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Utility Regulatory & Competition Office  
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**Industry Working Group (“IWG”)- Final Position Paper Comments**

Infinity Broadband Ltd. (t/a C3) appreciates Utility Regulatory & Competition Office (OfReg) continued efforts and support during final stages of the Pole Attachment Work Group Determination.

This final submission will assist OfReg to determine the appropriate methodologies to ensure each Licensee is provided an equal opportunity to their committed roll-out obligations of delivering island wide Fibre coverage to the Cayman Islands.

Upon reading each Licensee’s submission and their claim the current agreements they have with DataLink are acceptable, it is clear a consensus of frustration and inconsistency remains within our current structure of Pole Attachment Make Ready Process. C3 must point out there are two fundamental issues that still allow the Flow/DataLink, Master Joint Pole Use Agreement (‘MJPUA’), to give that licensee an unfair advantage over C3, Logic and possibly Digicel if DataLink signs a MJPUA allowing them to build their network on the CUC poles.

The pole attachment issues started the day C3 signed its MJPUA with CUC in November of 2005. C3 not being privy to the agreement between CUC and Cable & Wireless (Cayman) (dba ‘Flow’) at the time but have gained knowledge of the agreement over the years. Prior to C3 being granted space on the Poles, Flow had 18” of space to install its cables, Flow paid CUC an amount for each pole it installed for this space to be created on each pole. For CUC to sign an agreement with C3 to allow access to the poles Flow agreed to give up 6” of the 18” it was allotted under their agreement, the other 6” to make up C3’s 12” being created by make-ready necessary to create this space. We would assume that since Flow’s space was reduced from 18” to 12” that the payments being made by Flow to create this space was reduce by 1/3, if not Flow could have a claim against CUC for continuing to create charge for 18” an ultimately C3 since 6” that was being created was now to be used by C3. It should be noted this space on the poles was given up by Flow on all poles not just new poles. C3 would not necessary be against paying this 1/3 but would have to consider if it got them access to the poles. Nevertheless, if CUC continued to collect the full amount and not reduced it would be a matter that the Authority and Flow would need to consider. The fact remains that the space created for C3 came by reducing Flow from 18” to 6” immediately above Flow’s space, for avoidance of dough that space would be from 19’6” to 20’6”.

Since most other participants in the IWG have not really taken the opportunity to provide comments on the various matters that were discussed in the work group, C3 will take this opportunity to provide comments on DataLink’s submission.

In DataLink's submission titled "**Background**" C3 has to question DataLink's statement, "*DataLink disagrees with the Authority's assertion, in its letter of December 9, 2016, that the existing agreements "provide disparate terms and conditions for the Licensees who have entered into agreement with CUC and/or DataLink". As at the date of that letter, all but one attaching utility were party to an agreement with materially the same terms provided to the ICTA in support of the application for DataLink's license granted on March 28, 2012"*

DataLink has a different agreement with Flow, whereby Flow paid CUC to create a space of 12" or 18" depending on when the pole was planted for an attachment on every pole, the operative word being "an attachment", therefore how can DataLink allow Flow to **overbuild** its copper infrastructure, with fibre and not have to contribute for any make-ready? This is contrary to S.6(c) "interconnection and infrastructure sharing services shall be provided by the responders to the requestor at reasonable rates, on terms and conditions which are no less favorable than those provided by the responder to itself, any non-affiliated licensee...." of the infrastructure regulations.

Contrary to DataLink statement above the new agreement signed with DataLink allows Flow to continue, because they are recognizing Flow's previous payments and continue to let them overbuild their network and not contribute to make-ready, this is evident in the most recent make-ready invoices presented to C3 by DataLink for the make-ready work in the Prospect Area and other make-ready invoices presented to C3 since the new agreement was signed with Flow in November 2016. Why isn't Flow paying a portion of make-ready on poles where it has more than one attachment in some areas it has as many as 4 attachments, or where the weatherheads are below 22'10" or 23'10" which ever standard is applied, it is C3's position that CUC should pay 100% of the cost to move any electrical infrastructure below whichever standard is agreed. If the 40" safety zone was not complied to by CUC when it installed its cables or weather heads on the pole.

C3's comments (in red) are directly below DataLink's original comments:

### Issue 1: Standard Pole Attachment Contracts

- 3.1 The cost of making communications space at the outset are less than retrofitting the space into an existing line.  
*DataLink has billed on collected reservation fees based on all the poles within their infrastructure. Would this suggest the space should be created since it is being reserved? C3 questions the purpose of Reservation Fees and recommended the utilization of these funds be allocated to future Make-Ready being more efficient and effective.*
- 3.2 CUC remains compliant with its license as the license disallows CUC to take on this communications utility expense at cost of the electric consumer.  
*Becoming compliant with safety standards whereby CUC is required to raise power lines or weatherheads that are below 23'10", should not be a chargeable event responsible to communications utility provider. It should also not be passed onto the consumer - if so, it is the intention of CUC to pass on their costs to the customers for failing to meet the NESC safety regulations.*
5. Extension of the refund period for make-ready costs see addition to Section VII D. DataLink has received feedback from its customers that the 2-year period prescribed in Flow's and Logic's agreements is too short.

DataLink proposes to extend this time to five years which is fair as it substantially encapsulates current make ready work and the proposed 36 months for the remainder of the roll-out period as suggested by OfReg.

*C3 recommends the make-ready refund should be extended for the life of Utility pole. DataLink representative suggested poles have a lifespan of 40 years; therefore the life of the refund should be amortized over the equivalent lifespan of the asset. Why should the communication utility provider have to depreciate the make-ready over 5 years but CUC be allowed to depreciate their infrastructure cost over up to 40 years. It is anticipated that Communications Utilities will have make-ready cost in excess of US\$10mil to do meet the island wide rollout requirements, yet be required to depreciate that expense off their financial in 5 years. This too would create another unfair advantage to the potential new entrant to the market. A new entrant could wait five (5) years and save the CapEx of make-ready to rollout it service- it could them build its network in a year and used the money it saved on make-ready by waiting 5 years to acquire new customers.*

## Issue 2: Pole Attachment Specification Standards

2. Should the Industry consider adopting a definition that is based on the minimum clearance for electrical facilities of 25 feet, instead of the absolute length of the pole?

This proposed standard is only applicable to poles where telco utilities have paid for make ready or for the incremental cost of the required space to facilitate the telco space for 4 attaching utilities at the time of pole installation. However, we note that the minimum clearance for electrical facilities is actually 25'10". Note: If there are not telco utilities needing to attach to a pole, CUC would have electric facilities much lower than 25'10" while maintaining NESC compliance.

*Why is CUC allowed to refer to NESC standards to their convenience, yet suggest that they don't follow them and attach at lower than the 25'10"? There is a reason why minimum standards are set and as such must guide the industry. Is this not like having planning guidelines but leave the decision of building to the standard to the General Contractor? Why have standards? The 25'10" NESC standard was establish many years ago if CUC was properly regulated by an authority not allowed to self-regulate most power lines would have been installed at 25'10", if not all now.*

3.1. Should an Attaching Utility be required to pay for replacement poles which are shorter or taller than the 40-foot pole referenced in the definition of "Standard Utility Pole", if a new pole is required in order to accommodate the Attaching Utility's requirements?

An attaching utility should be required to pay if the new pole is required to facilitate the attaching utilities telco attachment. It should be noted that existing pole lines are there to serve electric consumers and any modifications needed to facilitate make ready for telco attachments must preserve the electric facilities function and structural integrity. Therefore, it is entirely possible that telco's will be required to pay for poles of varying heights as prescribed by the appropriate standard for the existing electric utility service. Standards have changed over time; however, CUC's infrastructure has not automatically been universally upgraded to match the current stated standards as and when these changes have occurred. Retrofits to accommodate new standards have been conducted on an as needed (typically at the time of replacement) basis in order to manage expenses for the electric consumers.

Due to the requirement in CUC's T&D License that it may not build infrastructure for non-electrical purposes, Attaching Utilities *must* pay for any modifications required *solely* in order to accommodate them on the infrastructure.

Where an existing pole may be outside the current standard in place for CUC, modifications required, over and above the provision of the communications space, are payable by CUC.

*CUC's T&D License may not allow CUC to build infrastructure for non-electrical purposes but it doesn't suggest that CUC should not follow established standards specifically the NESC standard that electrical cables are to be placed above 25' on the poles.*

4. Consider the implications of adopting a new definition.

Adoption of a new definition with communications space automatically provided should only be included if there is also provision for an automatic payment to account for the expense of the extra length of pole required.

*No further adoption of a definition is required. OfReg aggressively requires CUC to adopt the NESC Standards all electrical infrastructure be placed above 25'.*

4.3. How should the change in minimum clearance in 2014 be addressed?

This has been addressed in the work process for all future make ready works. In the case of weather heads that are below 23'6" CUC pays 65% and the attaching utility pays 35%. In the case of weather heads above 23'6" the attaching utility pays 100% of the weather head relocation costs.

*As stated in our opening comments CUC entered into a second MJPUA in 2005 with C3, as per that agreement C3 assigned space (12") was established directly above Flow's space, 18'6" to 19'6" (12"), therefore the communication space was established to be from 18'6" to 20'6", adding on the 40" safety zone above that required CUC attached their electrical cables at a minimum of 23'10". Clearly CUC was under obligations by way of the MJPUA with Flow (formerly Cable & Wireless) to install its electrical cables 40" the new established space on the poles or at the least make sure the safety zone was there above Flow's space that they were collecting funds on each pole to establish that would therefore establish that all electrical cables must be attached above 23'6", for them to suggest that going forward they (CUC) will pay for 65% of the cost to move the cables that are below the 23'6" established threshold can't be accepted, CUC should be responsible for the past and future cost to move the weather heads and electrical cables that are installed below 23'6". Any poles installed after 2014 CUC would bear 100% of the cost to raise the weather-head.*

#### **Issue 4: Planned Roll Out Timelines**

1. Consider the appropriate location of the boundary line.

DataLink is of the opinion that the boundary line should be placed as far West as possible. This will allow for greater area served by a universal service which will reduce the space needed on the pole from 4 to 2 attachers, thereby increasing efficiencies for roll out of the fiber optic service to the territory.

*The authority must consider how this would be adopted that it would not favor Flow over other attachers. If Flow has attached, a new development is built but others are not yet able to provide service Flow should not be allowed to force*

*the new customer into a long-term agreement, any agreement entered by the customer in that service are should be voided if the customer choose to go with another service once they consumer has a choice. It must also consider that C3 has applied and paid make-ready on many of these poles heading East, so therefore it could be argued that C3 would be the 2<sup>nd</sup> attacher or it must be compensated to forfeit its access to these poles in some form that is acceptable to C3.*

*Nevertheless, further clarification on the proposed infrastructure be clearly defined:*

- *Network Design / Operations Management / Deployment / Integration into C3 network*
- *Business Continuity / Liability*
- *Ownership of Network beyond Boundary Line*
- *Costing of Network Usage*
  - *CAPEX to deploy the network*
    - *Share per Telco provider*
- *Monthly Recurring Costs*

*4. Determine the factors which should be considered in developing the pole make- ready payment schedule.*

Payments should be received in advance to ensure availability of resources, such as in the fixed fee included in the draft standard pole attachment agreement.

*If full payment is required by CUC/ DataLink in advance a penalty formula should be agreed and regulated by the authority for failure DataLink to issue the attaching utilities permits to attached. Each day late with the issue of the permit for the entire batch results in a penalty applied- the penalty only stops applying once the permit has been issued by DataLink to the attaching utility.*

*Bare minimum, the fee schedule should be 100% in compliance to the Interconnection and Infrastructure Sharing Regulations 2003.*

*7.1. Consider in particular the impact of the proposal to use qualified third- party contractors where DataLink cannot meet a deadline under the Master Pole Joint Use Agreement, if that proposal is adopted at the conclusion of the Working Group process, on the allocation of DataLink's resources to the common pole make-ready process.*

CUC already contracts with two third party line contractors, there is no need for further contractors. Furthermore, the construction portion of the work is only a small part of the process that is required for Make Ready. Adding more contractors would only result in contractors sitting on standby while other non-construction processes are completed such as make ready design, switching procedures for isolation of work areas, mapping of as-builts in CUC's systems etc.

*DataLink did not disclose that they had two third party contractors, in fact the only disclosed 3<sup>rd</sup> Party Contractor was UMC during the IWG. C3 requested the liberalization of accredited contractors be sourced, although communication to the Communication Utility Providers be advised or informed of the Tendering Process. It should be noted that C3 proposed to be contracted to provide tree trimming services to CUC, submitting the credential of two certified linemen that would be doing the tree trimming only to learn recently that this new 3<sup>rd</sup> party contractor had hired one for sure and possible both men.*

Issue 5: Pricing/Costing elements applicable in the Pole Sharing Agreements

2.4. Is the 2/3 (two-thirds) allocation factor in the space factor formula (by which the unusable space is multiplied) an appropriate fraction to allocate to Attaching Utility, given the weighted average pole height, the actual communication space and the use of the pole for non-communication uses?

Yes, the result of the application of this factor is that each attacher pays for just under 17% of the unusable space while CUC pays the largest share at 33%. DataLink applied the 2/3 allocation factor based on precedence set from a determination made by the FCC.

*OfReg must be clear as to type of Pole the FCC determination was based on. It should be noted that in the United States the FCC has three type of poles as it related to ownership- Owner Utility, County Owned Poles and Private Owned Poles.*

2.5. What impact (if any) should attachments on the pole, other than CUC's electricity supply or an ICT Licensee's use of the communications space – i.e. street lighting or CCTV – have on the space factor formula or any other element of the formula for the calculation of the annual pole attachment fee?

None. Street lighting is part of CUC's electrical system and CCTV attachments fall outside of the telecommunications space.

*CUC is generating revenue for having these attachments on their poles, furthermore these attachments must factor into the wind load calculation on the poles along with CUC's own Fibre Cables that are attached to some poles. Therefore, these should be considered in the annual attachment fees as well as guying of the poles in many cases the CCTV and Street lights are in the communication space or slightly above and must be moved.*

In conclusion, inconsistencies exist regardless of a legacy contract or a newly agreed contract.

The common denominator remains with DataLink non-adhering to the Interconnection and Infrastructure Regulation Law (2003), Regulation 6:

- a) good faith
- c) reasonable rates
- d) transparent
- g) costs incurred due to the request
- h) rates to be cost-oriented
- i) not include loss of compensation
- k) reasonable and non-discriminatory

C3 requests aggressive action from OfReg to enforce DataLink to comply with the Interconnection and Infrastructure Sharing Regulations (2003) ultimately creating:

- Greater efficiencies
- Proper cost allocations and pricing / rates
- Economic and cost-effective stability
- Achievable timelines to deliver to the consumer of Cayman fibre optic island wide coverage