DETERMINATION REQUEST

Exhibit RM1

(Infinity Broadband Ltd.)

TABLE OF CONTENTS

Tab 1

Andrew Small, CEO
DataLink, Ltd.
457 North Sound Road
P.O Box 38
Grand Cayman KY1-1101
Cayman Islands

By email and by hand

August 26, 2014

Dear Andrew,

Height of Infinity's Assigned Space

As you are aware a dispute has arisen between us in respect of the height at which Infinity Broadband Ltd. (**Infinity**) is able to install its attachments to the pole network operated by DataLink, Ltd. (the **Poles**).

This issue has been the subject of much correspondence between the parties. A previous meeting was held at your office on July 15, 2014 to discuss the dispute but unfortunately it still remains unresolved.

The Board of the Information and Communications Technology Authority have now directed both parties to make good faith and reasonable efforts to settle the dispute by 5pm on Friday September 5, 2014.

We invite you to attend a without prejudice meeting to be held at the Authority's conference room (if available) in an attempt to try to resolve the dispute regarding the height of Infinity's assigned space on the Poles. We have contacted the Authority to determine the availability of the conference room. They have indicated that it is generally available but have provided us with some times / dates to avoid.

Please let us have your suggestions for a meeting to take place during the course of next week, prior to September 5.

As you are aware there are a number of other issues that have also been the subject of correspondence between us and which were also discussed at the meeting that took place on July 15, 2014. We also wish to discuss these issues with you at the meeting in an attempt to resolve them.

The issues to be discussed include (but are not limited to):

- Performance of make ready work;
- Payment of work ready work;
- Permit process and delays;
- 2013 annual minimum payment.

We genuinely hope that all issues between us can be resolved amicably so that our working relationship can be put on a more even keel for the ultimate benefit of both parties. Our letters to you, dated July 16 and July 21 are attached for the benefit of the parties to whom this letter is copied and for your ease of reference.

We look forward to hearing from you.

Yours sincerely,

[Signed]

Randy Merren

Infinity Broadband Ltd.

CC: Richard Hew (rhew@cuc.ky)
Dr Russell Richard (russell.richard@icta.ky)
Alee Fa'amoe (aleefaamoe@icta.ky)

Tab 2

20 August 2014

FAO: Russell Richardson (russell.richardson@icta.ky)
Information and Communications Technology Authority
PO Box 2502
Grand Cayman, KY1-1104
Cayman Islands

By email and by hand

Dear Sirs,

Undertaking for costs

We write further to our letter to the Authority dated August 5, 2014.

Further to regulation 5(e)(ii) of the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003 we undertake to pay any and all costs arising from any process or procedure initiated by the Authority in respect of a determination request relating to the grievances referred to in our letter dated August 5, 2014, in the event that it is determined by the Authority that we should pay any part of such costs.

Yours faithfully,

[Signed]

Infinity Broadband Ltd.

Tab 3

5 August 2014

Alee Fa'amoe
Managing Director
Information and Communications Technology Authority
3rd Floor, Allista Towers
85 North Sound Road
Grand Cayman

Dear Sirs,

DataLink, Ltd - Allegations of Anti-Competitive Practices

As an Information Communication Technology Authority (**ICTA**) licensee, we wish to draw to your attention what we consider to be a number of anti-competitive / abusive practices by ICTA another licensee, DataLink, Ltd. (**DataLink**). We request that you consider our concerns as a matter of urgency as we are also requesting that you apply urgent interim measures with a view to preventing these practices from continuing whilst any investigation is ongoing.

Our concerns all arise from the fact that DataLink has a monopoly on the electrical poles (**Poles**) which we (and others) require in order to install a fibre optic cable network in the Islands.

Overview of our concerns

Part IV of the Information and Communications Technology Authority Law (2011 Revision) (the **Law**) relates to Anti-Competitive Practices. This part of the Law creates 2 relevant prohibitions:

- **Section 36**: Agreements, etc. preventing, restricting or distorting competition; and
- **Section 40**: Abuse of dominant position

It is our position that DataLink has infringed both of these prohibitions. DataLink was granted a license under the Law on 28 March 2012 and is therefore a "licensee" for the purpose of the Law. It is also relevant to these submissions that DataLink is a wholly owned subsidiary of Caribbean Utilities Company, Ltd (**CUC**), which owns the ITC network (ie: the Poles) to which these issues relate.

Our allegations focus on the making of decisions by DataLink relating to the height (above ground) at which the various attaching parties (each an **Attaching Utility**) must attach to the Poles. Infinity's commercial competitiveness and indeed its viability as a Caymanian owned and controlled company, is

threatened by these decisions. In the following pages we will explain how Infinity has been demoted from the 2nd best position on the Poles to the worst position on the Poles (Infinity now having a worse attachment position than 3 other parties, including DataLink itself).

We are asking that ICTA commences an investigation under section 41 of the Law to establish whether the section 36 or section 40 prohibitions have been infringed by DataLink. Whilst the investigation is ongoing, we are also asking that ICTA exercises its section 50 powers under the Law with the purpose of preventing any further attachments by any Attaching Utilities.

Background

On 22 November 2005, CUC entered into a Master Pole Joint Use Agreement (the **Original Agreement**) with Infinity Broadband, Ltd (**Infinity**). By a deed of variation, dated 19 March 2012 (**Deed of Variation**) the Original Agreement was amended by the parties. By a novation agreement, dated 7 May 2012 (**Novation Agreement**), the Original Agreement was novated from CUC to DataLink, who thereby stepped into CUC's shoes for all purposes under the Original Agreement. In this letter, references to the Agreement are references to the Original Agreement, as amended by the Novation Agreement and the Deed of Variation.

At the time that the Original Agreement was entered into between CUC and Infinity, that agreement allocated space on the Poles (owned by CUC) to just 2 licensees - Infinity and C&W (now Lime; we will refer to this entity as "Lime" in this document, for ease of reference). Lime were entitled to 1 foot 8 of space on the Poles. Infinity was allocated 1 foot of space immediately above that of Lime. At the time of the Original Agreement, Infinity's space ran from 242 inches above ground to 254 inches above ground. Infinity were granted the right to attach to the Poles anywhere within their "space".

Following the signing of the Original Agreement, it became clear that DataLink wished to enter into further infrastructure sharing agreements with other Attaching Utilities. It is not clear to us whether this was encouraged by ICTA (although this seems likely), or whether this was a commercial decision taken by DataLink. In any event, at some stage after the signing of the Original Agreement, rights were granted to both Logic and DataLink itself to attach to the Pole. It is in respect of these changes that we are concerned.

In order to accommodate Logic and DataLink on the Poles, the space allocated to Lime was reduced from 1 foot 8 inches to 1 foot (the extra 8 inches being taken from the top of Lime's space, creating a "gap" of 8 inches between the top of Lime's space and the bottom of Infinity's space). We do not know whether this reduction in Lime's space was carried out with their consent, or in consultation with them. There was then a further proposal, to which Infinity has not consented, to move Infinity's space a further 4 inches up the Pole, making the new space (for Logic and DataLink) into a 1 foot space.

To summarise, after DataLink sought to make these changes, the order of attachments on the Pole (from lowest to highest) was (i) Lime, (ii) DataLink, (iii) Logic, (iv) Infinity. There is also a 5th attachment, which also belongs to DataLink, and which is within the 40 inch "safety zone". As we will explain below, the higher on the Pole someone attaches the more expensive the task and the slower the process. **In other words a higher position is a worse position, both practically and commercially**.

At this stage, there remains some confusion over the precise contents of the Deed of Variation, which amended the Original Agreement. During a meeting with DataLink on 30 July 2014, it came to light that there are two versions in circulation (both signed). In one version, Infinity agrees to attach only at the top of its originally assigned space (ie: to attach at 254 inches above ground). In this other version, this additional clause is not included, leaving it open to Infinity to attach anywhere between 242 and 254 inches above ground. We are taking urgent steps to determine which version of this agreement the parties intended to give effect to. This issue is not, however, the main point of our submissions. If the agreement including the additional clause is valid, Infinity has a contractual right to attach at 254 inches. If that agreement is not valid, the right is to attach between 242 and 254 inches. We note your remarks in respect of this point (in our meeting on 31 July 2014). Whilst it may be necessary for Infinity to attach at the top of the space, in order to accommodate the other Attaching Utilities, Infinity should not be solely responsible for the significant additional costs of being required to do so.

Infinity's additional concern is that DataLink have unilaterally determined that Infinity should now attach even higher - at 258 inches above ground. By some of our calculations, Infinity is being required to attach at 260 inches above ground (if we work on the basis that the "useable space" on the Poles is 25 feet). At no time has Infinity agreed to this. As will become clear from the following, the higher up the Poles, the greater the costs incurred.

Why Attaching Lower Down the Poles Provides a Major Commercial Advantage

All of the Attaching Utilities are aware that there is a major commercial / competitive advantage to being lower down the Poles. This is for several reasons, but the main reasons are summarised below.

When working on the Poles, with a view to hanging fibre optic cables, there is a need to keep a safe (minimum) distance away from the electrical installations already on the Poles. In most cases this safe distance is set as 40 inches. Some of the Poles to which Infinity wishes to attach are older (shorter) Poles. This means that the space allocated to Infinity makes it more likely that the 40 inch safety zone will not be available. This has multiple consequences.

Where Infinity is unable to attach to a Pole because the safety zone would be breached by an attachment there is the obvious problem of delay - those lower down the Pole can attach and move on whilst Infinity must wait - sometimes months - for work to be done on the Poles.

The second issue is that of cost. Infinity is required to pay the "make ready" costs for a Pole to which it wishes to attach. "Make ready" work is the name given to 2 types of work: (i) that required to strengthen the Pole to take the new attachment (**Strengthening Make-Ready**) and (ii) that required to make the Pole safe to take the attachment (**Safety Make-Ready**). We refer to Strengthening Make-Ready and Safety Make-Ready collectively as "**Make-Ready**".

It should also be noted that if no Make-Ready work is required in respect of a Pole attachment, the requested Permit to attach should be considered and issued within 10 /15 days (depending on the number of Permit requests made at that time) of the Permit application. We understand that DataLink has commissioned a local company to place coloured "bands" on the Poles to indicate where each Attaching Utility is to attach. Most Poles have 2 or 3 coloured "bands" on them. The top band is red. This presently represents the height at which Infinity is to attach and it is evident that the red band appears less frequently than the other colours.

It is very clear that most of the Safety Make-Ready cost falls on the highest Attaching Utility, simply because that Attaching Utility (Infinity, at present) is working closest to the electrical parts of the Poles. It is also the case that the Strengthening Make-Ready costs of those higher up the Poles are higher than the costs of those lower down the Poles. This is due to "wind-loading" calculations which show that a higher attachment puts more stress on a Pole in windy weather.

Under the Agreement between Infinity and DataLink, Infinity is responsible for all Make-Ready costs on the Poles to which it wishes to attach and does not have a right to recoup any of those costs from any other Attaching Utility.

It is therefore clear that by allowing Logic and DataLink to attach lower down the Poles than Infinity, a clear commercial advantage has been handed to them. Both are able to roll out their new fibre networks more quickly than Infinity and for considerably lower cost. The major overhead increases which Infinity is suffering as a result of this unilateral decision by DataLink will ultimately have to be passed on to Infinity's customers and will thereby markedly impact on Infinity's ability to compete commercially with the other providers on the Island. This will therefore directly affect trade in the Islands and will negatively impact on Infinity, a wholly Caymanian owned and controlled company.

The Nature of our Concerns

We are concerned about the decision-making processes on the part of DataLink when it took steps to accommodate itself and Logic on the Poles. We believe that the decisions taken in order to accommodate these new Attaching Utilities have the effect of distorting competition in the Islands. We also believe that this amounts to the abuse of a dominant position by DataLink which may affect the trade in ICT networks and ICT services within the Islands. This submission is premised on the fact that

DataLink enjoys a monopoly position in respect of the Poles. For Infinity to be "demoted" from the second best position on the Poles, to the worst position is of significant concern to us. However, this is made considerably worse by the fact that one of the Attaching Utilities being "promoted" to a more favourable position than Infinity is DataLink - the company having monopoly rights to the Poles themselves.

Infinity put in place the Original Agreement in 2005, reserving to them an entitlement to attach a fibre network to the Poles owned by CUC. Since 2012, Infinity has been paying reservation fees to ensure retention of the right to attach to the Poles. At the time of the Original Agreement, Infinity secured the lowest space on the Poles that it was possible to secure - right above Lime's space, and (in most cases) well below the electrical lines already on the Poles (if we use the diagram showing useable space of 24 foot 6 inches). As we explain above, it is cheaper, quicker and easier to attach to Poles as far away from the electrical equipment as possible. By signing this agreement as long ago as 2005, it is fair to say that Infinity secured the second best position on the Poles, which provided a strong commercial position from which to develop Infinity as a company.

When the decision was taken by DataLink to (i) hang their own fibre on the Poles, and (ii) to accommodate Logic on the Poles, we believe that Infinity should have been consulted regarding the order of those placements. More specifically we believe that Infinity should have been given the right to move down the Poles, so that Infinity's space was moved 8 inches lower than originally allocated. This would have created a new "gap" at the top of the Pole - above Infinity's space and not below it. After signing an agreement as long ago as 2005 (and, more recently, paying reservation fees) in order to retain the best possible position on the Poles, we now find that we are commercially disadvantaged by a decision by DataLink on which we were not consulted and which we consider to be inherently unfair.

Aside from being an unfair decision, we consider that the decision to allow Logic to attach to the Poles lower down than Infinity breaches the "section 36 prohibition" on agreements which distort competition. Our allegations are more serious in respect of the decision to allow DataLink itself to attach lower down the Poles (than both Logic and DataLink). We consider this to be an abuse of DataLink's dominant position and a breach of the "section 40 prohibition". This is on the basis that DataLink is a wholly owned subsidiary of CUC, and CUC owns the Poles and other electrical infrastructure.

What do we think should have happened?

Our position on this point is simple. At the very least, Infinity should have been consulted and given the right to make representations in respect of its position on the Poles, in light of the developments since the Original Agreement was signed. That did not happen.

Furthermore, Infinity's position is that we should have automatically been offered the space directly above Lime, after their space was reduced (ie: the lowest Attaching Utility should continue to be Lime and the second lowest should continue to be Infinity). It is clearly commercially advantageous to attach lower down the Pole. Infinity was the second company to have an attachment agreement with CUC (now DataLink, following the Novation Agreement) and so should be entitled to the benefits that come from entering into that agreement so early. This did not happen.

At the time when DataLink sought to accommodate itself and Logic on the Poles it has been suggested (in our meeting with ICTA) that Infinity might have consented to attaching higher up the Poles. This proposition is rejected entirely by Infinity. Prior to determining whether to accept a request to attach higher on the Poles, Infinity would have carried out an assessment of the cost implications of making that decision. Any assessment would have indicated that the Make-Ready costs associated with a higher Pole attachment would be significantly higher than those associated with a lower Pole attachment.

How do these concerns translate to breaches of the Law?

We will consider the two offences separately. We will first look at the section 36 prohibition and then look at the section 40 prohibition.

Section 36

We have separately enclosed the whole of section 36 for your ease of reference. In the following we will refer only to the relevant extracts of that section.

Section 36 clearly provides that agreements by or between licensees and decisions by licensees which may "affect trade in the Islands" and which have as their object or effect the prevention, restriction or distortion of competition relating to any "ICT service" or "ICT network" subject to the Law, are prohibited. Section 36(4) provides that any agreement or decision which is prohibited by this section is void.

ICT Service and ICT network: Looking at the various defined terms, "ICT service" includes broadcast service and internet service plus "any other similar service". "ICT network" means any network used in connection with the provision of an ICT service.

In this case, the services which Infinity (and the other Attaching Utilities) is looking to provide amount to an ICT service. It therefore follows that the Poles, to which the fibre optic network will be attached, would be considered to be an ICT network under the Law.

Decision and Agreement: Our allegation is that the decision by DataLink to allocate space, below that of Infinity, to itself and to Logic was a "decision" for the purpose of this section. We also consider that the

resulting agreement with Logic amounts to an "agreement by or between licensees" for the purpose of this section.

We explain above why a lower Pole attachment is a commercial benefit to an Attaching Utility. Based upon this, the effect of a unilateral decision by DataLink to allow new Attaching Utilities to attach below Infinity is to distort competition by significantly increasing Infinity's overhead cost of rolling out its network. There is also a restriction of competition caused by the delays that Infinity will encounter as a result of this position on the Poles.

Sub-section 2 of section 36 provides a non-exhaustive list of situations which fall within the section 36 prohibition. We consider that several of the provided examples apply to this situation, including the following:

- (b): agreements, decisions or practices which "limit or control production, markets, technical development or investment";
- (c): share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage.

Under (d), above, the "equivalent transactions" are (i) Infinity's attachments to the Poles, and (ii) Logic's / DataLink's attachments to the Poles. The "dissimilar conditions" applied in respect of these "equivalent transactions" are <u>not</u> the height of the attachments themselves (these, of course, vary between Attaching Utilities, as they must), but the other terms and circumstances surrounding the granting of the that right to attach to the Poles. DataLink was able to bring its inside knowledge as "owner" of the Poles to secure itself a lower position on the Poles, by reducing the space offered to Lime (potentially under threat of referring this matter to the ICTA). This was not something that Infinity was able to consider when negotiating its agreement with DataLink. It was reasonable for Infinity to assume that it was, and always would be, the second lowest Attaching Utility, given the nature and content of the Agreement.

We consider that section 36 requires that the decision by DataLink to allow attachments to take place lower than Infinity's attachments to be void, as a result of section 36(4). We consider the that subsequent agreement with Logic, based upon that decision, is also void under the same section. We seek a declaration from you to that effect and request the opportunity to make representations to DataLink (under ICTA supervision) regarding the proper order of Pole attachments between the Attaching Utilities.

<u>Section 40</u>

We have separately enclosed the whole of section 40 for your ease of reference. In the following we will refer only to the relevant extracts of that section.

Our allegations under this heading specifically relate to DataLink's abuse of its "dominant position". As a wholly owned subsidiary of CUC, the owner of the Poles, we consider that DataLink is in effective control of the Poles. We already know that DataLink has the legal right to enter into the attachment agreements in respect of the Poles. The Poles are essential to the business of the other Attaching Utilities - there are no other viable options for the distribution of a fibre network in the Islands. The network of Poles would amount to an "ICT network" as defined in the Law (as we explored earlier, above).

Section 40 provides that any conduct on the part of one or more licensees which amounts to the abuse of a dominant position in a market is prohibited if it may affect the trade in ICT networks and ICT services within the Islands. Our allegation is that DataLink has abused its dominant position in this market (as the controller of the Poles) to give itself a commercial advantage by allowing it to make Pole attachments lower than both Infinity and Logic, despite the fact that Infinity secured an attachment agreement much earlier than DataLink and should therefore have been able to be in a better commercial position.

Under sub-section 40(2) (which provides a non-exhaustive list of conduct which may constitute a breach of the prohibition contained in this section) it is made clear that the conduct may constitute an abuse if it consists in (amongst other things):

- (a): directly or indirectly imposing...other unfair trading conditions;
- (b): limiting production, markets or technical development to the prejudice of subscribers;
- (c): applying dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage.

We consider that all of the above may have been infringed by DataLink's decision to change the attachment order. DataLink allocated itself the most favourable position on the Poles, after Lime. It allocated itself a more favourable position to that of Logic and a more favourable position to that of Infinity. In doing so it demoted Infinity, despite the terms of the Agreement, and despite the fact that Infinity had an attachment agreement since 2005. No explanation has been offered as to how the order of attachments came to be changed, and how Infinity ended up in the worst position despite being the second Attaching Utility to contractually secure a right to attach.

The only fair basis on which the allocation of attachment positions on the Poles should be carried out is on the basis that earlier agreements get a priority right to lower / better attachments - the quality space should be allocated on a "first come, first served" basis.

What we are asking the ICTA to do

Section 41 Investigation: In light of the above, we invite ICTA to take immediate steps to commence an investigation into the alleged anti-competitive practices on the part of DataLink, using its powers under section 41 of the Law. More specifically we request that ICTA takes steps to determine whether the section 36 prohibition has been infringed and / or whether the section 40 prohibition has been infringed. We strongly believe that the contents of this letter provide ITCA with the "reasonable grounds" that it requires in order to commence that investigation.

If, following the conclusion of that investigation, it is determined that DataLink did infringe the section 36 prohibition or the section 40 prohibition, we invite ICTA to declare that the decision by DataLink to allow attachments by DataLink and Logic lower down the Poles than the Infinity attachments to be void. We also invite a declaration that the agreements between DataLink and Logic, and between DataLink and itself, in respect of Pole attachments, are declared void on the basis of the infringement of the prohibitions. We consider it entirely appropriate that Infinity's position in the second best attachment position be preserved.

Urgent Interim Measures: More urgently, we request that ICTA gives immediate consideration to the exercise of its powers under section 50 of the Law to put in place interim measures to protect the position of Infinity, as a licensee, whilst the investigation is carried out.

Section 50 provides ICTA with a series of powers which can be utilised where ICTA has a "reasonable suspicion" that either the section 36 or section 40 prohibition has been infringed. We consider that the contents of this letter are sufficient to create that reasonable suspicion and we urge you to address this concern as quickly as possible: the mere fact that DataLink put itself in a better position on the Poles than Infinity and Logic must create reasonable suspicion that the section 40 prohibition has been infringed.

Section 50(2) provides that ICTA can give "such directions as it considers necessary" where ICTA considers it necessary to act as a matter of urgency for the purpose (i) of preventing serious, irreparable damage to a particular person or category of person or (ii) of protecting the public interest.

We consider that the situation is urgent and that a failure to act immediately will cause serious and irreparable damage to Infinity: the other companies are quickly moving ahead with the deployment of their fibre networks, and at considerably lower cost to Infinity. Commercially we will be unable to survive if others continue to attach whilst we attempt to resolve this injustice.

Whilst it is, of course, open for ICTA to decide what directions it may wish to issue, **we request that all Attaching Utilities be prevented from making further attachments until this important matter is resolved**. The more attachments that the Attaching Utilities are permitted to make, the harder it will be

for the order of attachments to be changed, if that is what ICTA ultimately determines, after the investigation is concluded.

Finally, if ICTA considers that there was a breach of the relevant prohibitions, but is unwilling to change the order of attachments on the Poles, we consider that there needs to be an urgent review of the Agreement, on the basis that Infinity cannot be expected to bear all of the additional Make-Ready costs of being higher up the Pole than all of its competitors. Had Logic been at the top of the Pole, we understand that their agreement with DataLink (which we have not seen) would allow them to recoup some of their Make-Ready costs from later Attaching Utilities. Had DataLink been at the top of the Pole, they are qualified, trained, ready and able to work close to the electricity supply. CUC / DataLink will not allow Infinity to perform its own Make-Ready work (to save costs and expedite to attaching process) and so Infinity is at the mercy of DataLink to perform this work. It seems that it would have been a much more sensible decision to allocate DataLink the space at the top of the Poles but for obvious commercial reasons they did not want this space.

We wish to make it very clear that this final possibility is not the outcome which Infinity is seeking at this stage. Infinity wishes ICTA to declare the decision to allow DataLink and Logic to attach lower than Infinity to be void as a result of the provisions of section 36(4) of the Law, or otherwise). We therefore wish the decision to be made again, in proper consultation with Infinity, with a view to Infinity securing a right to attach directly above Lime's reduced space on the Poles.

Next Steps

We hope that you will treat the contents of this letter with the urgency which we think that they deserve. We invite you to make a decision in respect of your section 50 powers as soon as possible and to communicate that decision to us. We also hope that you will commence an urgent investigation under section 41 to consider in detail whether our allegations can be substantiated.

If you wish to discuss the contents of this letter, please contact Randy Merren on 938-0961, or speak with David Cooney (david.cooney@ogier.com) of Ogier on 815 1851. Ogier are our legal counsel in this matter.

Yours faithfully,

[Signed Randy Merren]

Infinity (Trading as C3)

tel: 1-345-333-3333 - 409 Walkers Road - PO BOX 30110 SMB- KY1-1201- GRAND CAYMAN
WWW.C3.KY

Tab 4

HIGH SPEED
INTERNET, TV AND PHONE

FAO: Andrew Small, CEO
DataLink, Ltd.
457 North Sound Road
P.O Box 38
Grand Cayman KY1-1101
CAYMAN ISLANDS

Monday, 21 July 2014

Dear Sirs,

Master Pole Joint Use Agreement with Infinity Broadband

This letter is further to our letter of 16 July 2014. We had not expected to be in a position of having to communicate to you so quickly after sending that letter. However, we have now had the opportunity to consider the contents of Nichelle Scott's letter to us (which was undated, but which was received by email on 15 July 2014). Your letter was sent in response to our letter of 24 April 2014.

As a preliminary point, we want to express our frustration that it took you **81 days** to respond to our letter. In a commercial context such as this, delays of this length are inexcusable and no explanation was offered in the response. Your unwillingness to communicate with us is at the crux of the multiple issues that we are now experiencing.

Height of our attachments - clarification of the legal position

As you are aware, our contractual relationship is governed entirely by the provisions of the Agreement between us. The definitions used in this letter are the same as those used in our letter of 16 July 2014.

The Agreement contains a defined term of "Assigned Space". That term, as amended by the provisions of the Deed of Variation, is defined as:

"either the Communications Space or the Electrical Space, which means space on Poles that can be used as defined by the Applicable Standards and the Agreement, for the attachment of Facilities for the provision of Communications Services or Electrical Service, respectively. Further details of, and terms relating to, the Assigned Space are set out in Appendix C and the drawings attached thereto."

In the case of Infinity, we are clearly only concerned with Communications Space and the provision of Communications Services. The final sentence of this defined term makes it clear

that the contents of Appendix C, and the "drawings attached thereto" are to be treated as part of the Agreement and are not merely illustrative of how a typical set up might look.

The "drawings attached thereto" means Attachment A of Appendix C of the Agreement. At Item 1, paragraph C of Appendix C it is clearly stated that "[Infinity] shall have a space of one foot on Pole for Attachment".

Turning to attachment A of Appendix C, the diagram has a number of measurements included on it. These measurements, and the diagram itself, tell us the following:

- Infinity's section of the Communications Space is 1 foot (12 inches);
- Infinity's Communications Space runs from 242 inches above ground to 254 inches above ground. This is calculated by adding 18 foot 6 to 1 foot 8, as marked on the diagram. Infinity's space is then an additional 12 inches above that, giving the upper height limit. We also get to this figure if we take the total height of the pole to the level of the CUC secondary (24 foot 6) and subtract from it the required clearance from the secondary (3 foot 4).
- Infinity can attach to the Pole anywhere in the range of 242 to 254 inches above ground;
- Infinity's share of the Communications Space lies directly above the space allocated to C&W (now LIME);

We wish to make it clear that Infinity proposes to assert its contractual rights to attach to the Poles within the range of 242 to 254 inches above ground. Any attempts to deny us the right to attach within that range will be a clear breach of the Agreement by you.

In addition to this, we are concerned that the diagram shows Infinity's entitlement to the space immediately above that of C&W / LIME. When LIME's space was reduced from the initial 1 foot 8, please confirm the basis on which it was determined that Logic and DataLink should receive that space, rather than offering Infinity the opportunity to take that space. It is very clear that there is a major commercial benefit to attaching as low on the Pole as possible (and we explore this further, below) and it seems unclear to us how this important decision was taken. As an ICTA licensee, we trust that you have acted appropriately in making this decision and we request that you provide us with details in respect of this. We remind you that Infinity was the second company to enter into a Master Pole Joint Use Agreement with CUC and so it is disconcerting to us that persons coming to the negotiating table considerably later than us have secured a better position on the Poles. This negatively impacts on the competitiveness of our business and so is something with which we feel we must take issue.

We are aware that the diagram attached to the proposed New Agreement (which, as you know, currently has no legally binding effect and simply represents a draft of the position that you would like to move to) presents a different picture. On that diagram, Infinity's space is above that

of Logic and DataLink and, looking at the figures, seems to suggest that Infinity should attach at a height of 260 inches (21 feet 8). The space allocated to LIME has been reduced, presumably by agreement with them, and Logic and DataLink have taken the space in between the LIME and Infinity.

This attempt to move Infinity further up the Poles has the effect of significantly increasing our Make-Ready costs: by putting us closer to the Electrical Space, you make it more likely that we will need to pay for considerable Make-Ready work to be done on the Poles than if we were able to attach within our contractually allocated space. This is not acceptable to us and we cannot be (i) told, in breach of the Agreement, that we must attach higher and (ii) made liable for the increased costs of then attaching further up the Poles.

Please confirm to us, in writing, your understanding of the space in which Infinity is currently entitled to attach. If you consider that we are unable to attach anywhere within the range of 242 to 254 inches, please clearly explain how you reach this conclusion. We remind you that clause XXV of the Agreement ("Amending Agreement") makes it clear that the terms and conditions of the Agreement shall not be amended, changed or altered except in writing and with approval by authorised representatives of both parties. We have not consented in writing to any change to Infinity's allocated space.

Paying for Make-Ready Work

We have a further issue in respect of the Agreement. It relates to who is responsible for paying for the Make-Ready work. It seems, from the Agreement, that Make-Ready work takes two forms (insofar as relevant here). Firstly there is the work required where the attachments would otherwise take place too close to the Electrical Space (**Safety Make-Ready**), and adjustments need to be made, and secondly the Make-Ready work where there is a need to strengthen the Poles to handle the new attachment (**Strengthening Make-Ready**).

In respect of LIME, your letter of 15 July 2014 says, "Attachment to the Poles by LIME within their designated space will only require make-ready work if the distance from their designated point of attachment to CUC's secondary is less than the minimum 40 inches required". This tells us two things. The first is that it is preferable to be as low down the Pole as possible, on the basis that this reduces likely Make-Ready costs (this further underlines the importance of us asserting our contractual right to attach in the range of 242 to 254 inches). The second thing is that DataLink appears to be looking only at the Safety Make-Ready and ignoring the Strengthening Make-Ready.

Your letter to us then touches on the Strengthening Make-Ready issue, but the position that you are taking here is unclear.

When we look at the Strengthening Make-Ready costs, your letter to us states that "The Make-Ready work to reinforce the poles result from pole loading analysis performed by CUC engineers

to determine the maximum capacity that can be accommodated for the Licensees [sic] cable attachment. The poles [sic] current reinforcement was constructed taking LIME attachments into consideration". If we understand these statements correctly, it seems that you are telling us that the Poles are strong enough for the existing LIME attachments (which we would hope was the case, given your legal obligation to comply with applicable safety standards already). If LIME are leaving their existing attachments in place, and adding new attachments to the Poles, we are unable to see how they are not then liable for a proportion of the Strengthening Make-Ready. Please clarify this important issue for us. If you are saying that the Poles are currently strong enough for an additional LIME attachment (with no required Strengthening Make-Ready work) but that our attachments will require Strengthening Make-Ready work, we find that difficult to accept.

If our understanding of your position, as set out above, is correct then this leads us to pose the following questions, to which we request a written response:

- Is it the case that to the extent that an attachment by Infinity falls at least 40 inches (3 foot 4 inches) below CUC's secondary, there is no obligation on us to pay for Safety Make-Ready?
- Following on from the first bullet point, is it correct to say that the only Make-Ready work that Infinity needs to pay for in that situation is any Strengthening Make-Ready work required to take that attachment?
- When determining the Strengthening Make-Ready costs of an attachment is this cost assessed based on the actual order of attachment, or based on some other procedure?
- If the actual order of attachment is the basis on which the Strengthening Make-Ready costs are determined, please confirm to us that any Pole strengthening work for which Infinity is asked to pay is simply the minimum additional strengthening that would be required to accommodate Infinity's attachment and that the Pole is not then strengthened beyond that point, at Infinity's expense. The Agreement only requires Infinity to pay for Make-Ready work required for *our attachment*. This means that further Make-Ready work may then be needed when the next attachment is made, and this would be paid by the later attacher.
- Following on from the above, please also confirm that, on the basis that DataLink already has a legal obligation to ensure that the Poles meet all required safety standards, to the extent that this is not the case in respect of a given Pole, DataLink (at their expense) will bring the Pole up to that required standard and only charge Infinity for any additional Strengthening Make-Ready. We cannot see how DataLink can claim to be entitled to require Infinity to pay for DataLink to comply with pre-existing legal obligations in which they are already in breach.

HIGH SPEED
INTERNET, TV AND PHONE

Breakdown of costs of Make-Ready work carried out by you

The final issue that we wish to raise can be dealt with briefly. We have asked you for a breakdown of the charges levelled by you on us in respect of Make-Ready work. The invoice was for C1 $75,892.66. The records that you have provided to us in support of that invoice takes the form of a meaningless spread sheet.

We cannot be expected to make a payment of this size without evidence of the work that you have carried out. We have nothing to indicate the number of man hours, the work required, or the materials used and have no way of determining whether these costs are reasonable or reasonably incurred. We are confident that DataLink would not make a payment of this magnitude to a 3rd party based on such poor evidence of completion of the work.

We therefore request that you provide us with a full breakdown of the work carried out, and set out for us how the total cost was determined. Until that time we are not in a position to make the requested payment.

Next Steps

In raising the points in this letter we are putting you on notice that we will assert our rights under the Agreement where we consider that they are being breached. We also require that we are treated fairly and reasonably by DataLink in all of our dealings with you in respect of the Agreement. At this stage, we do not consider this to be the case. Despite being the second company to enter into a Master Pole Agreement with you, we find ourselves at a disadvantage to others and we feel that the way in which these important decisions have been taken is not sufficiently transparent nor fair and in accordance with our Agreement.

We wish the matters raised in this letter to be added to the agenda for discussion at our next meeting. We simply cannot wait several months for your reply and so we invite you to treat this with the urgency which we believe this issue deserves.

We hope to receive your response as soon as possible.

Yours faithfully,

[Signed]
Infinity (trading as C3)

Tab 5

HIGH SPEED
INTERNET, TV AND PHONE

FAO: Andrew Small. CEO
DataLink. Ltd.
457 North Sound Road
P.O Box 38
Grand Cayman KY1-1101
CAYMAN ISLANDS

Wednesday. 16 July 2014

Dear Sirs.

Master Pole Joint Use Agreement with Infinity Broadband

We write in relation to the above. As you are aware. Caribbean Utilities Company. Ltd (**CUC**) entered into a Master Pole Joint Use Agreement (the **Original Agreement**) with Infinity Broadband. Ltd (**Infinity**) on 22 November 2005. By a deed of variation. dated 19 March 2012 (**Deed of Variation**) the Original Agreement was amended by the parties. By a novation agreement. dated 7 May 2012 (**Novation Agreement**), the Original Agreement was novated from CUC to DataLink (**DataLink**), who thereby stepped into CUC's shoes for all purposes under the Original Agreement. In this letter. references to the Agreement are references to the Original Agreement, as amended by the Novation Agreement and the Deed of Variation. The relationship between DataLink and Infinity, for present purposes. is therefore governed entirely by the contents of the Agreement.

A number of issues have arisen in respect of the Agreement and we wish to address those issues within this letter. having taken legal advice. More importantly, we wish to propose some *practical steps* to move this matter forwards and we consider it to be in the best interests of both parties that we do so. This letter does not address all of our current issues. but does address those that we consider to be of greatest significance at this time.

The issues break down into 2 categories: backwards looking issues (including alleged breaches of the Agreement by both parties) and forwards looking issues (including how we progress with the Pole attachments and the Make-Ready work as quickly as possible). Whilst the backwards looking issues are clearly important. we do not want your attention to be focussed entirely on these issues. We urgently require practical solutions. If these matters are not resolved amicably. and swiftly, between us. we will take our case to the Information Communication Technology Authority (**ICTA**) on the basis that DataLink is

also an ICTA licensee. We will also take further advice in respect of the legal avenues of redress that are open to us.

Safety

Before turning to the substance of this letter, we want to make it clear that we understand that safety is of paramount importance. Everything that we set out below is expressed against that backdrop and we want to do everything that we can to ensure that DataLink staff and contractors, Infinity staff, and the general public, remain safe as a result of the work that is required. We understand that doing things properly, and safely, can take time, but we do not accept that safety is a justification for all of the problems that have been encountered so far.

A New Agreement

There is one other preliminary issue which we would like to address. We are aware that DataLink wishes us to enter into a new form of Master Pole Joint Use Agreement (the **New Agreement**) to replace the Agreement. At this stage, we do not wish to engage with this process.

Until such time as we have confidence that DataLink has sufficient staff and resources to comply with the terms of any contractual agreement with us (particularly relating to time-scales), it is not a good use of our efforts to consider its likely content. We see this as a distraction from the issues at hand. It also remains that case that the New Agreement (a draft of which we have considered, and which is dated October 2013) is heavily biased in favour of DataLink and has almost nothing in the way of inducements to Infinity. As a commercial matter, it makes no sense for us to agree to replace the Agreement with the New Agreement and we do not believe that you genuinely consider that we would be willing to do so.

In addition, we do not believe that it is appropriate to attempt to force us to enter into discussions in respect of the New Agreement as a requirement for securing your adherence to the terms of the Agreement. We also resent what we consider to be inappropriate threats to treat the Agreement as terminated as a way of forcing us to engage with a negotiation over the New Agreement.

Once this relationship is back on a smoother footing, we will consider a fairly drafted form of amended agreement, but we will not be forced to the table on this, simply because DataLink does not like the contents of the Agreement.

Allegations of our breaches of the Agreement

Over recent weeks there have been a number of allegations made by DataLink to the effect that Infinity has been acting in breach of the terms of the Agreement. So far, we have not responded in any detail to these allegations, but wish to do so now. We will forcefully resist any attempts on the part of DataLink to treat the Agreement as terminated as a result of alleged misconduct on our part. We are concerned that the motivation for making these allegations is to secure a renegotiation of the Agreement on terms that are more favourable to DataLink.

We will address the issues raised by you, in turn:

The permitting process and make ready

We have reviewed the terms of the Agreement with our attorneys and are aware of the formal Permitting process to be followed in respect of all Attachments. This formal process is at odds with what we were led to believe was the case following discussions with Cindy Powell. Prior to our meeting with our attorneys, we were working on the basis that the "red band" appearing on a given Pole amounted to authorisation for the making of new Attachments. It seems that this is not the case.

We also wish to make it clear that we paid some CI $150,000 to CI $175,000 in 2008 / 2009 to cover a considerable amount of "Make Ready" work on various Poles. We were informed at the time that the required Make-Ready work had already been carried out on those Poles and so we can see no reason for any delays in allowing us to attach to those Poles. On one occasion we were asked to cease attaching to Poles in an area for which the Make-Ready work had already been carried out and so we cannot understand why we are not permitted to go ahead and attach in that area.

We confirm that we will comply with the formal Permitting procedure set out within the Agreement. However, we do not consider that it is appropriate for us to be penalised further for relying, in good faith, on the word of Cindy Powell when she confirmed that the "red band" amounted to permission to attach.

Unauthorized Attachments

We have already covered the relevant points under the heading "The permitting process and make ready", above. We are now clear as to the Permitting process and will ensure that it is followed by Infinity in respect of all future attachments.

It is not our intention to act in breach of the Agreement. However, as a commercial enterprise it is extremely difficult for us to have crews of trained staff sitting idle whilst we wait on DataLink to deliver on its contractual obligations.

Outstanding Payments

At the date of this letter, the only outstanding fees under the Agreement relate to the Total Minimum Annual Payment for 2013.

As you are aware, the fees payable under the Agreement consist of the Quarterly Reserved Space Payment (**Reservation Fee**) and the Quarterly Pole Rental Fee (**Attachment Fee**). There is then a Total Minimum Annual Payment (**Minimum Payment**) for the years 2012, 2013 and 2014. Where the Reservation Fee plus the Attachment Fee is less than the Minimum Payment for a given year, Infinity is required to make up the balance at year end. From Infinity's perspective, a Reservation Fee represents "dead money": there is no scope to secure income as a result of having a *right of attachment*. It is only once the attachment is made that Infinity is able to use attract customers in a given area. The Minimum Payment is also "dead money" for Infinity.

This payment mechanism ensures that DataLink receives a minimum annual benefit from the Agreement. This provision was clearly included in the Agreement as an inducement to Infinity to quickly reach the stage at which it was ready to make Attachments, so that the Attachment Fees increased and the Reservation Fees ("dead money") decreased. After a given number of Attachments, the total value of the Reservation Fee plus the Attachment Fee would exceed the Minimum Payment.

As matters have progressed, Infinity is ready, willing and able to make Attachments. The problem is the significant and repeated delays caused by DataLink's inability to comply with the terms of the Agreement relating to the timescale for processing Permit applications. These failures on DataLink's part have caused our new Attachment rate to fall to zero over recent months. It is therefore unacceptable for DataLink to now seek to capitalise on its breach of the Agreement in pursuing Infinity for the Minimum Payment for 2013. Had DataLink complied with the terms of the Agreement in respect of the

processing of Permit applications, we would have made considerably more Attachments and would be enjoying increased income from customers. We would also be paying more money to DataLink overall, but less of that would be "dead money".

VI.C of the Agreement requires you to respond to "Minor" Permit Applications within less than 10 days of receipt, and to "Major" Permit Applications within 15 days of receipt. VI.D provides a mechanism for expedited review (allowing you just 5 days to review and respond to a Permit application). DataLink is falling considerably short of these contractual time limits and it is therefore unreasonable to suggest that the 2013 Minimum Payment remains payable by Infinity: the parties to this contract surely did not intend for DataLink to profit from its own delays and inability to fulfil its legal obligations. We can certainly confirm that Infinity did not intend this to be the case.

We clearly need to resolve the issue of the outstanding 2013 Minimum Payment, but we need DataLink to compromise here. When we reach the end of 2014 we will encounter the same problems in respect of the 2014 Minimum Payment. By our projected roll-out schedule, we should, by this stage, be very close to the point where the Attachment Fees alone exceed the Minimum Payment, which would put an end to the spending of further "dead money" under the Agreement.

We hope that you can understand why we feel unable to simply send you a cheque to cover the balance of the 2013 Minimum Payment, until we have resolved the multiple issues that we are currently experiencing.

We welcome a discussion around these unpaid fees and invite you to propose a compromise. If DataLink will continue to be unable to meet the timescales required by the Agreement, we also urge you to consider the removal of the Minimum Payment entirely in favour of a more equitable system.

Potential Damage to the Property of other Attaching Parties

We dispute that we are responsible for any damage to the property of other persons attaching to the Poles. The accusations, as far as we are aware, have originated from LIME, a competitor business. We have been accused of touching / moving their components on the Poles. There is no evidence to suggest that Infinity was responsible for this and we deny any involvement. In all of our work on and around the Poles, we are extremely careful not to interfere with other attaching utilities' network or plant, even though other attaching utility are attached in Infinity's assigned space on the Poles and had been requested to move by DataLink.

However, we have previously brought to your attention the fact that LIME is placing their Naps on the front of the Poles (where our ladders need to rest to allow us to work). Whilst we try to work around this, it would be a significant benefit to us (and other attaching utilities) if the Naps are mounted on the back the Poles, or if LIME switch to a Nap that is attached on the strand away from the Pole: both Logic and Infinity use strand mounted Naps.

We hope that you see from the above that any alleged breaches of the Agreement came either from a miscommunication between the parties as to what was expected, or as a result of our response to what we consider to be DataLink's repeated and multiple breaches of the Agreement.

Your Breaches of the Agreement

Your email exchanges and other correspondence with Infinity suggest that we are in breach of the terms of the Agreement, without any acknowledgment that DataLink are in breach in a number of material respects.

Our main concern is your repeated failure to process Permit applications on the time-scale required by the Agreement, and the speed at which the Make-Ready work is being carried out. We will be required, shortly, to apply to ICTA once again to amend our proposed roll-out schedule. We are unable to meet with our published expectations for attachments due to your failures under the Agreement.

Our entire business model hinges upon our ability to make Attachments in order to offer services to our customers. The delays on your part in bringing your Poles and other infrastructure up to a standard where we can attach to the Poles are causing irreparable damage to our business and are causing us significant financial losses.

During a recent ICTA meeting Mr. Small indicated that DataLink has been caught out by the speed at which we are ready to make attachments. This is surprising. In the 2012 Deed of Variation, we agreed to the Minimum Payments for 2012, 2013 and 2014. The very nature of how the Minimum Payments are calculated means that you had clear notice that is was in our interests to look at making attachments as quickly as possible, and that we would therefore seek to do so.

To turn around, in mid-2014, and indicate that you were caught out by the speed of our progress is not sufficient defence to your failure to prepare to carry out the work that you

are legally obliged to do under the Agreement. This is nothing more than a failure to plan on your part, for which we are paying the price.

You cannot seek to hold us to the letter of the Agreement whilst being in breach of the most fundamental requirement of it.

We are advised that we have a number of legal remedies against DataLink for these multiple and serious breaches of the Agreement. We are advised that ICTA would be interested in our concerns, on the basis that others are already attaching to Poles, which we have been told that we cannot attach to., and we are advised that there is evidence to suggest a number of other areas in which Infinity is being treated less favourably than other ICTA licensees by DataLink.

In spite of the above, we wish to look towards the future and to seek out practical ways of moving forwards. It is those proposals to which we now turn.

The Future

Our most pressing concern is the speed at which we are able to make attachments. It is imperative that this improves in the very near future. It seems to us that there are 2 ways in which this can be achieved:

1. DataLink increases staffing numbers and appropriately allocates resources to ensure that the requirements of the Agreement in respect of the issue of Permits, and the carrying out of the Make-Ready work are adhered to (**Option 1**); and
2. DataLink authorises Infinity to carry out Make-Ready work and other work required in respect of the Poles and exiting infrastructure (**Option 2**)

Option 1

We are aware that DataLink is already working on the implementation of Option 1, and this is encouraging. We understand that additional staff will be in place by September and that this increased capacity will ensure that DataLink is able to comply with the Permit review timetable, and the Make Ready obligations under the Agreement.

We request that you provide us with formal confirmation of the above and with a written assurance that these steps are being taken. It would also be helpful for us to receive updates, on a regular basis, of your progress in taking on the new staff, so that we have

the ability to make appropriate resourcing decisions at our end. We cannot run our business on the back of vague, non-binding assurances, that the situation will improve at some future date.

Option 2

In respect of Option 2, Infinity has a number of suitably trained and qualified staff who are currently unable to work due to the delays that we are experiencing under the Agreement. This is very expensive for us and extremely inefficient.

Our proposal is that you allow named Infinity staff members to carry out Make-Ready work on your behalf. If you agree to do so, our commitment is that the first priority of those staff members will be to carry out any safety work that is required in respect of Poles to which Infinity have already attached, or to which Infinity is ready to attach.

This is already envisaged within the Agreement. VII.C ("Who May Perform Make-Ready Work") says that, in the event that DataLink cannot perform the Make-Ready work within 10 calendar days of the issuance of a Permit, "[Infinity] may seek permission from [DataLink] for [Infinity] to perform such work itself or employ a qualified contractor to perform such work". We are seeking that permission, and requesting that you agree to Infinity performing its own Make-Ready work under the Agreement, even before the expiry of the 10 calendar days.

We have staff who are ready, willing and able to perform this work, with a major emphasis on prioritising safety. This must be in your best interests, given the poor state of many of the Poles to which we are seeking to attach. We are also confident that our Make-Ready services would be considerably more cost-effective than those offered by others to whom you sub-contract the work.

We strongly urge you to allow us to progress this Option 2, on the basis that the further delays anticipated under Option 1 will continue to devastate us financially.

Next Steps

We have resisted a further meeting until this stage, on the basis that we wanted to produce a summary of what we consider to be the pressing issues for both parties.

Now that we have had the opportunity to set out our concerns, we invite you to reply and we suggest that a face-to-face meeting be arranged, once we have that reply.

The clear purpose of any meeting must be to find a quick solution to the various problems, particularly in respect of the "forward looking" issues.

We hope that you will agree that this is sensible. and we look forward to receiving your response as soon as possible.

Yours faithfully,

[Signed]
Infinity (trading as C3)