching Utilities be given in order to accept, reject or otherwise respond to estimates delivered by DataLink?</p>	<p>Flow proposes ten (10) days to accept, reject or otherwise respond to estimates delivered by DataLink.</p>

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7.	<b>What specific changes to the terms of the Pole Sharing Agreement would you propose to implement this proposal, if it were adopted as a determination following consultation?</b>	Since Flow's contract with DataLink is commercially negotiated, both Flow and DataLink would have to agree on any new terms and the language to reflect the new terms.
8.	<b>Do you agree with the proposal that all permits issued for poles included in the same batch application be given the same effective date, irrespective of when the pole is actually ready and available for attachment, unless the applicant requests otherwise? If not, explain in detail the reasons why you disagree. Please also indicate changes, if any, you suggest should be made to the proposed requirement.</b>	Flow agrees with Ofreg's proposal that all permits issued for poles in the same batch application be given the same effective date unless otherwise requested by the applicant.
9.	<b>What specific changes to the terms of the Pole Sharing Agreement would you propose to implement this proposal, if it were adopted following consultation?</b>	Since Flow's contract with DataLink is commercially negotiated, both Flow and DataLink would have to agree on any new terms and the language to reflect the new terms.
10.	<b>Do you agree with the Office's preliminary view that it should not require changes to the permit application process and to the Pole Sharing Agreements to include the provision of a "Pre-Approved Permit" prior to the issuance of a "Full Permit"?</b>	Flow agrees with Ofreg that there is no need for an additional step of "Pre-Approved Permit".
11.	<b>If not, explain in detail the reasons why you disagree, and describe in detail how the changes proposed by DataLink would promote an efficient, economic and harmonised utilisation of infrastructure on Grand Cayman.</b>	Not Applicable

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12.	<p><b>Do you agree with the Office's proposal to direct DataLink to investigate the creation of an online portal or system for the submission of pole attachment permit applications and the issuance of pole attachment permits? If not, explain in detail the reasons why you disagree.</b></p>	<p>Flow agrees with the Office's proposal to direct DataLink to investigate the creation of an online portal. DataLink does not lack the financial wherewithal to address pole maintenance or to provide a properly resourced system for processing Permit Applications in accordance with its contractual duties. DataLink receives a substantial recurring fee from ICT Licensees for attachments on the Poles.</p> <p>Unless DataLink, commit proper resources to pole maintenance and put in place a properly resourced system for processing permit applications, the Cayman Islands will suffer from a system that is unfit for purpose and where DataLink is in perpetual breach of its obligations.</p>
13.	<p><b>If you agree with the Office's proposal to direct DataLink to investigate the creation of an online portal or system for the submission of pole attachment permit applications and the issuance of pole attachment permits, what should be the requirements and scope of such a system?</b></p>	<p>Flow agrees that the Office should direct DataLink to investigate the creation of an online portal system. The requirements and scope of the system should be in compliance with the Decision arising from this Consultation. The actual system build should then be specified in accordance with the Decision.</p>
14.	<p><b>Do you agree with the Office's proposal to direct DataLink to investigate the creation of an online database containing relevant information on CUC utility poles managed by DataLink? If not, explain in detail the reasons why you disagree.</b></p>	<p>Flow is in agreement. The creation of a database containing information on CUC poles is likely to make due diligence on a pole route more efficient. This database would be part and parcel of the online portal for submitting permit applications and issuing permits.</p>
15.	<p><b>If you agree with the Office's proposal to direct DataLink to investigate the creation of an online database containing relevant</b></p>	<p>The information to be contained in the online database on CUC utility poles must be consistent with the information that DataLink requires of applicants to attach to the poles. Persons with access</p>

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	<p><b>information on CUC utility poles managed by Data, what should be the requirements and scope of such a system? In particular, what information in relation to CUC utility poles should be included and which persons should have access to the database?</b></p>	<p>to the database should be as advised by the Attacher to DataLink.</p>
<p>16.</p>	<p><b>Do you agree the Office has the jurisdiction under sections 6 and 62 of the URC Act to require DataLink to investigate the creation of an online portal or system for the submission of pole attachment permit applications and the issuance of pole attachment permits and/or the creation of an online database containing relevant information on CUC utility poles managed by DataLink?</b></p>	<p>It does appear that the Office has jurisdiction under Section 6(2)(d) to make Regulations under the Act. The Office should explore promulgating Regulations to include this proposal.</p>
<p>17.</p>	<p><b>Do you agree with the Office's proposal to modify the Pole Sharing Agreements to include a more explicit condition in contract that <i>any</i> changes to the communications facilities authorised to be attached to a pole under a permit <i>must</i> be reviewed by DataLink under the permit application process <i>before</i> the change is made? If not, explain in detail the reasons why you disagree.</b></p>	<p>Since Flow's contract with DataLink is commercially negotiated, both Flow and DataLink would have to agree on any new terms and the language to reflect the new terms. Without prejudice to Flow's position, Flow makes it clear that where an operator is modifying an attachment, which modification remains in the allotted space and no additional load is placed on the poles, notice should be served to DataLink of the intent to do so. Flow does not agree that such a modification should be subject to the permit application process which has steps irrelevant for an existing, approved attachment which requires no make ready work.</p> <p>A notice requirement is already the practice for existing attaching utilities under FCC rules in the United States. It is submitted that there is no reason these same FCC rules should not be applied to the Cayman Islands. Under rules implemented in 2018 in the FCC proceeding "<i>Accelerating Wireline Broadband Deployment</i></p>

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		<p><i>by Removing Barriers to Infrastructure Investment,”</i> pole owners may not require permission, but rather only require up to 15-days advance notice to the pole owner when a requested modification by an existing attaching utility increases the bundle size or load. In the case of copper-to-fiber modification there is a decrease to the load on the Poles. The FCC’s determination recognized an urgent need to reduce barriers to constructing fiber and other technologies pivotal to broadband deployment, and the intent of the pole access rules it implemented in this proceeding were focused on achieving that outcome.</p>
18.	<p><b>Do you agree with the Office’s proposal to require Attachers to report to DataLink all unauthorised attachments that have not yet come to the attention of DataLink, and must refrain from all future unauthorised attachments? If not, explain in detail the reasons why you disagree.</b></p>	<p>Flow does not agree with this proposal. DataLink has the ability to enforce the terms of its commercially negotiated contract regarding unauthorized attachment. The Office cannot enforce the terms for DataLink since it is not a party to the contract.</p>
19.	<p><b>Do you agree with the Office’s proposal to require DataLink to review each unauthorised attachment that comes to its attention, determine the make-ready work that would have been required if the attacher in question had properly applied for a permit for the attachment under the Pole Sharing Agreement, and invoice the attacher the applicable make-ready work charges? If not, explain in detail the reasons why you disagree.t</b></p>	<p>Flow does not agree with this proposal. DataLink’s contract already makes a provision for make-ready work and unauthorized attachment. DataLink has every incentive to enforce these terms.</p>



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20.	<b>Do you agree that the requirements should apply only to unauthorised attachments made after a final determination in this proceeding, or do you consider that they should apply to all unauthorised attachments, irrespective of when they were made or discovered? If the latter, describe in detail the power or jurisdiction that the Office would exercise in order to require retrospective adjustments to make-ready work charges.</b>	DataLink has the ability to enforce the terms of its commercially negotiated contract regarding unauthorized attachments. The Office not being a party to the contract, cannot enforce the contract.
21.	<b>Are there are other remedies that the Office should consider instead, such as mandatory removal of all unauthorised attachments? If yes, describe in detail the advantages or disadvantages of such other remedies including, without limitation, the impact on existing services provided to consumers.</b>	DataLink has the ability to enforce the terms of its commercially negotiated contract regarding unauthorized attachment. The Office not being a party to the contract, cannot enforce the contract.
22.	<b>Should different considerations apply to unauthorized attachments made by ICT licensees outside of the communication space. For example, in light of the danger to the safety and security of persons and of the electricity network, should they be subject to mandatory removal and/or to review under section 91 of the URC Act with a view to possible levying of administrative fines?</b>	The Office cannot enforce DataLink's commercially agreed contract with ICT Licensees. DataLink would have to enforce the terms of the contract. Without prejudice to the foregoing, where any ICT licensee is attached outside of the communications space, a warning should be issued and an opportunity be provided to remedy. A fine then could be considered if the situation is not remedied.
23.	<b>In light of the current limit of one Attachment per Assigned Space set out in Appendix C of the Pole Sharing Agreements, what process do you consider should apply when an Attacher seeks to replace an existing communications</b>	Consistent with Flow's response to Question 17, where an operator is modifying or replacing an existing attachment, which modification or replacement remains in the allotted space and no additional load is placed on the poles, notice of no less than fifteen (15) days should be served to DataLink of the intent to

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	<p><b>facility on a pole with a new facility, without interrupting service to consumers?</b></p>	<p>modify or replace the attachment. Such modification/replacement should not be subject to the permit application process which is not fit for purpose for an existing, approved attachment which requires no make ready work.</p> <p>A notice requirement is already the practice for existing attaching utilities under FCC rules in the United States. It is submitted that there is no reason these same FCC rules should not be applied to the Cayman Islands. Under rules implemented in 2018 in the FCC proceeding "<i>Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment</i>," pole owners may not require permission, but rather only require up to 15-days advance notice to the pole owner when a requested modification by an existing attaching utility increases the bundle size or load. In the case of copper-to-fiber modification there is a decrease to the load on the Poles. The FCC's determination recognized an urgent need to reduce barriers to constructing fiber and other technologies pivotal to broadband deployment, and the intent of the pole access rules it implemented in this proceeding were focused on achieving that outcome.</p> <p>It is Flow's practice to provide alternative means of communications to customers whose service may be interrupted when a facility is being replaced.</p>
24.	<p><b>Do you agree with the Office's proposal to ensure a permit to attach to a pole remains effective unless the right to attach contained in that permit is not exercised within no less than 200 calendar days after the date all permits in the same batch of poles have been issued? If not, explain in detail why you disagree.</b></p>	<p>A permit should not expire. Without prejudice to Flow's position, a permit should not be subject to expiry unless all the permits for the same batch of poles have been issued.</p>

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25.	<p><b>Should the duration of the period to exercise the right to attach remain 200 calendar days or should it be modified? If so, what should be the new period to exercise the right to attach? Explain in detail why and, in particular, how changing the period to exercise might promote an efficient, economic and harmonised utilisation of infrastructure.</b></p>	<p>Flow's position is that a permit should not expire.</p>
26.	<p><b>Alternatively, should Article IV.F be removed from the Pole Sharing Agreements? Explain in detail why and, in particular, how removing Article IV.F might promote an efficient, economic and harmonised utilisation of infrastructure.</b></p>	<p>Since Flow's contract with DataLink is commercially negotiated, both Flow and DataLink would have to agree on any new terms and the language to reflect the new terms.</p>
27.	<p><b>Do you agree with the Office's proposal attaching utilities be required to the Owner Utility (DataLink or CUC, as applicable) periodic forecasted attachment requirements over the next three-year period? If not, explain in detail why you disagree.</b></p>	<p>Periodic forecast would be useful for DataLink. It would improve efficiency. At the same time, a three (3) year forecast in the current business environment may be unrealistic. A view of two (2) years is likely more realistic.</p>
28.	<p><b>How often should attaching utilities be required to provide the forecasts, if any, and at what level of geographic specificity?</b></p>	<p>Forecast should be provided every two (2) years. However, DataLink must be advised if there are changed circumstances such that the forecast is materially different. The information shared must be kept strictly confidential to DataLink only.</p>
29.	<p><b>Should such forecasts, if any, include only new attachments, or should all attachments be included?</b></p>	<p>A forecast should be for new attachments only.</p>
30.	<p><b>Should the forecasts, if any, be binding?</b></p>	<p>Forecast should be provided every two (2) years. However, DataLink must be advised if there are changed circumstances such that the forecast is materially different. A forecast is for the purposes of guidance, is not binding but indicative.</p>

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31.	<b>In light of the fact that DataLink also competes with the other attachers as an ICT licensee, what measures should be implemented, if any, in order to protect the confidential and commercially-sensitive information of the other attachers?</b>	Flow proposes that in order to protect confidential and commercially-sensitive information, DataLink could establish a separate function that receives and processes the information provided by ICT Licensees. The information supplied would remain in the function and the retail, commercial function in DataLink would have no access to and be prohibited from accessing the information, and the data will not be shared with DataLink's retail team or discussed in meetings where the retail team is present. DataLink's technical team who will be assisting third party licensees with their request, are also required not to share confidential information with DataLink's retail team. This new way of interacting will require a culture shift in DataLink, which is achievable.
32.	<b>Do you agree with the Office's proposal that DataLink permit attaching utilities to perform pre-permit surveys prior to submitting pole attachment permit applications to DataLink? If not, explain in detail why you disagree.</b>	Flow agrees that DataLink allow attaching utilities to perform pre-permit surveys prior to submitting permit applications.
33.	<b>Do you agree with the Office's proposal that these pre-permit surveys would consist of visual surveys only and may be subject to reasonable terms and conditions such as a requirement to give DataLink reasonable advance notice of an intent to carry out a pre-permit survey? If not, explain in detail why you disagree.</b>	Flow is agreed.
34.	<b>Do you agree with the Office's proposal that DataLink publish the information it reasonably requires from a pre-permit survey in order for DataLink to process an application for a pole attachment permit? If not, explain in detail why you disagree.</b>	Flow is agreed that DataLink publishes the information that it reasonably requires from a pre-permit survey.

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35.	<p><b>Do you agree with the Office's proposal DataLink provide training at a reasonable cost to the persons proposing to do the Pre-Permit Surveys, and carry out a verification process to verify compliance with the requirements? If not, explain in detail why you disagree.</b></p>	<p>Flow is not opposed to DataLink providing training at a reasonable cost. However, since the Pre-Permit approval is based on a visual inspection of the poles, Flow is uncertain of the need for actual training since consistent with the Office's assessment at paragraph 443 '<i>There is, for example, no evidence that pre-permit surveys require more than a visual survey to report on the status of the pole and on the availability of space on that pole. In particular, this activity does not require DataLink or indeed any party to climb the pole or to modify, move or interfere in any way with existing electrical or ICT facilities on the pole. Indeed, it is following receipt of the results of the pre-permit survey that DataLink determines whether work must be done on the pole, including modifying, moving or interfering with the existing electrical or ICT facilities (whether or not the pole itself must be replaced), to make it ready to accommodate the requested attachment. There is therefore no reason why such pre-permit surveys cannot be performed by persons other than DataLink or its contractors and agents.</i></p>
36.	<p><b>Do you agree with the Office's proposal that DataLink maintain an up-to-date list of all CUC utility poles, which shall include information on the X and Y coordinates, height, CUC pole number or equivalent information, and size of communications space (where known) of each such pole, and shall provide the list upon request to ICT licensees who have executed a master joint use pole sharing agreement with DataLink? If not, explain in detail why you disagree.</b></p>	<p>Flow is agreed.</p>
37.	<p><b>Do you agree with the Office's proposal that DataLink be required to permit third parties to perform make-ready work, including make</b></p>	<p>DataLink should have operational control over its infrastructure. Having said that, DataLink already uses third party contractors to perform make-ready work on its behalf, so it would not be</p>

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	<p><b>ready work in the electrical space or involving electrical facilities on the utility pole, provided certain conditions are satisfied? If not, explain in detail why you disagree.</b></p>	<p>unreasonable for qualified third-party contractors to perform make-ready work on behalf of ICT Licensees. DataLink could also choose to publish a list of approved contractors for consideration. Flow does propose that Licensees should have the option to choose to have the make-ready work done by DataLink or by a third- party contractor from the outset.</p>
38.	<p><b>Are the proposed conditions appropriate? Are there are other relevant considerations that the Office should consider?</b></p>	<p>Flow's proposal is that from the outset, ICT Licensees should have the ability to choose to have make-ready work done by DataLink or by a third party contracted by the ICT Licensee. At this time, DataLink has made it clear that it does not have the capacity to process the volume of applications from the ICT Licensees so one can already anticipate that DataLink will not be able to make the timelines, as is the case today. For this reason, Licensees should be able to choose, from the outset, who will do the make-ready work.</p> <p>Flow supports that DataLink must maintain operational control over its infrastructure. Still, supervision and control by DataLink of third- party contractors, contracted by Licensees, could become a bottle neck if DataLink does not invest in increasing capacity in this area.</p>
39.	<p><b>Do you agree with the Office's proposal that upon receipt of a request to attach to a CUC utility pole, DataLink should replace the pole with one capable of accommodating up to four attachers, and that the costs of pole replacement should be shared by all attachers who have included the pole in their attachment demand forecasts. If not, explain in detail why not.</b></p>	<p>Flow does not agree that Attachers should cover the cost for a new pole because they would have already paid to attach to the current pole.</p>

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40.	<b>In your view, does the Office has power to mandate such a solution under the current ICT Act and Regulations? Provide your reasoning in detail.</b>	While Flow does not agree with the Office's proposal, it does appear that the Office is empowered under Section 6(2)(d) of the URC Act to promulgate Regulations to achieve the outcome.
41.	<b>In your view, can the parties (Owner Utilities and Attaching Utilities) agree to such a solution, in the event the Office does not have the power to mandate such a solution under the current ICT Act and Regulations? Provide your reasoning in detail.</b>	The parties can agree to such a solution as a term of their contract and it can be enforced as such.
42.	<b>Do you agree with the Office's alternative proposals that DataLink should first attempt to accommodate all attachment requests within the existing communications space before replacing the pole with a pole with can accommodate up to four attachers, that in such a case the requester should pay for the cost of replacing the pole with one that can accommodate up to four attachers, provided that, if a pole was installed between 1996 and 2016 and does not have a 1-foot 8-inch communications space, DataLink should bear half the cost of replacing the pole unless DataLink can demonstrate that Flow declined future use of the pole in question under the terms of the 1996 CUC-Flow Pole Sharing Agreement? If not, explain in detail why not.</b>	Flow is agreed.
43.	<b>Do you agree with the Office's preliminary view that it should not propose for consultation a revised definition of "standard utility pole"?</b>	Flow is not so much concerned with the definition of a standard pole so much as it is concerned about the cost of poles charged to ICT Licensee by DataLink. <sup>1</sup> Based on its 2016 assessment of CUC's invoices, the average height of bare poles installed by

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		DataLink was 39ft, which at the time produced a cost of \$533 and yet at that time DataLink calculated the net cost of a bare pole to be \$900. The accurate cost of the average height of the bare poles must be used in DataLink's calculations.
44.	<b>If not, explain in detail the reasons why you disagree, provide a revised definition of "standard utility pole", and describe in detail how the application of that revised definition would promote an efficient, economic and harmonised utilisation of infrastructure on Grand Cayman.</b>	Flow is not so much concerned with the definition of a standard pole so much as it is concerned about the cost of poles charged to ICT Licensee by DataLink. Based on its 2016 assessment of CUC's invoices, the average height of bare poles installed by DataLink was 39ft, which at the time produced a cost of \$533 and yet at that time DataLink calculated the net cost of a bare pole to be \$900. The accurate cost of the average height of the bare poles must be used in DataLink's calculations.
<b>Issues Relating to the Charging Principles (Consultation 2016-2 Part C)</b>		
45.	<b>Is DataLink pricing formula for calculation of the "Annual Attachment Fee" an appropriate pricing methodology for determining cost oriented prices for attachment of communication cables onto CUC's utility poles, and if so, why.</b>	Flow does not agree that DataLink's pricing methodology and calculation for the Annual Attachment Fee is appropriate.
46.	<b>If DataLink pricing formula for calculation of "Annual Attachment Fee" is not an appropriate pricing methodology, what other methodology should be used for determining cost-oriented prices for attachment of communications cables onto CUC's utility poles.</b>	<p>DataLink's pricing formula does not comply with the relevant costing principles. DataLink's pricing formula is based on "value of service" and not incremental costs, which is not a lawful basis under the Regulations. Incremental cost achieves economic and allocative efficiency for the market. Because there are no competitive constraints on DataLink's price, "value of service" pricing leads to unreasonable and excessive monopoly pricing.</p> <p>As previously submitted to Ofreg in its response to '<i>Public Consultation On Pole Attachment Reservation Fees, Permits Application Process And Charging Principles</i>', dated July 12, 2016 (2016 Response), Flow identified seven issues with</p>



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		<p>DataLink's pricing formula, which are as current today as they were then. These are:</p> <p><b>i. Net cost of bare pole is overstated:</b> In 2016, Flow's assessment was that the net cost of a bare pole was overstated by 69% based on its review of the average height and cost of installed poles included in the quarterly invoices received from CUC. There has been no change in DataLink's methodology since 2016 so there is no reason to believe that overcharging has abated.</p> <p><b>ii. "Space Factor" is mis-specified:</b> Attachers bear an excessive portion of the "common costs" of CUC poles because the size of the "unusable space" is overstated. The space occupied by individual attachers is miscalculated, and the '2/3' factor is inappropriate as it allocates 2/3 of the "unusable space" to attachers when, none of such costs were "caused" by, and therefore should not be allocated to, ICT Licensees.</p> <p><b>iii. Double Counting the Impact of Inflation:</b> The pricing formula double-counts the impact of inflation, once through the inclusion of the cost of new poles at current, not historical, prices, and again through the CUC annual carrying charge rate.</p> <p><b>iv. Overhead expense are excessive:</b> Including separate cost elements for "Management &amp; Overhead" and "Administrative" has the effect of double counting, creating artificial costs. Particularly since there is no evidence that DataLink is a separate business organization, with its own staff and assets fully separate from CUC.</p> <p><b>v. The calculations of the "Maintenance" and "Administration" elements of the carrying charge is flawed:</b> Both are expressed as percentages calculated of CUC totals, divided by the NBV of CUC's total assets. This approach is unreasonable, because if CUC decides to accelerate depreciation</p>

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		<p>of its assets, or write down their asset values for reasons unrelated to the attachment activities, this would have a significant impact on the attachment Fee. The prices paid for access to infrastructure should be based on the incremental costs of providing that access, not on irrelevant factors such as CUC's decision to accelerate depreciation of unrelated assets. Further, CUC administration and distribution costs should not be included in prices paid for attachment to poles, as they were "caused" by CUC's need for poles and not a result of use of poles by ICT Licensees.</p> <p><b>vi. Cost of Capital used in the pricing formula is misstated and excessive:</b> Cost of Capital should be based on DataLink's Weighted Average Cost of Capital ('<b>WACC</b>') instead of an arbitrary ■% Return on Equity ('<b>ROE</b>'), as use of ROE results in telecommunications customers subsidizing CUC. <sup>1</sup>CUC declares a WACC for fiscal 2022 of 7.25% and for 2021 of 7%. Even so a WACC of 7.25% would result in DataLink's telecommunications customers subsidizing CUC's business since the utility poles are included in CUC's fixed assets, and CUC is already generating a return on assets through its regulated Return on Rate Base ("<b>RORB</b>"), <sup>2</sup>targeted in the range 6.25% - 8.25% for fiscal 2022. Since CUC is already recovering the full costs of the utility poles and generating a return through its electricity rates, it is difficult to come to any other conclusion than that DataLink's telecommunications customers are subsidizing CUC. This should not be the case. DataLink's return should be limited to its own assets.</p> <p><b>vii. pricing formula appears to vary across Attachers in a manner that is discriminatory:</b> DataLink's pricing formula</p>

<sup>1</sup> [https://www.cuc-cayman.com/reports/download\\_pdf?file=1676573390cuc2022\\_ar\\_low\\_res.pdf](https://www.cuc-cayman.com/reports/download_pdf?file=1676573390cuc2022_ar_low_res.pdf) , pg.52

<sup>2</sup> Pg. 11, CUC 2022 Annual Report

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		appears to be different in the different pole sharing agreements in a manner that appears discriminatory. This is contrary to the Regulations.
47.	<p>If DataLink pricing formula for calculation of the “Annual Attachment Fee” is an appropriate pricing methodology, should any changes be made in the various elements of the formula, namely:</p> <ul style="list-style-type: none"> <li>○ Net Cost of a Bare Pole,</li> <li>○ Space Factor,</li> <li>○ CUC’s Annual Carrying Charge Rate,</li> <li>○ Inflation, and</li> <li>○ Management &amp; Overhead.</li> </ul>	Flow does not agree that DataLink’s pricing formula is correct.
48.	<p>Provide your view as to whether or not DataLink pricing formula has any effect on the prices electricity users pay to CUC and/or the potential profitability of CUC’s business operations resulting from the provision of access to its utility poles, including any evidence you have to support your view.</p>	<p>In its <b>2022 Annual Report</b> CUC states the following:</p> <ul style="list-style-type: none"> <li>○ <i>The increase in the net other income (by 1057%) for the year was due to an increase in foreign exchange gain and <b>increase in the revenue of the Company’s wholly owned subsidiary, DataLink.</b></i> (pg. 14). (emphasis added)</li> <li>○ <i>Revenues from DataLink for Fiscal 2022 are recorded in other income in the amount of \$2.1 million, a \$0.7 million increase from \$1.4 million for Fiscal 2021.</i>(pg.16)</li> </ul> <p>CUC’s 2022 Annual Report supports that the profitability of CUC’s business is benefitted by the provision of access to its utility poles which have delivered 50% growth in revenues year on year, and contributing to a net earnings increase for CUC of 9% over fiscal year 2021.</p> <p>It does not appear that DataLink’s formula has any effect on the price paid by users for electricity. In its <b>2022 Annual Report</b> CUC</p>

Question No.	OFREG'S QUESTION	FLOW'S RESPONSE
		states <sup>3</sup> <i>Net earnings for the year ended December 31, 2022 were \$33.2 million, a \$2.9 million increase from net earnings of \$30.3 million for the year ended December 31, 2021. <b>This increase is primarily attributable to a 2% increase in kWh sales, a 5.4% increase in base rates effective June 1, 2022 and lower finance charges and transmission &amp; distribution costs, partially offset by higher general and administration and consumer services costs.</b></i> (emphasis added). Nor does CUC state or even allude in its 2022 Annual Report that DataLink's pricing in any way affects pricing to electricity users. <sup>4</sup> Indeed CUC describes DataLink as an ICT Licensee.
49.	<b>Provide your view as to whether or not DataLink's ability to access CUC's utility poles at no charge 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.</b>	DataLink is a licensed ICT competitor. Access to CUC poles at no charge to DataLink confers an unfair advantage on DataLink, is discriminatory, and contrary to the Regulations. Accordingly, this discriminatory advantage has the effect of limiting the efficient and harmonized utilisation of infrastructure and the promotion of competition in the relevant ICT markets.
50.	<b>Provide your view as to whether or not DataLink's charges for Make-Ready work are cost-orientated, including a detailed explanation supporting your view.</b>	Please see Flow's comments in response to questions 45 – 48 on DataLink's pricing methodology.
51.	<b>If your view is that DataLink's charges for Make-Ready work are not cost-orientated, provide your view as to what approach should be taken to ensure the non-recurring charges for Make-Ready work are cost-orientated.</b>	Consistent with having qualified third party contractors carry out Make-Ready work, competitive tender for Make-Ready work will generate the prices closest to cost orientated rates.

<sup>3</sup> Page 3, CUC 2022 Annual Report

<sup>4</sup> Page 12, CUC 2022 Annual Report

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52.	<b>Do you agree with the Office's proposal that Article VII of the Pole Sharing Agreements should be amended as described in the preceding paragraph? If not, explain in detail why not.</b>	Flow agrees that DataLink should not be allowed to over recover its costs. Since Flow's contract with DataLink is commercially negotiated, both Flow and DataLink would have to agree on any new terms and the language to reflect the new terms.

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<sup>i</sup> Flow's Response to 'Consultation On Pole Attachment Reservation Fees, Permits Application Process And Charging Principles', dated July 12, 2016

**END**