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April 21, 2017

Mr. Alee Fa'amoe
Managing Director
Information and Communications Technology Authority
P.O. Box 2502
Grand Cayman KY1-1104
Cayman Islands

Dear Mr. Fa'amoe,

Re: Digicel Cayman Ltd input to Industry Working Group on Pole Attachments Introduction

ICTA has requested that industry participants submit position papers on the topic of pole attachments facilities to be offered by DataLink.

Pole attachment agreements are common place in many jurisdictions. Once the cable is in place, in the pole it is essentially passive with only infrequent intervention required. The processes and procedures around this are usually uncontentious and driven by practical considerations. As such Digicel does not propose to comment in detail on this aspect but expects that the operators will be able to reach agreement on this aspects through discussion.

The main areas of contention are pricing of the attachment, pricing of the make ready activity and the process for make ready/initial installation. This submission with deal with these issues. Digicel reserves the right to make further submissions on these or other topics related to pole attachment.

We wish to state from the outset that the output of this Working Group must be guided by the principles set out in the **Interconnection and Infrastructure Sharing Regulations, 2003**. As required under **section 69** of the **ICTA Law**, the objective of these guidelines is to promote an efficient, economic and harmonized utilization of infrastructure.

General

Assessment of the issues relating to pole attachment must be grounded in the specific market dynamics in Grand Cayman and must be guided by the Interconnection and Infrastructure Sharing Regulations, 2003. "Infrastructure Sharing:" is defined in the Regulations as the provision to licensees of access to tangibles used in connection with a public ICT network.....and, for the avoidance of doubt, tangibles includes.....poles..... Therefore pole access and joint pole usage fall directly within the scope of the Regulations and the Working Group must necessarily be guided by its principles.

In practice in the shape of the ubiquitous Caribbean Utliites Company (CUC) pole estate there is a single existing provider of the physical access infrastructure needed to deploy high speed fixed broadband. There are high barriers to entry in terms of cost and speed of deployment and also potential issues of consents and wayleaves. The fact that two of the telecoms operators already have access to the CUC poles at much

less than the full cost of pole deployment would give them a structural economic advantage as against a telecoms operator who had to build a pole network which could match CUC's.

CUC is a regulated entity in its "home" market of electricity. The infrastructure which is the subject of this initiative has been built and paid for within that regulatory framework.

CUC is not a neutral actor in this matter it is vertically integrated with Datalink who are already on the CUC poles. Unduly complicated processes for new "attachers" obviously benefits this vertically integrated player. A similar dynamic exists for CWC who are also in situ and for whom processes which delay market entry by new entrants shields them from competition.

Grand Cayman is a relatively small market with stable population development. This means that the issue of pole access is in the very large part concerned with access to existing assets. The scope of the access required is well defined encompassing approximately 14,370 existing CUC poles which have not already been made ready for sharing.

The various operators all have obligations to reach high levels of network deployment. This means that it is likely that for the majority of the CUC network there will be 3 if not 4 telecoms operators seeking pole access. The timelines for these obligations and the defined size of the pole estate in question mean that for the most part implementing the access across the island can be treated as a single project rather than a process where there is organic network growth and service deployment.

Access Pricing

Regulation 6(h) of the Interconnection and Infrastructure Sharing Regulations provides that interconnection and infrastructure sharing rates shall be cost-oriented and shall be set to allow the responder to recover a reasonable rate of return on its capital appropriately employed, all attributable operating expenditures, depreciation and a proportionate contribution towards the responder's fixed and common costs.

Datalink's presentation explicitly justifies its proposed pricing methodology on the basis that it is "US Market Based". It offers no objective justification as to why this US market based approach is appropriate or relevant to market conditions in Grand Cayman.

With or without pole sharing, the entire height of the pole is required by CUC to provide its electricity service.

The costs associated with the poles are already entirely recovered within CUC's regulated prices for electricity. These costs are recovered whether or not there is any pole sharing. CUC's proposal conveniently omits this fact.

The capital cost of the entire height of the pole is attributable to CUC's electricity business. The entire height of the pole must be maintained by CUC on an opex basis. In general, poles used solely for telecommunications are lighter and cheaper than those used for electricity distribution which are engineered to a higher standard.

There is no proposal for CUC to deploy additional pole capacity on a significant basis to support pole sharing. In the vast majority of cases, what is, in fact, required is access to space on existing poles which

have been installed for CUC's own purposes for electricity distribution, the cost of which has already been fully recovered by way of regulated retail pricing in the electricity sector.

In CUC's case, the attachment of telecommunications cables causes no incremental requirement to augment the poles in terms of either height or strength. Any incremental capital cost relates only to the direct cost of attaching the cables to the poles.

In terms of cost causation, allowing CUC to recover more than the incremental cost of attaching the cables is to allow them a double recovery of the same costs.

In addition this "windfall" for CUC must be borne by the telecoms providers. For most operators, this is a real cost on top of which they must make a margin. However in the case of CUC and Datalink, the "cost" to Datalink is revenue to CUC. Datalink need make no margin on this as the margin is made by CUC. This is sheltered from competition in the competitive telecoms market by moving it to the monopolistic upstream infrastructure market. Allowing this leveraging of CUC/Datalink's vertical integration will undermine sustainable competition in the telecoms market.

There has been no discussion as to how CUC might pass through any asset cost recovery in gains from pole attachment pricing into its retail electricity pricing.

Pricing pole attachment on the basis of direct incremental costs (and excluding asset cost costs from the pricing) does not require the electricity end-user to subsidise the telecoms end-user. This is because the directly caused incremental costs are recovered at the wholesale level and there is no net change in the cost base of the electricity business which is already fully recovered.

However allowing CUC to price pole attachment to recover asset costs which have a causation entirely attributable to electricity distribution and passing this through to retail electricity and telecoms pricing forces a cross subsidisation of electricity users by telecoms users.

There is already ubiquitous electricity distribution in Grand Cayman. The policy objective is to promote competitive fixed broadband deployment which is not ubiquitous. Forcing additional costs into the telecoms sector by requiring it to cross subsidise electricity distribution does not align with the policy goal.

From a policy perspective, therefore, the optimum approach is clear. Adopt a pricing regime which is neutral to the electricity sector while not burdening the telecoms sector with costs which are unrelated to the provision of the wholesale pole sharing service i.e. allow CUC to only charge the direct incremental cost of the pole attachment. This is the correct outcome for Grand Cayman market conditions and proposals to use pricing models based on US market conditions are irrelevant.

Pole network "Make Ready" Implementation

Regulation 6(j) makes provision for infrastructure sharing services to be provided in a manner that enables the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner.

Digicel has very serious concerns regarding CUC's proposed timelines for the make ready activity. It proposes a cycle time of some 15 weeks to make ready a batch of 25 poles with a maximum monthly output of 300 poles. In Digicel's opinion, these timelines indicate that either it 1) has a backlog, 2) is

progressing multiple batches in parallel with insufficient resources, 3) is using inefficient work practices or 4) a combination of these.

As outlined above, given the reasonably well define scope of work in making its entire network ready, it would take approximately 4 years for CUC to make its entire network ready. This delay serves to shield both CWC and CUC's downstream arm, Datalink, from additional competition. In addition, it sets a constraint on telecoms operators' ability to commit to roll-out time lines. This outcome would not be consistent with the Regulations.

Given the coverage obligations of telecoms operators, the constrained nature of the size of the pole network in Grand Cayman and the need of all operators to deploy fibre on "trunk" routes before they can serve access branches means that a project based approach to the "make ready" would be more appropriate and efficient.

The fact that CUC allows accredited 3rd party working on its plant facilitates this project based approach as Telecoms operators should be in a position to provide the additional resources required to deliver a quicker make ready deployment. CUC should share the accreditation requirements and the Authority should oversee the accreditation process to ensure that it is prompt. This approach would also benefit CUC in the longer term as it would create a pool of accredited resources that could be drawn on in the event of a disaster recovery situation.

Digicel therefore proposes that Datalink's proposal to use US focussed FCC guidelines for process driven pole attachment should be set aside and a project based approach should be adopted instead.

This should take account of the fact that, within a reasonably short period, most poles will have more than one attachment and on the trunk routes are likely to have very high utilisation factors. A project based approach using 3rd parties would allow for a division of labour model where operators would agree to carry out the make ready for full utilisation on different portions of the pole estate. Protocols could be agreed to avoid jump starts for the actual cable deployment. These could also provide incentives for project delivery e.g. you can't get access to other sections of the made ready pole estate for cable deployment if your own make ready is late.

Cost Recovery and Price Structure of "Make Ready"

Allowing operators to use 3rd parties to carry out the make ready work means that, in effect, they directly fund this activity without it washing through CUC. Provided that an appropriate division of activity can be agreed there would, in fact, be no requirement for CUC to levy any charges for the make ready installation activity. Appropriate terms in the sharing agreement would allow operators the flexibility to treat their expenditure as either opex or capex.

In the alternative, if operators choose to use CUC for the purposes of make ready, then it is Digicel's position that the make ready costs should be amortised over the lifetime of the resulting asset and recovered in the pole attachment charges.

Digicel is of the view that all poles should be made fully ready and that the cost of the make ready averaged across the entire pole estate using a project utilisation factor based on the roll-out commitments of operators.

Given the dynamics of the Grand Cayman market a "committed update" provision in the sharing agreement with payments specified in lieu of uptake would fully mitigate any cost recovery risk for CUC.

Summary

The policy driver behind the Authority's initiative on pole attachment is to facilitate the early and widest rollout of competing fixed broadband networks. Digicel's preference is for an agreed way forward as this has the best chance of balancing the business imperatives of all parties in the shortest time. However, if such an agreed outcome is not likely to be attained in a reasonably short defined timeline then we would look to the Authority to promptly intervene to mandate an outcome which seeks to deliver on the policy objective above.

Yours Sincerely,

Martin Bould
Chief Executive Officer
Digicel Cayman Ltd.