



OfReg ICT Consultation 2016-2 RFI's and Next Steps

DataLinks' Responses to 7A and 7B

7A: The Office invites the Parties to provide additional comments or submissions, including any supporting documentary evidence, on any of the matters raised in Consultation 2016-2, with a particular focus on relevant changes in the market or the sector since 2017.

DataLink's Response:

DataLink would like to take this opportunity to comment on certain areas regarding Make Ready and Joint Use that in their view should be addressed to better utilize the resources available:

1: Make Ready Area Selection – Presently DataLink/CUC, based upon the T&D License of CUC, cannot Make Ready any infrastructure without this first request being sent in by a Third Party, namely an Attaching Utility. Presently each Attaching Utility has their own network deployment strategy, which presently do not overlap with the other Attaching Utility's. Because of this DataLink/CUC efforts are being split into 4 with each addressing a different area for Make Ready as any given point in time. With the limited resources available to both entities DataLink is of the opinion, that if DataLink was to select the areas to be Made Ready, taking into consideration the varying requirements from the Attaching Utility's, and also assisting them with their obligation to roll out their network to the country in its entirety, DataLink would be able to focus their resources on said selected area and complete the process faster than it is currently taking. As per all Make Ready work, the cost attributed to the selected area would need to be paid for by the Attaching Utility's prior to work commencing.

2: Infrastructure Relocates - As per Section 8 of the Master Pole Joint Use Agreement (MPJUA) it presently states that the Attaching Utility has 90 calendar days to transfer their infrastructure once notified by the Owner Utility. Presently DataLink staff spend an exorbitant amount of time liaising with the various Attaching Utility's after notice has been given to verify that their infrastructure has been relocated/removed. In most cases the 90 calendar day period is not met but because of Section 83 of the INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW (2019 REVISION) it states:

- No person shall remove, alter, damage, disrupt, disable or destroy any ICT network or ICT apparatus except in accordance with this Law or the regulations

DataLink would be in violation of this section of the law should it remove/relocate any infrastructure belonging to the Attaching Utility's. DataLink is of the view that they, or certified third parties, should have the legal right to remove/relocate any Attaching Utility's infrastructure as long as the notice period stated in the MPJUA is adhered to.

3: Unauthorized Attachments – As per Section 14 of the MPJUA it states "Owner Utility has the right to remove such Facilities at Attaching Utility's expense." Just as mentioned DataLink's previous response, should DataLink remove any such facility they would be in breach of Section 83 of the INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW (2019 REVISION) law. As such the Attaching Utility's continue to make unauthorized attachments with little fear or repercussions for this action. DataLink is of the view that they, or certified third



parties, should have the legal right to remove/relocate any Attaching Utility's infrastructure as long as the notice period stated in the MPJUA is adhered to.

4: Non Payment - Section 3.J of the MPJUA states:

- Default for Nonpayment. Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a default of this Agreement.

During its tenure, there have been several Attaching Utility's who have not, and some that are still not, paying their respective fees while still being attached to the Owner Utility infrastructure and continuing to roll out their network attaching to new infrastructure thus equating into further unauthorized attachments. With the risk of sounding pedantic without repercussions to said Attaching Utility and DataLink, or certified third parties being able to remove/relocate the violating Attaching Utility's infrastructure this behavior will continue thus hindering the progress of Make Ready and Joint Use.

7B: The Office also invites the Parties to submit their views on the additional issues identified in paragraph 4 a) and paragraphs 5 a), b) and c) above, including on their relevance, whether it is appropriate to consider them as part of Consultation 2016-2, what processes, procedures, conditions and/or rules currently apply, and how those should be modified (if at all) in order to promote and maintain an efficient, economic and harmonized utilization of ICT infrastructure in the Cayman Islands. In all submissions, the Office requests that the responses by the Parties be detailed and include all relevant documents in support of their positions.

DataLink's Response:

Paragraph 7.b) of the letter of 12 October 2022 deals with procedural matters and invites the parties' views on whether it is appropriate to consider the issues identified in paragraph 4.a) and 5. a) – c) above as part of consultation 2016-2. DataLink's view is that these matters are (1) distinct from the original subject matter of 2016(2), (2) important in their own right and (3) deserve and require to be addressed in the normal way that such matters are addressed in a consultation. As to (3) that would mean adopting the same approach to these issues as was adopted for the original subject matter of 2016(2), in which the Office presented a background which included legal and factual matters, highlighting matters of interest or concern to the Office and containing an initial view, then inviting responses to a proposal or series of proposals that was clearly spelled out. If that approach is not followed, the Office will not have the benefit of focused responses to clearly articulated proposals and the parties will not have a proper opportunity to respond to any concerns that the Office may have. While DataLink has done its best to respond to the questions raised, it has not had the benefit of hearing what concerns the office may have in these areas, of any provisional view that the Office may have and of being to address specific issues of concern and proposals. In DataLink's view, that is something that ought to take place before the Office intervenes in any of these areas.