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Utility Regulation and Competition Office

BY EMAIL

30 June 2017

Mr. Victor Salgado
Chief Executive Officer
Cable and Wireless (Cayman Islands) Limited (**'Flow'**)

Mr. Sacha Tibbetts
Chief Executive Officer
DataLink, Ltd. (**'DataLink'**)

Mr. Raul Nicholson-Coe
Chief Executive Officer
Digicel Cayman Limited (**'Digicel'**)

Mr. Randy Merren
Managing Director
Infinity Broadband, Ltd. (**'C3'**)

Mr. Rob McNabb
Chief Executive Officer
WestTel Limited (**'Logic'**)

(Each a **'Licensee'** and collectively referred to as **'Licensees'**)

Dear Licensees,

**INDUSTRY WORKING GROUP - Provision of ICT Infrastructure to 3rd Parties
– installing and maintaining attachments of communication cables to CUC's
electricity poles**

Notice: As of 16 January 2017, the functions of the ICTA, ERA, and Petroleum Inspectorate have been merged into a new regulatory agency, the Utility Regulation and Competition Office ("OfReg"). See our new website at www.ofreg.ky for more information.

Background

1. The Information and Communications Technology Authority (the '**Authority**') formed the Pole Attachments Industry Working Group (the '**Working Group**') by letter sent by the Authority on **9 December 2016** to Licensees.¹
2. The purpose of the Working Group² was to consider various issues related to the installing and maintaining of attachments of communication cables to the electricity poles owned by Caribbean Utilities Company, Ltd. ('**CUC**') and managed by DataLink, including the matters being consulted on in ICT Consultation 2016-2.
3. The Authority set out a number of issues which the Working Group was tasked with addressing, including pricing/costing elements applicable in the Pole Sharing Agreements, and it was the hope of the Authority that as part of this process the Licensees would achieve consensus on all or some of the issues under consideration.
4. On **16 January 2017**, the Authority was dissolved and all of its functions and powers were transferred to the Utility Regulation and Competition Office (the '**Office**').
5. The Working Group met nine (9) times between **13 January 2017** and **17 March 2017**. On **21 April 2017**, C3, DataLink, Digicel, and Logic submitted final position papers on the issues discussed by the Working Group. Flow submitted its final position paper on the issues discussed by the Working Group on **26 April 2017**. These position papers were published on the Authority's website at <http://www.icta.ofreg.ky/announcements/icta-forms-pole-attachment-working-groupon>, on **19 May 2017**.
6. On **1 June 2017**, the Office requested³ that Licensees submit any comments they may have on the final position papers of the other members of the Working Group. These submissions were also to include comments on whether the Licensees considered there was consensus among the members of the Working Group on any issues, as well as on whether the Office ought to address the outstanding issues, if any, by continuing with the ICT Consultation 2016-2 procedure or by adopting another procedure.

¹ <http://www.icta.ofreg.ky/upimages/commonfiles/149729612220161207PoleAttachmentIndustryWorkingGroupLetter.pdf>

² <http://www.icta.ofreg.ky/upimages/commonfiles/1495201565ICTAFormsPoleAttachmentWorkingGroup.pdf>

³ <http://www.icta.ofreg.ky/upimages/commonfiles/149729618520170601OfficelettertoPoleWorkingGroupnextsteps.pdf>

7. DataLink, Digicel, Flow and Logic submitted their reply comments on **16 June 2017** although the latter three respondents noted they had no comments in addition to those already provided in their final position papers. C3 submitted its reply comments on **20 June 2017**.⁴

Office's Analysis

8. The Office considers that the discussions among the Licensees in the Working Group contributed to a greater understanding by all stakeholders of the challenges involved in providing and obtaining access to CUC's electricity poles.
9. In its **9 December 2016** letter, the Authority noted that it was its "*hope that as part of this process the Licensees achieve consensus on each of the Issues under consideration.*" The Office considers that a 'consensus' represents "*a general agreement*"⁵ or "*a generally accepted opinion among a group of people.*"⁶ It follows that, if a member of that group of people expressly does not agree or hold the opinion in question, there cannot be deemed to be a consensus among that particular group (although there might be a consensus among a different group of persons).
10. The Office considers that the relevant group of persons in this instance consists of all five Licensees (namely C3, DataLink, Digicel, Flow, and Logic). The Office notes, however, that the Licensees submitted few comments on whether there was consensus among *all* Licensees on the matters discussed by the Working Group.
11. As noted, Digicel, Flow and Logic did not add to their submissions in the Working Group in their reply comments.
12. DataLink only noted an "*apparent consensus*" on the need for a standard contract, which was, according to DataLink, not actually shared by all companies, and a "*general consensus that the communications space should be provided*", which did not also include a consensus on who ought to be responsible for making that space available. With respect to the issue of reservation fees, DataLink specifically noted "*[n]o consensus was reached...*"
13. C3 noted "*a consensus of frustration and inconsistency.*"

⁴ All documents referenced are available at the URL noted in paragraph 5 above.

⁵ <https://en.oxforddictionaries.com/definition/consensus>

⁶ <http://dictionary.cambridge.org/dictionary/english/consensus>

14. The Office also notes that there was little consensus on the matter of which procedure ought to be adopted to address any outstanding issues. DataLink submitted that "*OfReg should progress with the Determination process*" and issue a decision expeditiously. C3 requested "*aggressive action*" but did not elaborate with respect to the form that action ought to take.
15. As a result of the clear lack of consensus, the Office considers that the issues addressed in ICT Consultation 2016-2 remain outstanding. The Office notes that the issues addressed in ICT Consultation 2016-2 were also included in the matters which the Working Group was tasked with addressing, that each of the parties to ICT Consultation 2016-2 were also members of the Working Group, and that the Licensees have already provided extensive comments on these outstanding issues in the context of the ICT Consultation 2016-2 procedure. Under the circumstances, the Office considers that commencing a new procedure would not be efficient and would result in an inordinate delay in resolving many of the outstanding issues related to the installing and maintaining of attachments of communication cables to CUC's electricity poles.

Next Steps

16. Accordingly, consistent with paragraph 45 of the Authority's **9 December 2016** letter, the Office hereby notifies the members of the Working Group that it will continue with the ICT Consultation 2016-2 procedure. The Office intends to address Parts A, B and C of ICT Consultation 2016-2 separately and will issue determinations or additional questions for consultation as appropriate.
17. As previously noted, the final position papers and reply comments of the Licensees can be referenced in the ICT Consultation 2016-2 procedure where continued, or any other follow-up procedure, and the Office can take them into account where appropriate in reaching determinations on any of the outstanding issues.

Yours sincerely,



Alee Fa'amoe
Deputy CEO
& Executive Director ICT
OfReg