

27 May 2016

Mr Alee Fa'amoe
Managing Director
Information Communication Technology Authority
85 North Sound Way
Alissta Towers
Box 2502
Grand Cayman KY1-1104
CAYMAN ISLANDS

Dear Sirs,

Re: Response to Questions from Infinity Broadband Limited in respect of Consultation 1- ICT Decision 2016-1 – cost of reattaching of Infinity's communication cables to CUC electrical poles

QUESTION 1: Provide your view as to whether or not the proposed cost recovery principles, and the relevant liabilities for the recovery of the costs related to the reattachment of Infinity's communication cables, as discussed above under Proposal A and Proposal B, are appropriate and why.

We are in broad agreement with Proposal A. However, where Infinity took every reasonable step to obtain a permit and DataLink, in breach of its obligations under the pole sharing agreement, failed to issue that permit, we believe that such an attachment should be considered to be a "justified unauthorised attachment". We further believe that a justified unauthorised attachment should be treated as an authorised attachment for the purpose of determining financial liability for relocating the attachment.

We are also in broad agreement with Proposal B, but subject to the introduction of the concept of a justified unauthorised attachment being deemed to be an authorised attachment.

If the Authority implements Proposal A and Proposal B as currently drafted (without taking into account our proposed amendments) the consequence will be that Infinity is required to meet significant costs of relocating what are determined to be unauthorised attachments. Had DataLink complied with its own obligations under the pole sharing agreement a considerably higher number of Infinity's attachments would have been authorised. In other words, these Proposals act as further financial punishment for DataLink's own breaches of contract.

QUESTION 2: Provide your view as to whether or not DataLink should grant the relevant pole attachment permit to Infinity under Article VI of the CUCInfinity Pole Sharing Agreement at the same time as completion of the relevant reattachment.

We consider this to be essential to the process of relocating Infinity's attachments. We assume that this point only applies to existing *unauthorised* attachments (with the permits in issue already being *treated* as though they were permits to attach at 258 inches, not 254 inches, once that re-attachment actually takes place). If an unauthorised attachment is removed and re-attached at 258 inches, the only authority for that *new attachment* must be an issued permit, per VI.F.

We therefore propose that DataLink issues the relevant re-attachment permits before the reattachment takes place and that there are strict timelines for the issue of those permits.

QUESTION 3: Provide your view on the proposed due date of thirty (30) days for issuing the relevant pole attachment permits following the completion of the reattachment of Infinity's communication cables to the new height of 258 inches above the ground, after which DataLink would then be liable for the recovery of the costs related to the reattachments to the new height of 258 inches above the ground.

As covered above, since the permit amounts to the only permission to attach it seems that the permit must be issued at the same time as (or shortly prior) to the re-attachment. It should flow from this position that DataLink are responsible for the costs of the re-attachment if the permit is not issued at the time of (or before) that reattachment. The introduction of a 30 day period complicates this matter by making it possible for DataLink to delay the issue of permits to a period after re-attachment.

Again, we would expect the concept of a "justified unauthorised attachment" to be followed through into this provision so that such attachments were treated as authorised and so relocated at DataLink's expense. Only an "unjustified unauthorised attachment" would be relocated at Infinity's expense, and then only if DataLink issues the permit within the strict time limits for doing so.

QUESTION 4: Provide your view on any other matters you consider relevant to this consultation.

Given the historic problems in the relationship between DataLink and Infinity we also consider it essential that (i) DataLink is obliged to issue the re-attachment permits within very tight time-scales (and without a formal request by Infinity); and (ii) where the permits are not issued within those time-limits without good reason (a) Infinity is *deemed* to have received the relevant permit; and (b) Infinity can perform the re-attachment work itself. Any other outcome will result in further indefinite delays and escalating expense for Infinity.

Given that there is currently an undertaking in place by which Infinity is prevented from accessing the poles without a permit in place we also request that DataLink (and CUC, to the extent possible) be required to cooperate with an application by Infinity to discharge that undertaking to allow Infinity to access the poles in a manner that is consistent with the pole sharing agreement as *it stands following any actions by ICTA to amend the terms of the agreement.*