



August 3rd, 2023

The Utility Regulation and Competition Office (OfReg)
PO Box 10189
Grand Cayman
Cayman Islands

Attn Mr. Daniel Ebanks

Dear OfReg,

RE: ICT 2016-2 – Consultation Part B and Part C (updated)

We refer to your email dated Friday June 2nd, 2023 providing "ICT Consultation 2016-2 Part B and Part C Updated", and to the extension to August 3rd 2023 of the deadline for providing responses.

We have been invited to answer the 52 questions posed and have confined our responses to the facts and matters which appear necessary to address those questions, including in light of the views which the Office has itself stated that it has formed on particular issues. Accordingly, the responses which follow are not a paragraph by paragraph response to the entire paper: in particular, whilst DataLink considers that various assertions which the Office records as having been made by Attaching Utilities are misguided, it has not sought to respond to any which appear simply to feature as part of the background, and which to us do not appear to have informed the Office's proposals and/or the questions posed. Indeed, it has not been asked to do so.

We further note that DataLink would have benefited from having been granted an extension to August 11th 2023 as it requested, in view of the magnitude and significance of the Consultation, and its having been issued shortly before the summer holiday period, when the few personnel who can properly engage with the Consultation have been absent at various times. Nonetheless, DataLink has endeavoured to respond to the questions posed as fully as possible in the time allowed, and it trusts that the Office will seek supplementary responses by way of a second phase of consultation (as the Consultation indicates at paragraph 627) if there are any concerns that any issue has not been adequately addressed.

In that regard, we note that a second phase of consultation is likely to be appropriate in any event, given certain fundamental misunderstandings which feature in the positions which the Office has expressed and proposals it has made on certain critical issues (which have also been shared with the public at large). We briefly note here three significant areas of concern (to which we return below):

- (a) the Consultation reflects the erroneous view that DataLink is in competition with, and in a position to discriminate against, Attaching Utilities, notwithstanding that DataLink has given up its ability to compete and therefore any temptation to discriminate – and indeed had sought to relinquish that ability for many years before the amendment to its Licence was finally granted;



- (b) the Consultation appears to suggest that DataLink receives profit from make-ready work, when it does not; and
- (c) the Consultation relies for cost comparisons upon data from jurisdictions which are plainly not good comparables for the Cayman Islands.¹

As to the first of these areas of concern, we particularly note that the Office has gone as far in paragraph 326 of the Consultation as to express what appears to be a concluded view that, for the reasons stated at paragraph 308, “*DataLink is in fact discriminating against other ICT licensees and in its favour...*”, notwithstanding that the majority of the reasons given in paragraph 308 are premised on the erroneous assumption that DataLink is actually in competition with Attaching Utilities.

Given these fundamental misunderstandings reflected in the Consultation, the related questions which have been posed proceed on a fundamentally misconceived basis and can be expected to elicit responses from other consultees which, for that reason, are themselves misguided – indeed notwithstanding that DataLink has necessarily sought to correct such misunderstandings by way of its own responses, which are provided below.

Whilst we are hopeful that the Office will take that recommendation on board given the significance of this Consultation, we are, in any event, grateful for the confirmation which it has provided at paragraph 628 of the Consultation, that a draft administrative determination will be issued following the review of the responses to the Consultation (and any second phase).

Please see DataLink’s responses to the questions raised by this Consultation below. These responses assume that the reader will be familiar with the capitalized terms used herein, save where such terms have been specifically defined herein.

CONSULTATION QUESTION 1: *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 nondiscriminatory 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.*

DataLink’s Response: DataLink understands that s.69(2) of the ICT Act seeks to ensure that third-party utilities are able to attach on non-discriminatory terms, and believes this objective is best achieved through third-party utilities being subject to the same terms and conditions as each other. Nonetheless, we observe that it is the Office, and not DataLink, which has the statutory powers conferred by s.69(2), and DataLink does not believe that it could do any more to “ensure” that this objective is met than to draw the Office’s attention

¹ Rasheed Griffith, Head of Emergent Ventures Africa & the Caribbean at George Mason University's Mercatus Center, (www.mercatus.org), writing on 17 May 2023, on the Caribbean Progress blog at cpsi.media/p/notes-towards-caribbean-dollarization/ / archive.is/wip/hvF7P (Accessed 3 August 2023) notes that: “The structure of Caribbean economies is different in quantity and quality. Caribbean economies are import dependent. This is not a value judgment or a temporary state of affairs; it is an immutable fact of the world. Even the most basic economic activity, agriculture, requires tools made from metals not found in the Caribbean - they must be imported. This has been the state of the Caribbean from the beginning”.



to any areas of concern, at least prior to the expiry and renewal of its agreements with each third-party utility, so that the Office may consider and, if appropriate, address them.

DataLink further notes that paragraph 302 of the Consultation alleges that DataLink did not raise the issue of the differing contractual terms with the Authority prior to the Consultation ICT 2016–2. This is factually incorrect. The correct position is that this issue was raised multiple times with the Authority as a concern, including in response to a Determination Request by Infinity Broadband in 2014 that was shared with the Authority.

With the objective of s.69(2) in mind, and as stated in our Working Group response paper of June 16th 2017, DataLink has consistently been willing and attempted to negotiate a standard set of terms and conditions with other Licensees. For completeness, this was stated in our Licence Application to the Information and Communications Technology Authority (the "**Authority**") and as required by the Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations, 2003 (the "**Regulations**").

Furthermore, the DataLink standard pole attachment agreement (Master Pole Joint Use Agreement) ("**MPJUA**") has not materially been altered since the legal framework document was submitted with DataLink's application to the Authority to become an ICT Licensee, the terms and rates of which were considered by the Authority at that time prior to the issuance of the ICT Licence in 2011.²

Some terms of the MPJUA will have evolved, or been updated, each time DataLink signs a new MPJUA with an Attaching Utility, in light of the parties' experiences over time and due to the amount of time that has passed since the execution of the original agreements with third-party utilities and changes in market rates. Plainly, DataLink cannot force contractual amendments on each other Attaching Utility every time a new MPJUA is executed with one of them, hence the minor differences which presently exist between the various agreements. Notwithstanding, we agree with the Office that the agreements currently in effect are substantially the same.

DataLink has sought both to improve the standard agreement and to negotiate the consistent use of a standard agreement with all Licensees with an existing agreement for infrastructure sharing of the communications space (some of which were novated from CUC as negotiated prior to the issuance of DataLink's ICT Licence). DataLink has generally been able to put MPJUAs in place with Attaching Utilities without inordinate delay. However, the following serves to illustrate the inability of DataLink itself to "ensure" that third-party utilities sign up to particular terms and conditions: DataLink has experienced considerable difficulty in its negotiations with Infinity Broadband Ltd (trading as C3). In particular, prior to the execution of its current MPJUA on July 22nd 2022, C3 had been operating without any MPJUA in effect since November 20th 2020 (in breach of the statutory requirements). Despite DataLink's extensive efforts to engage with C3 on this matter during the intervening period including the issuance of a Notice of Grievance filed with the Office, C3 was persistently uncooperative; and when C3 did purport to engage substantively, it provided comments on outdated drafts of the

² DataLink notes that the Authority did not expressly approve the terms and rates at that time, stating that they were subject to commercial negotiation and that, if the Authority were to comment on those matters at that time, it would effectively compromise its neutrality in the event of a dispute or complaint arising in future.



MPJUA before eventually signing the correct MPJUA (as noted above, over a year and a half following the expiry of its previous MPJUA).

CONSULTATION QUESTION 2: *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.*

DataLink's Response: The observations made by the Office in the Consultation document are unfortunately factually flawed and reveal either a failure to recall, or a fundamental misunderstanding of, the application previously made by DataLink to remove the Roll Out Schedule previously set out in Annex 1A of its Licence, which was granted (eventually, after a number of years' delay) on February 4th 2022.

Since DataLink does not provide such services to itself, DataLink respectfully considers that this question is academic (the reasons for which are explained in greater detail further below). However, DataLink can confirm that the rates, terms and conditions that are in each of the agreements with the Attaching Utilities are no less favourable to any Attaching Utility than any other Attaching Utility.

As of February 4th 2022, DataLink was granted its request of the Office for a licence amendment to remove the Roll Out Schedule set out in Annex 1A of DataLink's Licence and as a result to allow the space allocated to DataLink within the Communication Space on the utility poles owned by Caribbean Utilities Company Ltd) "CUC") to be allocated to another Licensee (namely Digicel). Amendment Number 4 of the license granted to DataLink is exhibited below:



**AMENDMENT NUMBER 4 TO THE LICENCE
OF DATALINK LIMITED.**

WHEREAS DataLink Limited ("DataLink") was granted a Licence by the Information and Communications Technology Authority, now the Utility Regulation and Competition Office (the "Office"), dated 28th March 2012 (as amended) (the "Licence");

AND WHEREAS DataLink has requested that the Office remove the Roll Out Schedule set out in Annex 1A of DataLink's Licence to allow the space allocated to DataLink within the Communication Space on the utility poles owned by Caribbean Utilities Company Ltd) "CUC") to be allocated to another Licensee;

AND WHEREAS the Office agrees to the DataLink request for amendment of the licence;

THEREFORE pursuant to sections 23 and 31 of the Information and Communications Technology Act (2019 Revision), Annex 1A of the licence is hereby amended to remove the Roll Out Schedule for Fibre optic cable – Domestic.

Dated this 4th day of February 2022

Executive Director Information
Utility Regulation and Competition Office



Since this amendment was granted by OfReg, an agreement was executed with Digicel, which has begun utilizing the assigned point within the Communication Space on CUC poles previously reserved for DataLink.

Accordingly, DataLink is not and has no intention to utilize such services, and as a result will not be subject to any such rates, terms and conditions applicable to an Attaching Utility (although if it had, they would have been the same as those in place with other Attaching Utilities).

For completeness, we note that the Office has expressed the understanding at paragraph 329 of the Consultation that DataLink has "*since changed this situation by moving its attachments to a different position on the pole outside of the communication space*". DataLink wishes to advise the Office that its understanding of this matter is incorrect. The true position is that CUC has had a fiber optic loop (of which DataLink has strands for infrastructure sharing to others,) but DataLink does not have fiber itself. The CUC fiber optic loop has been in place for decades without any movement. Extensions to the loop have been added for CI Government CCTV links as needed. This is not anticompetitive in any way, and is simply a provision of services and infrastructure sharing which were anticipated at the time that the ICT Licence was granted.

CONSULTATION QUESTION 3: *Do you agree with the proposal that applicants 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? If not, explain in detail the reasons why. Please also indicate changes, if any, you suggest should be made to the proposed requirement.*

DataLink's Response: DataLink respectfully disagrees with this proposal, and considers that the current practice of DataLink verifying and approving Pre-Permit Surveys internally ought to remain in place.

DataLink's position is based on the findings of the Joint Use Audit conducted in 2022 (the "**Audit**"), which revealed a vast number of breaches of contractual requirements under the MPJUAs, involving all Attaching Utilities to some extent. Against that recent background, DataLink cannot be confident that there would be full compliance with contractual and regulatory requirements, and that the integrity and safety of the utility poles would be safeguarded, if there were to be a departure from the current practice.

By way of brief overview, the Audit revealed a vast number of instances where Attaching Utilities failed to adhere to the terms and conditions provided by their respective MPJUAs, including *inter alia* (i) by making unauthorised attachments; and (ii) failing to observe the condition that a maximum of four half-inch cables, situated between 18.5ft and 21.5ft above the ground, may be attached within the Communications Space. The Audit identified a total of 47,221 attachments, spanning various heights from 0ft to 23ft, with only 21,878 permits having been issued.

For the avoidance of doubt, no Attaching Utility had fully adhered to its MPJUA. Whilst C3 asserted in the updated Consultation that "*telcos only attach at one point in the three-foot communication space*", the Audit has shown that is not the case.



As OfReg will be aware, the MPJUAs govern the permit process, and establish and incorporate Engineering and National Electric Safety Code ("**NESC**") guidelines specifying the permissible size and mounting of attachments. Appendix D of the MPJUA explicitly states that the "Electric Utility will permit a maximum of 4 half (1/2) inch cables to be attached." This provision is grounded in the objective of preventing pole loading from exceeding 100% of its capacity, while adhering to the relevant NESC and ANSI Standards. Furthermore, it serves to safeguard the integrity of the electricity grid, which is engineered to endure continuous wind conditions of up to 110 mph, typical of a Category 2 storm. Given the extent of non-compliance revealed by the Audit, allowing the Attaching Utilities to conduct their own pre-permit surveys would only introduce additional costs and complexities to the already established permit/make-ready process.

If the current proposal were implemented, then in order to ensure that there had been compliance with the prerequisites of the MPJUA, DataLink would nonetheless be compelled to undertake a thorough verification process for each pre-permit survey submitted by an Attaching Utility. This would create a duplicative verification process, which would inevitably result in increased time and resources being allocated by DataLink to review and cross-reference the survey data.

Considering these challenges and the historical non-compliance observed, DataLink believes that maintaining the current practice of DataLink verifying and approving pre-permit surveys internally is the most prudent approach. This approach allows DataLink to ensure that the Attaching Utilities adhere to the established terms and conditions, mitigating the risks associated with unauthorised attachments and maintaining regulatory compliance.

We emphasize that DataLink remains committed to upholding the integrity of the joint utility infrastructure, which requires it to uphold the necessary guidelines and standards. By independently verifying and approving pre-permit surveys, DataLink is able to effectively safeguard the integrity and safety of the utility poles, while ensuring compliance with the relevant regulatory frameworks.

CONSULTATION QUESTION 4: *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.*

DataLink's Response: DataLink repeats its response to Question 3 above. Since DataLink considers that it would, in any event, need to thoroughly verify each Pre-Permit Survey if such a process were adopted, it does not anticipate that there would be any reduction in the time required to provide a quotation to the applicant.

As noted above, the Audit confirms that each Attaching Utility has failed to comply fully with the terms of its MPJUA. In countless instances, the Engineering and NESC guidelines pertaining to the permitted methods and types of attachments on the utility poles have been disregarded. Such non-compliance undermines the integrity of the joint utility infrastructure and raises safety and regulatory compliance concerns.

DataLink thus considers that it would be compelled to undertake additional validation procedures to ensure compliance with the MPJUAs and the applicable guidelines, and that the



proposal which is the subject of Question 3 above would only serve to create duplicative work for DataLink and the Attaching Utilities.

By maintaining control over the verification process, DataLink can effectively fulfil its responsibility of safeguarding the utility poles, ensuring adherence to the established standards, and providing accurate quotations to applicants in a manner that is no less timely than would be the case if the proposal which is the subject of Question 3 above were to be adopted.

CONSULTATION QUESTION 5: *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.*

DataLink's Response: DataLink agrees that Attaching Utilities possessing a valid MPJUA and without any outstanding issues, including unpaid invoices or pending relocation requests, should adhere to a predetermined timeframe for responding to the provided estimates.

Such a requirement would serve to ensure that such estimates do not become outdated, and to expedite progress in the realm of Make-Ready work. It would particularly enable DataLink, as the facilitator of Make Ready operations, to proficiently organize and plan its Make-Ready endeavors based on the expeditious approval of estimates. Furthermore, it would establish a consistent framework for Wayleave Coordinators to follow when seeking necessary approvals.

The adoption of such a proposal should therefore also benefit Attaching Utilities, by affording them the opportunity to assess the viability of the proposed works, taking into account factors such as budgetary constraints, customer acquisition timelines, or the need to explore alternative routes in instances where estimated costs for a specific route are deemed excessive due to substantial infrastructure modifications or additions necessary for pole preparation.

CONSULTATION QUESTION 6: *What period of time should Attaching Utilities be given in order to accept, reject or otherwise respond to estimates delivered by DataLink?*

DataLink's Response: DataLink maintains that a prescribed period of 15 Business Days is both reasonable and appropriate, since that should allow Attaching Utilities adequate time to thoroughly evaluate their options and make informed decisions. In order to ensure that the deadline is observed, the estimate should be deemed null and void upon the expiry of that period.

Implementing a 15 Business Day period for Attaching Utilities to respond aligns with industry best practices and promotes effective collaboration between all parties involved. The imposition of such a timeframe is crucial for effective planning and allows CUC/DataLink to allocate necessary resources, such as personnel and contractors, in a systematic manner. This systematic approach ensures consistent work schedules and enhances the overall efficiency of the deployment process. Conversely, any appreciable delay in responding directly impacts the overall timeline for CUC/DataLink to prepare the site for attachment.



Providing Attaching Utilities with a specific timeframe for reaching a decision also requires them to focus on and carefully assess the feasibility and logistical considerations associated with the proposed attachment at the relevant times.

In conclusion, DataLink considers that requiring responses to be provided within this timeframe strikes an appropriate balance between providing ample time for evaluation and enabling a streamlined and well-coordinated site preparation process.

CONSULTATION QUESTION 7: *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?*

DataLink's Response: The provision of estimates is resource-intensive, in terms of the various personnel and equipment involved. DataLink therefore proposes the implementation of an upfront application fee of KYD\$1,600 per estimate for up to 10 poles, which would cover the review of the application, route design analysis and site survey necessary to generate the estimate.

An application fee would also serve to encourage Attaching Utilities to submit requests for estimates only for sites they genuinely intend to utilise, and which can properly be considered within the 15 Business Day period proposed above. This approach would help to mitigate unnecessary resource allocation and increase efficiency, whilst enabling CUC/DataLink to recover costs associated with the estimation process.

In this regard, it is important to recognise that DataLink operates with limited resources, as highlighted in OfReg's Consultation. Historically, there have been instances during Joint Use/Make Ready projects where Attaching Utilities have requested estimates for significant areas, requiring substantial efforts from CUC/DataLink, only for the requested estimates then to be declined or left unanswered.

This proposed upfront application fee should encourage a more focused and efficient estimation process, avoiding more substantial wasted expenditure, while supporting the financial sustainability of CUC/DataLink. It should generally ensure that resources are allocated to meaningful estimates, contributing to the overall effectiveness of the joint use infrastructure management.

CONSULTATION QUESTION 8: *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.*

DataLink's Response: DataLink strongly disagrees with this proposal.

At the time of submitting a batch application, an Attaching Utility will be unaware (or not necessarily aware) of whether the poles in question are categorized as "Green" or "Red." As you will know, those categorized as "Green" poles are those that have undergone the Make Ready process within the past 5 years. On the other hand, "Red" poles refer to those that either haven't undergone the Make Ready process or underwent it more than 5 years ago and



require reassessment. Due to the lack of this information prior to pole submission, there are instances where a combination of Green and Red poles is included in such applications.

In such instances, the Green poles may be easily accessible to the applying Attaching Utility, allowing them to attach their infrastructure and commence offering services to the surrounding area once the permit is issued. However, it would be inappropriate for DataLink to issue permits in respect of the Red poles which are effective as of the same date, since those poles will not have been made ready or reassessed as of that date.

Conversely, if DataLink were to withhold (or delay the effective date of) permits for Green poles until the Make Ready processes and/or reassessment of all Red poles within the batch have been completed (which could be extensive depending on the number of Red poles in the batch and the required work, necessary Way Leaves, and other factors), the Attaching Utility could be expected to miss out on potential customers and revenue in the event that it is able to make use of at least certain of the Green poles pending completion of the make-ready work which the Red poles require.

DataLink considers that each the first of those scenarios is unworkable, whilst the second is less than ideal. We acknowledge that the Office has this potential solution in mind with a view to eliminating “the concern that some permits might lapse due to delays in obtaining other permits” and facilitating “the efficient use of CUC utility poles and the deployment of ICT networks”. However, DataLink considers that a more nuanced approach would better serve Attaching Utilities’ interests, namely to allow them to indicate which (if any) Green Poles within the batch will be unusable pending completion of the Make Ready processes and/or reassessment of all Red poles within the batch have been completed, and to positively request that the permit for those particular Green poles be given the same effective date as permits for the Red poles upon which their use is dependent”.

CONSULTATION QUESTION 9: *What specific changes to the terms of the Pole Sharing Agreement would you propose to implement this proposal if it were adopted following consultation.*

DataLink’s Response: For the reasons given above, DataLink disagrees with this proposal, and therefore with implementing any alterations to the terms of the MPJUA. As noted above, such changes would be likely to detrimentally affect Attaching Utilities and impede the pace of their network expansion efforts.

CONSULTATION QUESTION 10: *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”?*

DataLink’s Response: DataLink agrees that there is no need to change the permit application process. However, DataLink acknowledges that it would be desirable to modify the process to better accommodate the interests of all entities involved in the respects described below.



The introduction of the Pre-Approved Permit is deemed necessary based on the findings of the Audit, which have been described above.

Upon receiving permits, or – as evident from the Audit – even without obtaining permits from DataLink, Attaching Utilities have proceeded to attach to infrastructure however they see fit. In certain instances, these companies installed such a substantial amount of infrastructure that it precluded the possibility of other entities attaching their equipment, thereby violating Article 65.1 of the Interconnection and Infrastructure Sharing Act, which explicitly prohibits a licensee operating a public ICT network from (among other things) *obstructing or impeding* another licensee in making interconnections or *sharing infrastructure*.

By implementing a Pre-Approved Permit as an integral part of the Post Installation survey, DataLink aims to effectively mitigate any further misuse of the CUC electricity grid by Attaching Utilities while ensuring effective and harmonized usage of the infrastructure.

CONSULTATION QUESTION 11: *If not, explain in detail the reason why you disagree, and describe in detail how the changes proposed by DataLink would promote an efficient, economic, and harmonized utilization of infrastructure in Grand Cayman.*

DataLink’s Response: DataLink refers to its previous response on this matter.

CONSULTATION QUESTION 12: *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.*

DataLink’s Response: As the Office is aware, during the meeting held on January 27th, 2022, DataLink apprised the Office of its ongoing efforts to develop an online Joint Use Platform (“**JUP**”) specifically designed to monitor assets and attachments, streamlining the current practices that rely on email attachments and manual tracking via spreadsheets. Furthermore, on February 1st, 2022, DataLink sent an email to the Office, providing hyperlinks to the platform that is currently under consideration. For completeness, the JUP includes an *'online portal...for the submission of pole attachment permit applications and the issuance of pole attachment permits'*.

With DataLink having informed the Office of, and demonstrated, its consideration of and intentions to adopt an online JUP, it is unclear why the Office would now consider it appropriate (assuming it has jurisdiction) to issue a directive compelling DataLink to pursue an objective that is already underway. Furthermore, DataLink remains committed to leveraging technology and implementing systems that enhance the efficiency and effectiveness of the pole attachment permit application process. The ongoing development of the online JUP aligns with this objective and aims to provide a seamless and streamlined experience for all stakeholders involved.

In the circumstances, issuing such a directive would seem otiose. DataLink firmly believes that the more appropriate course would be for the Office to collaborate with it in deploying the online JUP, rather than prescribing a specific course of action.

DataLink thus respectfully expresses its disagreement with this proposal.



CONSULTATION QUESTION 13: *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 requirement and scope of such a system?*

DataLink’s Response: For the reasons set out above, DataLink respectfully disagrees with this proposal.

The JUP which DataLink is working to implement encompasses a comprehensive range of information pertaining to pole attachments and infrastructure sharing. This includes, but is not limited to, the following elements:

1. Pole Number
2. Street Name
3. District/City
4. Country
5. Pole Height
6. Pole Class
7. Pole Type
8. Pole Installation Date
9. Foundation
10. Grounding
11. Installation Date
12. Longitude and Latitude
13. Make Ready Completed Date
14. Attachment Owner
15. Attachment Type
16. Attachment Height
17. Over-lashing
18. Permit

Furthermore, the JUP will facilitate online permit application submissions for Attaching Utilities with valid MPJUAs, offering transparency throughout the entire process, including, but not limited to, the following stages:

1. Application Submission
2. Application Acceptance
3. Assessment/Survey
4. Make Ready Estimate
5. Make Ready Estimate Response (as outlined in Consultation Questions 5, 6, and 7)
6. Make Ready Work
7. Post Inspection

At each step of the process, the applicant will receive timely updates and notifications regarding the status of its application, ensuring effective communication. Please refer to the screenshots below for a visual representation.



Attachment Request Pro... Active for less than one m...

Save Save & Close + New Create Permit Flow

New Attachment Request - Unsaved

Jonathan Martin Owner Open Status Reason

Identify (< 1 Min) Permit Acceptance Survey Make Ready Estimate Make Ready Estimate Response Make Ready Work Post Inspection

Summary Stage Tracking Proposed Attachments Work Orders Record Log Documents

ATTACHMENT REQUEST INFORMATION

Request Id * ...

Description ...

Work Order Number ...

Attachment Owner * ...

Contact ...

Contract + ...

Permit Type ...

Attachment Type * ...

Reported Date * 6/16/2023

Requested Completion Date ...

Timeline

Almost there

Select Save to see your timeline.

Attachment Request Pro... Active for less than one m...

Save Save & Close + New Create Permit Flow

New Attachment Request - Unsaved

Jonathan Martin Owner Open Status Reason

Identify (< 1 Min) Permit Acceptance Survey Make Ready Estimate Make Ready Estimate Response Make Ready Work Post Inspection

Summary Stage Tracking Proposed Attachments Work Orders Record Log Documents

PERMIT FEE

Permit Fee ...

Billed Date ...

Paid Date ...

SURVEYING

Issued Date ...

Received Date ...

Complete Date ...

MAKE READY ESTIMATING

Required No

Estimate Amount ...

Estimate Sent Date ...

Estimate Response Date ...

Final Estimate Amount ...

Estimate Billed Date ...

Estimate Paid Date ...

MAKE READY

Actual Amount ...

Issued Date ...

Billed Date ...

Paid Date ...

Complete Date ...

Post Inspection Complete Date ...

Finally, the JUP will serve as a valuable tool for DataLink in addressing Relocation Requests and managing violations identified during the Joint Use Audit. All requests for relocation and remediation of violations will be submitted and processed through the Joint Use Platform, streamlining the resolution process.

CONSULTATION QUESTION 14: *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.*

DataLink's Response: Please see our previous responses above. The JUP which is in the course of being implemented encompasses a comprehensive range of information including,



but not limited to, the elements described above, which includes relevant information on the CUC utility poles managed by DataLink.

CONSULTATION QUESTION 15: *If 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 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?*

DataLink’s Response: Please see our responses above regarding this proposal.

As regards the question of who should have access to the JUP, DataLink proposes that each Attaching Utility holding a valid MPJUA provides DataLink with the names of the individuals responsible for their permit submissions and their Access Network (i.e. components such as Fiber Cables, Cabinets, MSAN's, Splice boxes, and similar assets). It should be noted, for completeness, that DataLink envisages each Attaching Utility only being granted access to view its own assets, and having the ability to generate reports solely for their own assets.

DataLink also envisages providing the Office with a dedicated account, enabling them to access specific reports as determined at a later date.

CONSULTATION QUESTION 16: *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?*

DataLink’s Response: Please see our responses above regarding this proposal.

DataLink has already voluntarily embarked on this initiative, demonstrating its dedication to enhancing the efficiency and effectiveness of the pole attachment permit process.

DataLink would welcome the opportunity for further collaboration and engagement with the Office on this initiative, including to refine and finalize the implementation plan for the online JUP, and ensuring compliance with relevant regulations and industry standards.

With the JUP, DataLink aims to foster transparency, efficiency and accountability within the pole attachment permit application process, and will remain committed to leveraging technology and innovation to provide a robust and user-friendly platform that benefits all parties involved.

CONSULTATION QUESTION 17: *Do you agree with the Office’s proposal to modify the Pole Sharing Agreements to include a more explicit condition in contract that any changes to the communications facilities authorized to be attached to a pole under a permit must be reviewed by DataLink under the permit application process before the change is made? If not, explain in detail the reasons why you disagree.*

DataLink’s Response: DataLink provisionally agrees with the inclusion of a more explicit condition in the contract addressing this issue.



If such a proposal were implemented, DataLink would expect it to require the Attaching Utilities to provide detailed specifications of the equipment and materials intended for replacement of existing attachments, since this information is necessary to enable DataLink to assess the potential wind loading impact on the poles and ensure compliance with relevant safety standards.

Furthermore, DataLink emphasizes the importance of effective communication during maintenance activities. The Attaching Utility should thus be required to notify DataLink both before and after maintenance, providing comprehensive information on the poles included in the maintenance work and the materials to be removed and installed.

In this regard, DataLink again refers to the findings of the Audit, which revealed numerous instances of non-compliance with the MPJUA terms by Attaching Utilities, including a significant number of unauthorised attachments which violated s.65(1) of the ICT Act (as described above).

DataLink recognizes the importance of adhering to regulatory requirements and fostering a cooperative environment among all parties involved in the pole sharing process. It therefore expects that incorporating this proposed modification to the Pole Sharing Agreements would promote compliance, transparency and the efficient management of shared infrastructure.

CONSULTATION QUESTION 18: *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.*

DataLink's Response: DataLink strongly agrees with this proposal.

DataLink recognizes the importance of addressing unauthorised attachments in a proactive manner to ensure compliance with regulatory requirements and to protect the integrity of the shared infrastructure. Implementing measures to encourage prompt reporting and establishing appropriate penalties should mitigate the occurrence of unauthorised attachments and consequential safety concerns, and promote a culture of compliance among all Attaching Utilities.

As the Office will have noted from the discussion of the Audit above, based on the findings of the Audit, there are currently over 20,000 unauthorised attachments attached to the CUC Electricity Grid by the four Attaching Utilities, none of which were reported to DataLink, but were only discovered during the Audit process.

In light of those findings, it is apparent that the existing penalty for making unauthorised attachments, as stated in Section 2.B of Appendix A of the MPJUA, which amounts to one year's fees in arrears, is not a sufficient deterrent. If the Office were to impose a further self-reporting obligation, in order for that obligation to be effective, there should be additional consequences, in the form of increased penalties, for non-compliance.

Furthermore, in order to ensure that Attaching Utilities refrain from making unauthorised attachments in future, DataLink would support revisiting the applicable penalty fee and



reinstating the previous provision, which imposed a penalty of six years' fees in arrears, which should plainly be more effective in discouraging such practices.

CONSULTATION QUESTION 19: *Do you agree with the Office's proposal to require DataLink to review each unauthorized 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.*

DataLink's Response: As foreshadowed above in response to Questions 17 and 18, DataLink provisionally agrees with this proposal.

DataLink would add that, in situations of the sort previously mentioned when discussing the Audit, where multiple Attaching Utilities are found to have unauthorised attachments, DataLink firmly believes that the cost incurred for the necessary make-ready work should be shared equitably among all offending Attaching Utilities involved. This approach would ensure fairness and proportionality in addressing the consequences of unauthorised attachments.

CONSULTATION QUESTION 20: *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 unauthorized 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.*

DataLink's Response: DataLink considers it important to uphold and enforce the terms and conditions provided by the current MPJUA for unauthorised attachments made prior to a final determination in this Consultation. Relatedly, it accepts that the implementation of a more robust penalty fee structure, specifically a penalty of six years' fees in arrears per unauthorised attachment, cannot fairly be imposed on Attaching Utilities retrospectively, and could only apply to unauthorised attachments post-dating its implementation.

Beyond this, the self-reporting proposal reflected in Question 18 plainly cannot be confined to unauthorised attachments made after a final determination in this proceeding, if it is to be effective; nor is there anything in that proposal which can properly be regarded as having retrospective effect. It is simply to require an Attaching Utility to give a full account of its unauthorised attachments if or when the Office decides to implement the proposal.

The proposal reflected in Question 19 also does not involve any retrospective adjustments: if DataLink is assessing make-ready work necessitated by existing unauthorised attachments following a final determination in this proceeding, it will be assessing and invoicing for that make ready work by reference to current conditions and costs, and not what they would have been at the time that the unauthorised attachment was reportedly made. DataLink considers that any Attaching Utility found in violation should be held financially responsible for the necessary make-ready costs associated with supporting the unauthorised attachments. DataLink firmly believes that regardless of the installation date, the Attaching Utility responsible for the unauthorised attachments should bear the costs associated with the make-



ready work which will nonetheless be required when the unauthorised attachment falls to be addressed.

Whilst it may be contended that the proposal reflected in Question 17 would amount to a retrospective adjustment, if made applicable to changes to the communications facilities authorized to be attached to a pole under a permit which were effected prior to a final determination in this proceeding, the paramount concern is that such changes do not compromise the integrity of the poles and create safety issues. DataLink considers that the Office has a wide jurisdiction under s.69 of the ICT Act to require the necessary contractual modifications to be made, so that where such changes remain in place, they can be required to be addressed following a final determination in this proceeding, by way of a permit application process conducted at that time. In this way, DataLink suggests that such action would not truly be retrospective, but would be to require any such issues to be resolved prospectively, so that they do not persist into the future.

For completeness, in instances where the offending Attaching Utility fails to comply with the obligation to cover the costs of the make-ready work required to properly accommodate its unauthorised attachments, DataLink considers that the Office should grant DataLink the authority to remove the assets associated with the unauthorised attachments from the poles in question. Furthermore, DataLink proposes the implementation of a denial-of-service measure, which would suspend the non-compliant Attaching Utility's ability to apply for new permits, perform maintenance, or engage in any other activities related to Joint Use. This measure aims to reinforce compliance and ensure the resolution of the matter in a fair and efficient manner. Without such abilities, even where financial penalties are imposed, unauthorised attachments may remain unresolved for considerable periods of time.

DataLink remains committed to promoting a transparent and accountable environment in the joint use of infrastructure. We appreciate the opportunity to collaborate with the Office to address unauthorised attachments, enforce penalties for non-compliance, and uphold the integrity of the shared infrastructure.

CONSULTATION QUESTION 21: *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.*

DataLink's Response: As noted above, DataLink considers that the mandatory removal of all unauthorised attachments from the poles and the ability to deny services are necessary remedies, particularly where an Attaching Utility persistently fails to comply with requests to address its unauthorised attachments and/or is undeterred by the imposition of financial penalties, however substantial.

DataLink does however stand by its recommendation to impose a penalty of six years' fees in arrears per unauthorised attachment on the offending Attaching Utility, on the basis that this would serve as a strong deterrent, encouraging Attaching Utilities to adhere to the agreed-upon processes and refrain from attaching without proper authorisation and permits.

In the event that the Attaching Utility fails to comply with the specified terms outlined in the MPJUA by not removing the unauthorised attachment, DataLink suggests engaging a third-party contractor to undertake the removal of the attachments. Should the Attaching Utility



fail to settle the invoice issued for the removal and associated costs, DataLink proposes that it be given the authority to implement a "Denial of Service" measure, thereby suspending the Attaching Utility's ability to engage in new permit applications, maintenance activities, or any other duties related to Joint Use until the outstanding fees are resolved, as previously mentioned.

Advantages:

- Unauthorised attachments to the network should diminish or cease entirely because ignoring the applicable requirements will no longer make commercial sense.
- Non-compliant Attaching Utilities will no longer be able to gain an unfair commercial advantage by breaching regulations and reducing costs compared to more compliant competitors.
- DataLink costs – ultimately borne by Cayman residents – should be reduced.
- Risks to the reliable provision of power via the CUC network should be reduced, as pole loading will be better understood and DataLink will be able to identify and monitor issues.
- Safety risks to people, both members of the public and people working on and in the vicinity of CUC poles, should be reduced by the ability to enforce the rules.

Disadvantages:

- Whilst some Attaching Utilities may complain about DataLink's proposed remedies, it is clear that the current system does not ensure compliance, and it is essential to prioritize consumer protection and promote a fair and competitive market.
- We do not consider that there are any genuine disadvantages to the proposed remedies, particularly to consumers, since it is ultimately in consumers' interests that the services they receive are properly and safely delivered.
- We anticipate that certain Attaching Utilities may make commercially-motivated assertions to the contrary. But it is indisputable that the proposed remedies are only engaged if Attaching Utilities breach agreements with which they are already meant to be complying.

In conclusion, while we acknowledge that the proposed remedies may impose certain costs on Attaching Utilities, they are reasonable and necessary. Our primary goal is to safeguard consumers and the infrastructure itself (both electricity distribution and telecoms), promote fair competition, and ensure continued growth and development. The introduction of the proposed remedies, along with continuing to foster an open dialogue with stakeholders, should enable a balanced regulatory framework that benefits all parties.

DataLink remains committed to upholding compliance, ensuring fair practices, and fostering accountability in the joint use of infrastructure. We appreciate the opportunity to collaborate with the Office in developing effective measures to address unauthorised attachments and enforce penalties for non-compliance.



CONSULTATION QUESTION 22: *Should different considerations apply to unauthorised 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?*

DataLink's Response: DataLink respectfully disagrees with the notion that different considerations should be applied to unauthorised attachments made by ICT licensees outside of the communication space. While attachments outside of the communication space may initially appear to pose a more visible risk to pole safety and the well-being of individuals working in proximity, it is important to note that the level of risk cannot be solely determined by visual assessment.

The implementation of various NESC (National Electric Safety Code) and engineering guidelines during the Make Ready process, as well as their stipulation in the MPJUA, serve to ensure the overall safety and security of both the Electrical Grid and those involved in its operation. Each unauthorised attachment introduces the potential for increased stress on the pole, thus elevating the safety risk associated with potential pole failure.

As noted above (and in respect of unauthorised attachments both within and outside of the communication space), DataLink thus proposes that it be granted the authority to impose significant fines on entities that make unauthorised attachments. Furthermore, DataLink suggests that it should also have the capability to rectify unauthorised attachments if the owner utility fails to do so timeously, with a mechanism in place to recover the expenses incurred for the rectification work. In the event of non-compliance by the Attaching Utility, DataLink supports the view that the Office should levy fines against the violating entity, and proposes that it empower DataLink to enforce a denial of service measure until the matters have been appropriately resolved.

These measures are intended to encourage strict adherence to safety standards, mitigate risks to pole infrastructure, and ensure the overall integrity of the regulatory framework governing pole attachments.

CONSULTATION QUESTION 23: *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 facility on a pole with a new facility, without interrupting service to consumers?*

DataLink's Response: The definition of a "Permit" provided in the MPJUA refers to the written or electronic authorization granted by the Owner Utility to the Attaching Utility, allowing them to make or maintain Attachments, Overlash existing Attachments, or perform Substantial Construction or Modification on specific Poles in accordance with the requirements of the agreement.

Once a permit is issued, it is the responsibility of the Attaching Utility to maintain the attachment associated with the permit. If necessary, the Attaching Utility is permitted to modify the attachment as required by the terms of the agreement. Currently, when performing maintenance on their attachments, Attaching Utilities inform DataLink about the



areas where the maintenance will take place and provide details regarding the proposed date and time of commencement and completion of the work.

With respect to the question of replacement "without interrupting service to consumers," if the Attaching Utility determines there is a need to replace its infrastructure without disrupting service to its customers, they should take the following steps:

- The Attaching Utility must notify DataLink of its intention to perform maintenance in a specific area. When submitting this information, the Attaching Utility should include the poles it intends to work on (limited to a maximum of 25 poles at a time), details of the infrastructure to be removed, and specifications of the infrastructure intended to be attached to the poles. This information is crucial in determining the wind loading requirements of the poles. If the new infrastructure increases the wind loading risk beyond acceptable limits, DataLink will deny the request and provide the Attaching Utility with an estimate for the required Make Ready work to support the new assets.
- If the new assets do not necessitate any Make Ready work, DataLink will grant the Attaching Utility permission to attach the new infrastructure to the poles within a 30-day period. During this 30-day period, the Attaching Utility is also expected to fully remove their old assets from the pole.
- At the conclusion of the 30-day period, if the Attaching Utility has not removed the old assets from the pole, DataLink will consider the old attachments unauthorized and proceed in accordance with the terms outlined in the MPJUA relating to unauthorised attachments.
- In the event that the Attaching Utility has installed assets that do not match the specifications provided in their application, the Attaching Utility must replace the equipment with the correct assets within 10 days. Failure to do so will grant DataLink the right to remove the assets from the pole(s).

It is crucial to note that during the aforementioned activities, strict adherence to all NESC and Engineering standards is of utmost importance. Any violations of these standards should result in the Attaching Utility rectifying or removing the newly installed assets. DataLink reiterates that if the Attaching Utility fails to comply with these requirements, the Office should grant DataLink the authority to have the assets removed.

CONSULTATION QUESTION 24: *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.*

DataLink's Response: As previously indicated in DataLink's responses to Questions 8, 9 and 10, DataLink disagrees with the proposal that a permit to attach to a pole should remain 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. DataLink believes that it should have the discretion to determine whether or not to expire a permit based on the terms outlined in the MPJUA, without being obliged to do so.



In addition to the rationale provided in DataLink's previous responses to questions 8, 9 and 10, it is important to note that permits are not issued until certain conditions are met. These conditions include either A) the completion of the job in its entirety, B) the decision by the applying Utility to trench past any potential blockages to reach their desired location, or C) the completion of a redesign to circumvent any potential issues.

Furthermore, permits do not automatically expire or cease once executed unless a specific request is made by the Attaching Utility to DataLink for expiration. Therefore, the issuance date of the permit is of limited relevance. Notably, DataLink does not initiate billing until the permit is issued, and the permit is only issued once all the necessary work is completed.

CONSULTATION QUESTION 25: *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.*

DataLink's Response: DataLink maintains that the period of 200 calendar days for exercising the right to attach, as currently stated in the MPJUA, is appropriate. To further support this stance, DataLink presents examples from CenterPoint Energy Houston Electric, Georgia Power, and Florida Power and Light, where their permits expire after a specified duration if the Attaching Utility fails to attach within that timeframe.

CNP – CenterPoint Energy Houston Electric, LLC

Temporary Construction Permit

Except in cases where Supply Space Make-Ready and/or a Pole replacement is requested or required, CenterPoint shall issue a TCP upon its approval of Attacher's Application. The TCP shall authorize Attacher to access such Poles, on a temporary basis, as needed to perform all required Make-Ready, and to install its approved Attachments. In cases where Supply Space Make-Ready and/or a Pole replacement is requested or required, CenterPoint shall issue a TCP upon its completion of such work.

Temporary Construction Permits for Non-OTMR requests will automatically expire 120 days after issuance, unless an extension is granted by CenterPoint Energy upon Attacher's written request, five (5) days prior to the date on which the TCP is scheduled to expire. CenterPoint Energy reserves the right to deny an extension of any TCP in any cases where Attacher fails to commence the approved Attachment installation within the initial 120-day period for which the TCP was issued. Attacher is prohibited from accessing CenterPoint Energy's Poles if the Temporary Construction Permit has expired, or has been revoked by CenterPoint Energy for any reason.

Pole rental charges shall be applied immediately upon issuance of the relevant Temporary Construction Permits. The charges will be detailed on the following year's annual attachment fee invoice.



Attacher must notify CNP when all Make-Ready has been completed by submitting a comment through the respective NJUNS pole attachment request, and its Attachment has been fully constructed and installed, within 15 days after field completion

Georgia Power

The applicant will need to make sure the installation is completed within 60 days of being provisionally permitted.

Prior to 60 days, the applicant may request an extension from Georgia Power. If the installation goes beyond 60 days, without requesting an extension, the applicant will need to submit a new request.

After the applicant performs the installation and the workflow is advanced, the request will go to post inspection and to be reviewed by Georgia Power.

If here are violations found, the applicant will need to correct the violations (could be additional charges if major scope change).

FPL- Florida Power and Light

If no Gulf Power make-ready work is required, Gulf Power will return the approved permit or Overlapping Notification.

If Gulf Power make-ready work is required, Gulf Power will return the approved permit or Overlapping Notification upon completion of Gulf Power make-ready work.

You must complete construction within 60 days of permit approval (180 days if major project), or permit will automatically expire, and you will need to re-apply.

You may request an extension of the permit life if you are unable to complete construction due to extenuating circumstances.

Any request for extension of permit life must be made and approved PRIOR to expiration of the permit

Unless Gulf Power has extended the permit in writing, the post-construction inspection will be scheduled for 60 days after permit approval.

If violations are found, licensee will be sent a Notification of Non-Compliant Attachment. Licensee will be required to take corrective action within the appropriate time, after which Gulf Power will conduct an additional inspection to ensure the corrective action has been properly performed.

This process will continue until violations are corrected

These examples demonstrate that the inclusion of a time limitation clause is a common practice in the Joint Use industry. DataLink contends that the 200-day period outlined in the MPJUA aligns with industry standards and serves as a reasonable timeframe for the Attaching Utility to exercise its right to attach to poles.



DataLink acknowledges the importance of receiving notification from an Attaching Utility upon the completion of its attachment of assets to the pole. This notification allows DataLink to maintain an accurate record of the attachments and facilitates effective management of the joint use infrastructure. Again, DataLink believes that it should have the discretion to determine whether or not to expire a permit based on the terms outlined in the MPJUA, without being obliged to do so.

CONSULTATION QUESTION 26: *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.*

DataLink's Response: DataLink maintains its position that Article IV.F should not be removed from the Pole Sharing Agreements. Removing this clause would deviate from the industry standard and established practices within the Joint Use sector. It is essential to adhere to industry norms and standards to ensure consistency and uniformity in pole sharing arrangements. Practically speaking, it also reflects the period of time beyond which it is appropriate that there be a further review as to whether any further Make-Ready work is required; and it removes the prospect of anti-competitive behavior amongst Attaching Utilities, which may seek to secure attachment spaces for the future without intending to attach within such a period, if and to the extent that further licences are granted.

By retaining Article IV.F, DataLink ensures that the Pole Sharing Agreements align with industry best practices and regulations. This clause serves as a vital provision to govern the rights and obligations of the parties involved in the pole sharing process. It provides clarity and establishes a framework that is widely recognized and accepted within the industry.

Moreover, the inclusion of Article IV.F in the Pole Sharing Agreements helps maintain consistency and harmonization across multiple jurisdictions. It allows for a streamlined and efficient process that adheres to established standards and practices in the Joint Use industry.

Therefore, DataLink asserts that retaining Article IV.F in the Pole Sharing Agreements is crucial to ensure compliance with industry norms and to maintain consistency and fairness among all parties involved in the pole sharing process.

CONSULTATION QUESTION 27: *Do you agree with the Office's proposal [that] attaching utilities be required to [provide] the Owner Utility (DataLink or CUC, as applicable) [with] periodic forecasted attachment requirements over the next three-year period? If not, explain in detail why you disagree.*

DataLink's Response: DataLink agrees with this proposal. The provision of such forecasts is necessary due to the substantial workload involved in facilitating Make Ready processes, and the need to ensure as far as possible that sufficient resources are available.

By receiving these forecasts from attaching utilities, DataLink can proactively initiate the necessary Make Ready work based on the anticipated attachment requirements. However, it is crucial to establish a mechanism to recoup the costs incurred by DataLink if the Attaching Utilities decide to alter or deviate from the initially provided forecasts. In DataLink's experience, it is not uncommon for Attaching Utilities frequently to change their plans, and thus to require its planners to conduct reassessments.



DataLink operates within specific resource limitations, and it would be unreasonable to expect an expansion of resources to accommodate fluctuating forecasts without a corresponding financial commitment from the attaching utilities. Financial considerations are necessary to ensure the sustainability and efficiency of the Make Ready processes.

Therefore, DataLink supports the proposal for attaching utilities to submit periodic forecasted attachment requirements, but emphasizes the importance of implementing a financial framework that accounts for any adjustments made by the attaching utilities. This approach ensures that DataLink can effectively allocate its resources and recover costs associated with accommodating changes in the forecasted attachment requirements.

CONSULTATION QUESTION 28: *How often should attaching utilities be required to provide the forecasts, if any, and at what level of geographic specificity?*

DataLink's Response: DataLink considers that forecasted attachment requirements should be submitted on a quarterly basis and should be based on the areas identified by DataLink. This approach is crucial to address the issues arising from each Attaching Utility requiring DataLink to deploy its already limited resources in different locations from other Attaching Utilities, as has been observed thus far.

Given that all Attaching Utilities are obliged to roll out their services across the entirety of Grand Cayman, it is essential to avoid fragmented efforts (which should be unnecessary) and ensure a more concentrated and coordinated approach to Make Ready processes. By granting DataLink the authority to propose specific areas for Make Ready, Attaching Utilities can follow these recommendations, leading to a more efficient and impactful utilization of available resources.

This collaborative approach will allow for a focused and targeted effort in specific regions, maximizing the effectiveness of the Make Ready processes and ultimately achieving superior outcomes. It would ensure that the limited resources are deployed in a manner that benefits all stakeholders, including DataLink, the Attaching Utilities and the end consumers.

Therefore, DataLink proposes quarterly submissions of forecasted attachment requirements based on areas identified by DataLink, as this approach allows for a more coordinated and concentrated effort that can yield optimal results in the Make Ready processes.

CONSULTATION QUESTION 29: *Should such forecasts, if any, include only new attachments, or should all attachments be included?*

DataLink's Response: DataLink considers that any forecasts of attachment requirements should exclusively pertain to new attachments. There is an existing mechanism in the MPJUA that already covers maintenance-related activities. It is essential to differentiate between new attachments and maintenance activities to avoid unnecessary complexity and confusion, and to ensure accurate planning and resource allocation.

In addition to new attachments, DataLink considers it crucial that the forecasts include specific details such as cable types, size, weight, and other equipment that is intended to be attached to the pole within the forecasted area. Examples of such equipment may include splice boxes, splitters, repeaters, and similar items. By providing comprehensive details regarding the types and characteristics of attachments, DataLink can appropriately assess the potential impact on



pole capacity, structural integrity and safety considerations. The inclusion of this information is vital to facilitate proper engineering and adherence to relevant guidelines, particularly NESC standards, and thus to ensure the overall reliability, performance and safety of the shared infrastructure.

CONSULTATION QUESTION 30: *Should the forecasts, if any, be binding?*

DataLink's Response: DataLink considers that the forecasts submitted by Attaching Utilities should not be treated as binding until DataLink receives payment of the proposed fee discussed in response to Question 7 and initiates any part of the forecasted work. This approach is necessary due to the limited resources available to DataLink, which prevents simultaneous action on all forecasts.

More particularly, it is envisaged that DataLink will engage with each submitting Attaching Utility to meticulously examine and validate the provided data. In order to ensure accuracy and reliability, DataLink will thoroughly vet and verify the forecasted information in consultation with the Attaching Utility. This verification process would serve to confirm the feasibility and validity of the forecasted data, guaranteeing that the proposed work aligns with the joint-use infrastructure's capacity and conforms to applicable regulations and guidelines.

As noted above, the proposed fee outlined in Question 7 will also need to be paid by the Attaching Utility before DataLink commences any necessary work based on the validated forecast. In the event of any modifications or changes to the forecasted information, the Attaching Utility will be required to remit the proposed fee again before work can begin on the revised forecast. This fee is necessary to cover the costs associated with initiating the Make Ready process as outlined in the MPJUA.

By adopting this approach, DataLink will be able to ensure a systematic and financially sustainable implementation of the forecasted work, while also safeguarding the interests of all parties involved.

CONSULTATION QUESTION 31: *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?*

DataLink's Response: As explained in response to Question 2 above, DataLink does not compete with other Attaching Utilities, nor does it have the opportunity to compete with them in the future, following the approval of Amendment 4. As per the current arrangement, there are four designated spaces within the Communication Space, each assigned to an Attaching Utility with whom DataLink has executed an MPJUA. DataLink itself does not possess any cables connected to poles within the Communication Space.

Further and in any event, since its establishment in 2012, DataLink has maintained an unblemished record in safeguarding the Attaching Utilities' confidential and commercially-sensitive information. DataLink takes the confidentiality and commercial sensitivity of such information very seriously and fully comprehends the potential consequences of breaching that confidentiality in any way, and/or violating any data protection laws. The staff at DataLink operate with the highest level of integrity and professionalism, adhering to stringent protocols to maintain the confidentiality of commercially-sensitive information.



If it would help to underscore DataLink's commitment to confidentiality, DataLink is willing to execute a Non-Disclosure Agreement (NDA) with each Attaching Utility. This additional layer of contractual obligation would provide further assurance to the Attaching Utilities that DataLink is fully dedicated to safeguarding their respective confidential information, and confirm the recourse available if there were ever any breach.

DataLink's track record, coupled with its commitment to confidentiality and willingness to enter into NDAs, demonstrates its unwavering dedication to maintaining the highest standards of professionalism and integrity in the management of joint-use infrastructure and the protection of confidential and commercially sensitive information.

CONSULTATION QUESTION 32: *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.*

DataLink's Response: DataLink respectfully disagrees with this proposal, on the basis that it does not consider that it would be able to treat pre-permit surveys performed by Attaching Utilities as reliable without verifying such surveys itself.

As explained above, the Audit revealed a significant number of unauthorized attachments, and that unauthorized attachments had been made by each Attaching Utility. In circumstances where none of the Attaching Utilities has fully complied with the terms and conditions of its MPJUA regarding the permit process and adherence to engineering and NESC guidelines regarding attachment size and mounting (and thus demonstrated a lack of discipline and/or willingness to ensure that they do so), DataLink cannot be confident that pre-permit surveys which they conduct will be reliable, let alone in every case. Furthermore, it is necessary for a uniform approach to be taken in relation to all Attaching Utilities.

Granting Attaching Utilities the authority to conduct their own pre-permit surveys would therefore only serve to introduce additional (duplicative double-checking) costs and steps into the permit and make-ready process. Given the Attaching Utilities' collective history of substantial non-compliance with the express terms of the MPJUAs, as explained above, DataLink would be required to extensively review and validate each pre-permit survey submitted. This would result in duplication of efforts, prolong the process and increase administrative burden.

DataLink firmly believes that it is best positioned to conduct the necessary surveys and assessments to ensure compliance with established regulations, guidelines and safety standards. By retaining control over the survey process, DataLink can leverage its expertise and knowledge to accurately assess the feasibility of proposed attachments, guarantee adherence to engineering and NESC guidelines, and maintain the integrity of the joint-use infrastructure.

DataLink's objective is to streamline the permit and make-ready process, eliminate unauthorized attachments, and uphold the highest standards of safety and regulatory compliance. Granting Attaching Utilities the authority to perform pre-permit surveys independently would undermine these objectives, introduce unnecessary complexity and costs and carry the significant risk of compromising the integrity of the joint-use system.



In conclusion, DataLink respectfully requests that the Office reconsider its proposal and continue to entrust DataLink with the responsibility of conducting pre-permit surveys to ensure a streamlined and compliant permit and make-ready process.

CONSULTATION QUESTION 33: *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.*

DataLink’s Response: DataLink respectfully disagrees with this proposal. This disagreement is principally based on the findings of the Audit, which revealed that none of the Attaching Utilities have adhered to the Engineering and NESC guidelines provided in the MPJUA. Additionally, the Attaching Utilities have not complied with the terms of their respective MPJUAs pertaining to attachments.

The non-compliance of the Attaching Utilities has resulted in undue stress on the electricity grid and introduced significant safety violations. Given this behaviour, DataLink believes that allowing Attaching Utilities to conduct pre-permit surveys without strict oversight and control would not effectively address these issues and could potentially lead to further non-compliance. In particular, very limited information can be derived from one or even a few photographs of a given pole. There are numerous perspectives and factors which need to be taken into account in connection with assessing and/or planning for Make-Ready work, the detail of which would be voluminous to present (in photos and/or a form), and thus needs to be the subject of a survey by the planners themselves. It would also serve to create inefficiency if an Attaching Utility were repeatedly required to revisit a pre-permit survey because of inadequacies and/or deficiencies in a previously submitted version.

It is essential to ensure that pre-permit surveys are conducted in a thorough and comprehensive manner, taking into account all engineering and safety requirements. DataLink maintains that it is best positioned to carry out these surveys, as it has the necessary expertise and knowledge of the joint use infrastructure.

By retaining control over the pre-permit survey process, DataLink can ensure that all necessary safety and compliance standards are met, thereby safeguarding the integrity of the electrical grid and minimizing any potential risks associated with unauthorized or non-compliant attachments.

CONSULTATION QUESTION 34: *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.*

DataLink’s Response: DataLink respectfully disagrees with this proposal, in light of its responses above, which explain why it considers that Attaching Utilities cannot safely be left to conduct pre-permit surveys on their own.

As explained above, DataLink considers that the Attaching Utilities have demonstrated an inability to comply with guidelines, rules, standards and agreements. In this regard, it is important to note that the MPJUA signed by each Attaching Utility contains substantially similar terms and conditions that have been in effect for a considerable period. Despite the



clear provisions of these agreements, the Attaching Utilities have persistently violated their terms and conditions.

Given this recurring pattern of non-compliance, DataLink believes that sharing the information it requires from a pre-permit survey publicly is unlikely to address the issues arising from the Audit, as explained in detail above. It is crucial for DataLink to maintain control over the processing of pole attachment permit applications to ensure that all relevant information is accurately captured and verified, and that the necessary engineering and safety standards are upheld.

By retaining the responsibility for processing applications and conducting the necessary assessments, DataLink can closely monitor and evaluate the compliance of the Attaching Utilities with the established guidelines. This approach is aimed at upholding the integrity of the joint use infrastructure and safeguarding the interests of all stakeholders.

CONSULTATION QUESTION 35: *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.*

DataLink's Response: DataLink respectfully disagrees with this proposal, as DataLink does not agree with the overall proposal regarding pre-permit surveys.

As previously stated, DataLink does not support the concept of pre-permit surveys and the associated requirements. Consequently, DataLink does not agree to provide any training related to pre-permit surveys, as it is not aligned with our position on the matter.

It is important to clarify that DataLink's disagreement with the training requirement is based on the fundamental disagreement with the proposal itself. Therefore, any associated or consequential obligations, including training, are not considered appropriate or necessary.

CONSULTATION QUESTION 36: *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.*

DataLink's Response: DataLink respectfully disagrees with this proposal. As previously communicated to the Office, DataLink is currently in the process of implementing an online JUP that will encompass all relevant information necessary for efficient Joint Use operations. This platform will serve as a comprehensive repository for pole-related data, including the details specified by the Office.

DataLink does not believe that the Office should prescribe a defined methodology or solution for the management of pole information. However, it is worth noting (as explained above) that DataLink has proactively initiated the development and implementation of the online JUP, which will fulfil the requirement of providing essential pole information. The platform will offer a robust and accessible resource for ICT licensees who have executed an MPJUA with DataLink.



DataLink appreciates the Office's consideration of this matter but maintains that the ongoing efforts to implement the online JUP will adequately address the need for an up-to-date list of utility poles and associated information, without there needing to be any separate direction to meet the objective of this proposal by different (and duplicative) means. By utilizing the platform, ICT licensees will have access to accurate and relevant data pertaining to pole locations, dimensions, and other pertinent details, ensuring transparency and facilitating smooth joint use operations.

DataLink remains committed to leveraging technology and industry best practices to enhance the effectiveness and efficiency of Joint Use processes, and looks forward to providing the Office and relevant stakeholders with access to the comprehensive pole information through the online platform as it is implemented and operationalized.

CONSULTATION QUESTION 37: *Do you agree with the Office's proposal that DataLink be required to permit third parties to perform make-ready work, including make-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.*

DataLink's Response: DataLink respectfully disagrees with this proposal. DataLink emphasizes that it is not the owner of the infrastructure used to provide electrical services or telecommunication attachments. Rather, DataLink has an agreement with CUC, the infrastructure owner, to manage and maintain the Communication Space allocated for joint use.

DataLink does not possess the authority to dictate to CUC which contractors should be utilized for make-ready work, and is therefore incapable of complying with any requirement which the Office would propose to impose upon it in respect of this matter. CUC, as the infrastructure owner, has exclusive control and supervision over its facilities and determines the contractors it engages for infrastructure-related activities. DataLink's role is to manage and maintain the Communication Space within the framework of its agreement with CUC, but it does not have the jurisdiction to dictate CUC's contracting decisions. The selection of third-party contractors is solely within the purview of CUC as the owner of the infrastructure. DataLink has no involvement in the procurement or signing of agreements with third-party contractors by CUC. The agreements and terms are established by CUC, taking into account their specific operational requirements and considerations.

DataLink reiterates that, based on the significant number of unauthorized attachments identified by the Audit, it is evident that the Attaching Utilities have not consistently adhered to the required engineering and NESC standards outlined in their MPJUAs. Given this context, DataLink has concerns about the ability of Attaching Utilities to meet the necessary safety standards for performing make-ready work.

Furthermore, it is worth noting that CUC has already engaged various third-party contractors to assist in facilitating make-ready work, as stated by the Office in this consultation and confirmed by DataLink in previous correspondence. These third-party contractors have established agreements with CUC, not DataLink, and DataLink's involvement or authorization is not relevant in this context. Therefore, DataLink does not consider it appropriate for the Office to require DataLink to permit third-party contractors to perform make-ready work, as this falls outside the scope of DataLink's agreement with CUC.



DataLink remains committed to fulfilling its obligations and responsibilities within the scope of its agreement with CUC and will continue to work collaboratively with CUC and the Attaching Utilities to ensure the efficient and safe operation of joint use infrastructure.

CONSULTATION QUESTION 38: *Are the proposed conditions appropriate? Are there are other relevant considerations that the Office should consider?*

DataLink's Response: For the reasons explained above, DataLink respectfully maintains its position that the proposed conditions regarding third-party contractors for make-ready work are not suitable.

DataLink does not consider it appropriate for the Office to require DataLink to permit or impose conditions on third-party contractors for make-ready work. DataLink's primary focus is on fulfilling its obligations and responsibilities within the scope of its agreement with CUC, ensuring effective coordination and cooperation among all parties involved in the joint use of infrastructure.

CONSULTATION QUESTION 39: *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.*

DataLink's Response: DataLink agrees with this proposal.

It is important to note that Make Ready work aims to facilitate the attachment of four half-inch (1/2) cables to the designated attachment points within the Communication Space, as outlined in Appendix D of the MPJUA. However, as explained above, a historical and ongoing issue is the practice of "cherry picking" by the Attaching Utilities, where they selectively choose specific locations for Make Ready applications. Currently, there is no overlap between the areas selected by the four Attaching Utilities for Make Ready work. This cherry picking has strained the limited resources which DataLink has available for Make Ready work.

While the MPJUA does provide a mechanism for a refund to the Attaching Utilities to recover some of the costs incurred for Make Ready, it is only effective if another Attaching Utility attaches within a two-year period. DataLink has previously proposed to the Office that this period be extended to between five and ten years, as it allows for a more reasonable timeframe. It is worth mentioning that, in cases where unauthorised attachments are made without DataLink's knowledge, the primary Attaching Utility cannot receive the refund until DataLink receives payment from the second Attaching Utility. This process has been observed in the past.

DataLink remains committed to finding solutions that optimize the use of resources and ensure fair and efficient processes for all Attaching Utilities involved in joint use. These considerations are essential for promoting effective infrastructure sharing and maintaining the integrity of the joint use system.

CONSULTATION QUESTION 40: *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.*



DataLink's Response: DataLink offers no view as to whether the Office has such power, but considers that the proposed solution is desirable.

CONSULTATION QUESTION 41: *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.*

DataLink's Response: It would of course be open to the parties to agree on such a solution. However, the question of whether they will be able to reach a consensus on such a solution is a different matter. DataLink would therefore encourage the Office to give careful and close consideration to the question of whether it has the power to mandate such a solution under the current ICT Act and Regulations.

By way of background, and for completeness, DataLink had proposed a "we will lead, you follow" approach to Make Ready, where all Attaching Utilities would be required to build out their network at the same locations and within the same timeframe. However, this approach did not receive support from the Attaching Utilities at that time.

Furthermore, according to CUC's Transmission and Distribution (T&D) License, they are not permitted to undertake work for the Attaching Utilities unless an application is submitted. Unless the Office provides explicit support to CUC to adopt the "we will lead, you follow" approach, DataLink remains reliant on the Attaching Utilities to submit their Make Ready locations.

DataLink recognizes the need for a collaborative and coordinated effort among all stakeholders to effectively address the challenges of Make Ready. DataLink is committed to engaging in constructive discussions and exploring feasible solutions to ensure efficient and streamlined processes within the constraints of the existing regulatory framework.

CONSULTATION QUESTION 42: *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.*

DataLink's Response: DataLink respectfully disagrees with this alternative proposal. As explained above, DataLink considers that it is more practical and efficient to replace poles with ones capable of accommodating up to four attachers during the initial replacement process.

According to NESC Rule 235H, which has been in effect since 2002, the spacing between messengers' supporting communication cables should be no less than 300mm (12 inches). DataLink has entered into MPJUAs with multiple Attaching Utilities between 1996 and 2016, as well as in subsequent years.



Considering that all ICT Licensees, with the exception of one Attaching Utility, are obliged to roll out a Fiber based network in the Cayman Islands, it is essential to allocate sufficient space for up to four Attaching Utilities at the time of pole replacement. This approach avoids the need for repeated visits to the same pole when additional Attaching Utilities request attachments. Additionally, each pole replacement requires obtaining permission from the landowner for the prescribed work, making it redundant to approach the same landowner multiple times for accommodating different Attaching Utilities with valid MPJUAs.

Moreover, the assumption made by the Office that each Attaching Utility would only attach one cable per attachment point on the pole does not align with the Audit findings. In the eastern districts, for instance, where there is currently only one Attaching Utility, a significant number of poles (995 out of 2,185) have two or more attachments. There were even instances where poles were found to have up to eight attachments.

DataLink believes that replacing poles to accommodate multiple attachers during the initial replacement process is a more efficient approach, taking into account the requirements of NESC, the obligations of ICT Licensees, and the practicality of working with landowners. This approach avoids unnecessary disruptions and minimizes the need for repeated pole replacements in the future.

DataLink asserts that it is imperative to maintain the poles in compliance with the most current wind loading criteria. As industry standards evolve and update, it is within CUC's right to adhere to these standards. Ensuring that the poles meet the latest wind loading criteria is crucial for maintaining the integrity and safety of the entire communications infrastructure. By adhering to updated industry standards, CUC demonstrates its commitment to providing a reliable and secure network for the benefit of all stakeholders involved.

CONSULTATION QUESTION 43: *Do you agree with the Office's preliminary view that it should not propose for consultation a revised definition of "standard utility pole"?*

DataLink's Response: DataLink agrees with this view and supports the decision to maintain the existing definition as it stands.

DataLink recognizes that the term "standard utility pole" is a well-established and commonly understood industry term, encompassing the typical poles used for utility infrastructure. It is essential to maintain consistency and clarity in the interpretation of this term across the industry.

Furthermore, DataLink appreciates the Office's consideration of maintaining regulatory stability by not introducing changes to the definition of "standard utility pole" at this stage. Stability and consistency in regulatory frameworks provide certainty for all stakeholders involved in joint utility infrastructure usage.

DataLink wishes to continue to adhere to the existing definition of "standard utility pole" as defined within the relevant regulations and agreements. By adhering to the established definition, DataLink ensures alignment with industry norms and practices, facilitating efficient joint utility infrastructure usage.



Any future changes to this definition can be explored and evaluated through appropriate processes, ensuring all stakeholders have the opportunity to provide input and engage in consultation.

CONSULTATION QUESTION 44: *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.*

DataLink's Response: As noted above, DataLink agrees with the Office's preliminary view on this matter and supports the decision to maintain the existing definition without further modifications.

Section 7 – Analysis of Issues Relating to the Charging Principles

In addition to the questions raised in this section, DataLink will seek to address certain observations made by the Authority (as noted in the Introduction at the outset of these responses, above, insofar as they appear material and/or the time allowed has permitted it to do so).

Introductory Observations

Paragraph 499 states: *"The Authority further noted that there may be advantages for the Attacher to be at the top of the Communication Space and it, therefore, considered that 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".*

This view is directly opposite to the views expressed by the Attacher with the place at the top of the poles (namely C3), which submitted the determination request noted at paragraph 12 of Appendix 1 of the Consultation, in respect of which the Authority ultimately issued the decision noted at paragraph 26 of Appendix 1 of the Consultation.

Paragraph 500 further states: *"The Authority also considered that DataLink, as an Attacher utilising the Communication Space on CUC's utility poles in accordance with its ICT licence granted by the Authority, and as provided for in legislation, 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".*

As noted above, on February 4th 2022, OfReg granted DataLink's request to amend its license by removing its fibre rollout obligation and allowing the pole attachment space allocated to DataLink to be allocated to Digicel. Paragraph 500 does not appear to consider the effect of the license amendment, nor the fact that the pole attachment space has in fact been allocated to Digicel.

CONSULTATION QUESTION 45 *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.*



DataLink's Response: The Office has noted DataLink's previous responses relating to this matter, including at paragraph 510 (c), that:

"the attachment of telecommunications cables does not cause an incremental requirement to augment the height or strength of poles and... any incremental cost relates solely to attaching cables;"

DataLink further notes that there is indeed a requirement for taller and stronger poles/pole network which does lead to incremental costs solely relating to attaching cables. The average required height for poles required only to support electricity cables is 35 feet. On the other hand, the height of an electricity pole required to support attaching cables must be at least 40 feet. There is of course a price differential for the two poles: by way of example, a 35ft pole costed US\$662.17 landed, as at July 14th 2023, whereas a 45ft pole had a landed cost of US\$1,322.77 as at that date. Additionally, the two different pole heights mean that there are differences in the amounts of labor and material required to install them.

DataLink has, in the past, also provided evidence of the impact of the additional attachments on the poles during hurricanes due to additional wind loading. As a result, greater strengthening and lower spans length (i.e. shorter distances between poles, resulting in the utilization of more poles than CUC alone would require across the same space) is required to protect the integrity of the T&D system.

At paragraph 511 (b), the Office records an assertion by Flow (first noted at paragraph 509 (u)) that: *"there is no evidence that Datalink is a separate business organization, with its own staff and assets fully separate from those of CUC, which suggests that CUC has in effect "created" costs which did not exist before"*.

However, as we trust the Office is aware, the institution of separate regulatory regimes for telecommunications, on the one hand, and electricity, on the other, necessitated the creation of a company separate from CUC. DataLink understands and believes that the provision of the pole attachment service is classified as telecommunication in nature and necessarily had to be separated legally into a different service in order to preserve the integrity of the two business lines. DataLink therefore wishes to note, insofar as it may affect the Office's own views on this matter, that the assertion made by Flow is misconceived.

At paragraph 531, the Office expresses the view that: *"...it is questionable whether the use of the "2/3" factor in DataLink's pricing formula for calculation of the "Annual Attachment Fee" is effectively justified. Moreover, it is not just the use of the "2/3" factor but also the FCC pole attachment pricing model itself, which may not be justified for calculation of the "Annual Attachment Fee"."*

DataLink notes that the Office has, to date, made no recommendations regarding an appropriate model and has proposed to utilize USA prices for benchmarking at paragraphs 553 and 568 of the Consultation. Paragraph 568 refers to the jurisdictions of USA, UK, Ireland & Canada as relevant jurisdictions.

The Office has purported, in paragraph 553, to compare US prices in 2018 to Cayman Islands prices in 2022. Even putting to one side the appreciable and material time difference, a country such as the USA, and indeed any of the other jurisdictions to which the Office has



referred, are not comparable in any industry, from telecommunications to mortgage rates to fuel for myriad reasons.

DataLink considers that the pricing formula for calculation of annual attachment fees is an appropriate pricing methodology. DataLink chose an existing methodology from a more mature market in an effort to avoid significant disagreement with the rate structure given that the chosen methodology had already been questioned in that country, which is considered a relevant jurisdiction. DataLink reviewed multiple jurisdictions, given that CUC is listed on the Toronto Stock Exchange and given that most companies on island utilize US GAAP accounting principles, and it was decided that initial preference would be given to US and Canadian methodologies. UK methodologies were also considered. Canadian provinces all have differing methodologies and requirements as it relates to telecom attachments. The DataLink contacted multiple utility companies in Canada and due to the Fortis network, received multiple contracts for review and comparison. Notwithstanding its receipt of this information, due to the inaccessibility of these agreements, the methodologies of the various Canadian sectors were at that time deemed insufficient in terms of transparency. The same lack of transparency occurred with the UK. At the time of research and rate design, the US market was one of the few with similar infrastructure (most pole and telecoms equipment is sourced from the US) with a completely transparent rate structure as well as clear instructions on accounting for the same. For this reason, DataLink continues to deem this methodology as appropriate for the Grand Cayman market.

CONSULTATION QUESTION 46 *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.*

DataLink's Response: DataLink continues to deem the FCC methodology as appropriate for the Grand Cayman market.

CONSULTATION QUESTION 47 *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:*

- o Net Cost of a Bare Pole,*
- o Space Factor,*
- o CUC's Annual Carrying Charge Rate,*
- o Inflation, and*
- o Management & Overhead.*

DataLink's Response: DataLink does not consider that any changes are required at this time.

CONSULTATION QUESTION 48 *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.*

DataLink's Response: The rationale for DataLink to be created as an entity was to ensure that costs were kept clearly delineated and CUC customers did not accidentally subsidize the telecom industry. Any costs passed on to telecoms relate specifically to the additional costs



incurred to accommodate telecom attachments. DataLink's pricing formula has no effect on the prices that electricity users pay CUC. The pricing structure, like any other non-charitable organization (including the attaching telecoms), seeks to make a fair return. Any such returns are however generally reinvested in the business, on improvements such as the new JUP software (explained above) which DataLink anticipates implementing in the near future, and to cover the significant legal costs which DataLink has often been required to incur – and thus ensure that DataLink remains self-sustainable, in circumstances where CUC was directed to make its infrastructure available for such purposes. Any remaining returns may, if available, be paid in dividends to CUC, as DataLink's sole shareholder. DataLink would like to take this opportunity to remind all stakeholders that neither DataLink nor CUC, nor indeed any of the other licensed organizations who pay license and regulatory fees to OfReg based upon revenues earned, is a charitable organization.

CONSULTATION QUESTION 49 *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.*

DataLink's Response: As explained above in detail, DataLink has requested and received an amendment of its license by OfReg so as not to be considered a retail service provider and to avoid being subject to the related Roll Out obligations. DataLink is therefore not a competitor to Attaching Utilities, nor has it engaged in any such competition in any way since its inception in 2012. It follows that its position has no limiting effect on the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.

CONSULTATION QUESTION 50 *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.*

DataLink's Response: Significant effort has been made by DataLink to ensure that there is transparency around costs charged in respect of Make-Ready work. As explained above in response to Question 45, in order to accommodate Telecom attachments, there is a requirement for taller and stronger poles/pole network that does lead to incremental costs which are solely attributable to attaching cables. In the interests of avoiding repetition, we refer the Office to the detail provided in response to that question regarding cost comparisons between the different sizes of pole and the reasons therefor.

As the Office will also have noted from that previous response, there is a significant amount of work required to ensure that the electricity system can withstand hurricanes with the additional load placed on the poles with the addition of telecom attachments.

CONSULTATION QUESTION 51 *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.*

DataLink's Response: As noted above, significant effort has been made by DataLink to ensure that there is transparency around costs charged as it relates to Make Ready to prove



that all charges are in fact cost-oriented. DataLink respectfully maintains that the charges are cost-oriented.

CONSULTATION QUESTION 52 *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.*

The Office has proposed, subject to consultation that the refund formula set out in Article VII of the Pole Sharing Agreements should be amended to take into account the matters listed in its proposal. DataLink addresses each of those matters in turn as follows:

a) the appropriate principles for depreciation of the value of make-ready costs eligible for refund; such depreciation to be based on the actual lifespan of the relevant poles, and calculated using straight-line depreciation method;

DataLink has already expressed its willingness to review the make-ready refund methodology. The initial design was created around the OfReg license requirements regarding fiber rollout timelines. Those timelines were not abided by and, as such, DataLink considers it appropriate that the design for the refund process be revisited. said it goes without saying that DataLink anticipates that any changes will be implemented in respect of all MPJUs given the imperative to avoid discrimination.

b) the principles of proportionality for determining the relevant amount of refund of make-ready costs; such proportionality to be related to appropriate sharing of costs by all the parties that directly benefit from the relevant make-ready work;

DataLink considers that the current calculation takes this into consideration.

c) DataLink should determine and arrange for refunds of make-ready work charge without requiring the attacher to apply for them; and

DataLink agrees with this proposal. It will, however, go without saying that DataLink cannot provide a refund where it did not previously receive payment for the attachment.

d) DataLink should be liable to refund the make-ready work charges paid by other attachers in instances where it also benefits from the relevant make-ready work.

This proposal appears to be based on the observations which the Office has made at paragraphs 622-623 of the Consultation. For the reasons explained in detail and repeated in response to numerous questions above, DataLink is not in competition with the Attaching Utilities and does not stand to benefit from such make-ready work. It is therefore not possible for the existing arrangements to confer any competitive advantage on DataLink, including with respect to its access rights in respect of CUC's poles.