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Utility Regulation and Competition Office

# Infrastructure Sharing Dispute (Towers) Logic and Flow

ICT Determination 2025-1-Logic Flow Re:Towers

Issue Date 31 January 2025



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## Executive Summary

1. On **16 February 2023**, the Utility Regulation and Competition Office (the '**Office**') became aware of a possible infrastructure sharing issue between Cable and Wireless (Cayman Islands) Limited, trading as Flow ('**Flow**'), and WestTel Limited, trading as Logic ('**Logic**'), collectively referred to as '**the Parties**'.
2. As presented by Logic, the issues related to submitted delays surrounding Logic's request to share Flow's communication tower infrastructure that, in Logic's view, ultimately resulted in a response to Logic's request not being provided within a reasonable timeframe.
3. Having been copied on a number of communications between the Parties regarding the infrastructure sharing request, the Office reviewed the various communications and decided to initiate an investigation into the matter to ascertain whether the process between the Parties complied with the Utility Regulation and Competition Act (2021 Revision- now 2024 Revision) (the '**URC Act**'), The Information and Communications Technology Act (2019 Revision) (the '**ICT Act**') and The ICTA (Interconnection and Infrastructure Sharing) Regulations, 2003 (the '**INI Regulations**') and the terms of the ICT Licences held by the Parties.
4. On **25 March 2023**, the Office notified the Parties that, pursuant to Section 67A of the ICT Act, it was declaring a dispute between the Parties, initiating an own motion investigation in order to resolve the issues and where appropriate issue a determination.
5. The Office requested copies of certain information from both Parties which the Office subsequently reviewed in detail.
6. The Office also convened several meetings with both Parties.
7. As an initial step, the Office agreed with the Parties on a date (**27 April 2023**) by which Flow must provide its material response to Logic regarding the request to share tower infrastructure.
8. Flow provided its response to Logic on **27 April 2023**, which confirmed Flow's position that it did not have sufficient information about its own infrastructure to provide a clear answer to Logic on whether it could share its infrastructure.
9. To seek further clarity on Flow's position, the Office issued several additional requests for information to Flow.

10. Having completed its review of the responses received, the Office's preliminary findings were that:
  - Flow does not hold reasonably sufficient information necessary to operate, manage, maintain, and ensure the safe operation of its communication tower infrastructure.
  - Flow does not hold reasonably sufficient information to enable it to respond in a timely and accurate manner to the Office's information requirements.
  - Both parties did not comply with various processes in the INI Regulations, which led to lengthy delays. Notwithstanding this, it appeared that Flow's failures were substantially greater.
11. On **02 July 2023**, the Office's initial findings, as summarised above, were shared with the Parties in a Draft Investigation Report, in which the Office identified approaches that it considered necessary to resolve the dispute and answer the question of whether Logic can access Flow's towers. Responses from the Parties were submitted to the Office on **18 July 2023**.
12. On **25 August 2023**, having confirmed that Flow was not in possession of the Original Manufacturers Specifications for the towers in question, the Office issued to Flow a Directive pursuant to section 67A(2) ICT Law to Take Immediate Action (the '**Directive**'), which included providing the Office with certain information on structural integrity, general safety and ability to provide access to Logic. Flow complied with the Directive on **14 November 2023**.
13. As part of the 14 November 2023 communications, Flow notified the Office and Logic that, based on the findings of its structural assessment of the various towers, Flow was unable to provide Logic with access to the towers for two main reasons:
  1. of the six towers in question, based on the safety standards Flow applied to its own towers, Flow could not provide access to five of the towers because the towers could not accommodate the additional load due to the windspeed threshold being exceeded; and that,
  2. the remaining space on one tower, is unavailable to share with Logic because Flow has plans to use the available space for its future intended use.
14. Having reviewed the 14 November 2023 submissions from Flow, the Office issued further requests for information in order to seek greater clarity on the information received.

15. On **7 February 2024**, the Office was copied in on correspondence where Logic sent a letter to Flow stating its objection to Flow's 14 November 2023 response to Logic's Infrastructure Sharing request. Flow provided a response to Logic on **13 February 2024**.
16. The Office concluded its investigation and proposed several determinations which were set out in the Investigation and Draft Determination shared with the parties on **17 April 2024**.
17. The Office received the Parties' responses to the Investigation and Draft Determination on **17 May 2024**. The Parties then had the opportunity to review one another's submissions and make cross-comments. The Parties' cross-comments were received on **28 June 2024**.
18. After review of the responses and cross-comments, the Office sent a number of requests for information ('**RFIs**') to the Parties, including to Flow on **26 July 2024**, regarding Flow's activities after 25 August 2023 on the towers in question.
19. Flow responded to that 26 July 2024 RFI on **9 August 2024** providing information on the activities that had taken place and explaining that such activities were as a consequence in confusion as to the naming of the relevant towers.

## Investigation Process

20. Guided by Section 67A of the ICT Act, the process which the Office followed in undertaking this investigation included the following steps:

- a) Collect all information, documentation and data related to the request to share infrastructure.
- b) Identify all issues related to the request to share infrastructure and, ultimately the dispute.
- c) Identify all relevant processes or activities, departments, affiliates or agents, including identification of individuals responsible for and otherwise involved in receiving, processing and actioning the request to share infrastructure and their activities to date.
- d) Identify and agree on the next steps required to advance the Logic request, with the result being that Flow provides a response that is compliant with the relevant law, regulations and license obligations.
- e) Make agreements or issue any determinations, directives, or recommendations that the Office considers appropriate to remedy any issues identified.
- f) Consider and determine through the appropriate process whether any party has contravened any obligation and whether any administrative fines or other remedy should be levied on any Party where it is appropriate to do so.

## Applicable Acts

21. The Office is guided by its statutory remit, particularly as set out in the URC Act, the ICT Act and the INI Regulations. In considering this dispute, the Office was guided in particular by the following laws and regulations:

- a) **The URC Act**, particularly:
  - Section 6. (1) (b) (c) (d), 6. (2) (d) (w) (cc) (gg) (hh), 6. (4) (a) (b) (c) (d) (e) (f) (g)
  - Section 87. (1) (a), (c), (d)
- b) **The ICT Act**, particularly:
  - Section 2. (a), (b)
  - Section 9. (3) (a), (g), (h), 9. (4)
  - Section 65. (1), (2), (3), (4), (5), (6)
  - Section 67. (1), (2), (3)
  - Section 67A. (1), (2), (3), (4), (5)
  - Section 68. (1), (3)
  - Section 69. (2) (b), (3) (a) (b) (c)
- c) **The INI Regulations**, particularly:
  - Regulation 2.

Regulation 3.  
Regulation 4. (1), (3) (a) (b)  
Regulation 5.  
Regulation 6. (a), (b), (c), (d), (f), (g), (h), (j) (i) (ii) (iii), (k)  
Regulation 8. (1), (2), (3), (4), (5), (6), (7), (8), (11) (d)  
Regulation 9.  
Regulation 10. (1) (a) (b) (e)  
Regulation 30

22. The referenced provisions of the URC Act, ICT Act, and INI Regulations are reproduced in full in **APPENDIX 1**, attached to this document.

## The Parties

23. Logic was first licensed by the Office's predecessor – the Information and Communications Technology Authority ('**ICTA**') in October 2003. Logic's ICT Licence was subsequently renewed in 2021 by the Office. Logic is a fixed network operator providing fixed voice, internet, and video services in the Cayman Islands. It has built various ICT facilities across the country, including its own tower and underground duct infrastructure and has rights to attach to many of the utility poles owned by the electric utility and towers owned by other ICT licensees.
24. Flow is the incumbent telecommunications service provider in the Cayman Islands and has been licensed and operating in the country since at least the late 1960's. Flow is a fixed and mobile network operator that provides a full range of voice, internet, and video services. As the incumbent operator in the Cayman Islands, Flow has built and owns considerable ICT facilities across the country, including both an extensive tower and underground duct infrastructure. Flow also has the right to attach to many of the utility poles owned by the electric utility and towers owned by other ICT licensees.
25. Flow also had several affiliates (these are not local licensees or local entities) involved in the infrastructure sharing process:
- I. Cable and Wireless Communications, Carrier Services ('**CWC-CS**')
  - II. Cable and Wireless Communications, Regulatory and Finance ('**CWC-R&F**')
  - III. Cable and Wireless Communications, Northern Cluster ('**CWC-NC**')
  - IV. Liberty Latin America, Mobile Radio Engineering ('**LLA-MR**')
  - V. Liberty Latin America, Regulatory & Government Affairs ('**LLA – R&G**')



## Flow Internal Emails

26. The table below references several key internal emails provided to the Office on **13 April 2023** by Flow.

27. These Flow internal emails are in **Schedule 1** attached.

<b>Date/ Doc</b>	<b>From</b>	<b>To</b>	<b>Summary of comments in email</b>	<b>Office's Observations and General Comments</b>
06 Oct 2021 Doc 1	CWC-R&F	CWC-CS	Discussion to not reference INI Regulations in email to Logic	The INI Regulations govern the sharing of infrastructure as required by law and license obligations. Therefore, it is reasonable to refer to the INI Regulations in communications regarding Infrastructure Sharing.
21 Oct 2021 Doc 2	CWC-CS	CWC-R&F	Confirming what the \$2000 payment covers	Carrier Services, being the process owner/ point of contact with other licensees for Infrastructure Sharing requests, was unaware of the entire process.
18 Feb 2022 Doc 3	Flow	LLA-MR	Southside Bluff looks ok physically, checking RF Team	In Feb 2022, this tower had sufficient space to accommodate Logic, but in Nov 2023, Flow stated they would need the space as they had plans for the tower, which were known from February 2017 as stated in Flow's letter to Office on 20 December 2024
18 May 2022 Doc 4	LLA-MR	CWC-CS	Last week, in a meeting, we discussed stopping collocation approvals to Logic	Denial of infrastructure sharing request if so done for reasons unrelated to the request/infrastructure, would be contrary to law.
24 May 2022 Doc 5	CWC-NC	CWC-CS	Point clarifying no intention to stop approvals to collocate but rather that Flow was evaluating Logic's request in view of another matter related to spectrum previously assigned to Logic	As per above, the INI Regulations do not allow for a spectrum assignment to a requestor to be taken into consideration as a part of the responders' review of a request for Infrastructure Sharing.
18 Aug 2022 Doc 6	CWC-CS	Flow	Reference to email from Logic; requesting confirmation on the way forward	-
06 Sept 2022 Doc 7	CWC-CS	Flow	Notification of chasing email from Logic and highlighting need for urgent response in order to respond to Logic.	-
06 Sept 2022 Doc 8	Flow	CWC-CS	Discussion on site visits being "completed weeks ago", noting that nothing more required from local Flow team. Comment of being surprised that more work was being required before approvals could be made	Both Logic and Flow were awaiting each other, whilst Flow's internal team in Cayman and Flow's Carrier Services were both unaware of the next step.
09 Sept 2022 Doc 9	LLA-MR	CWC-CS	Instruction to include further requests for information from Logic	The INI Regulations require that within 14 days of acknowledging a request that the requestor be advised of the need for further information. This information request should have been shared much earlier than it was.
13 Feb 2023 Doc 10	LLA-MR	CWC-CS	Comments on status of agreement and need to send an engineer to do a proper site survey and load analysis to confirm whether the tower can support additional antennas.	Had flow's process been properly set out to meet the INI Regulations and followed by their internal resources, Logic would have been notified of this step at the start of the process.

## Key Chronology

28. The Documents referenced in this section can be located in **Schedule 2** attached.
29. On **2 July 2023**, the Office shared a Draft Investigation Report [See **Schedule 2 – Doc 1**] with the Parties for their review and comments. In the Draft Investigation Report, the Office identified approaches that it considered necessary to resolve the dispute and answer the question of whether Logic could be accommodated on the Flow towers in question. Responses [See **Schedule 2 – Doc 2 & Doc 3**] from the Parties were received on **18 July 2023**.
30. On **4 August 2023**, the Office sent a Request for Information [See **Schedule 2 – Doc 4**] to Flow, asking for certain “*AS Built*” documents referenced in the Flow 18 July 2023 response to the 02 July 2023 Draft Investigation Report. Flow provided the requested documents on **8 August 2023**.
31. On **25 August 2023**, the Office issued a Directive to Take Immediate Action [See **Schedule 2 – Doc 5**] directing Flow to,
  1. at its own cost, obtain certain information which Flow did not have in its possession;
  2. provide Logic with the costs associated with determining whether the Logic infrastructure sharing request could be accommodated; and,
  3. confirm to the Office that Flow’s towers were being operated in a safe manner, and to refrain from attaching additional apparatus to the towers in question.
32. On **14 November 2023**, Flow provided the Office with copies of Structural Evaluation Reports and an affidavit attesting to the safety of the towers in question. Flow also provided a response to Logic regarding Logic’s infrastructure sharing request denying access to all towers in question. Logic responded to Flow on **30 November 2023** [See **Schedule 2 Doc 6**].
33. On **6 December 2023**, the Office wrote to Flow [See **Schedule 2 – Doc 7**] seeking clarification about the certification status of the engineers who produced Structural Evaluation Reports on the towers, additional documentation in support of Flow’s future plans for their use of the tower at Southside Bluff in Cayman Brac, and the industry standards or industry practices referred to by Mrs. Cristina Spratt in her sworn certification submitted to the Office on 14 November 2023. Flow provided its responses [See **Schedule 2 – Doc 8**] on **20 December 2023**.
34. On **7 February 2024**, Logic submitted a formal objection to Flow’s refusal to share its tower infrastructure [See **Schedule 2 – Doc 9**].

35. On **7 February 2024**, the Office received a letter from Flow [See **Schedule 2 – Doc 10**] requesting that the Office revoke or amend the 25 August 2023 Directive to Take Immediate Action – specifically the directive to refrain from attaching additional apparatus to any of its towers related to this matter.
36. On **13 February 2024**, Flow responded to Logic’s objection to the refusal to share infrastructure. [See **Schedule 2 – Doc 11**].
37. On **15 February 2024**, the Office replied to Flow’s letter of 7 February 2024, stating that the Office was currently finalizing its investigation report and determinations and that the same would be communicated to the parties in due course.
38. On **16 April 2024**, the Office shared its Investigation and Draft Determination with the parties for their comments, with a response deadline of **17 May 2024** (**Draft Determination**’).
39. On **13 May 2024**, the Office received a letter from Logic regarding “*Flow’s Upgrade Activities*”.
40. On **17 May 2024**, both parties submitted their responses.
41. On **11 June 2024**, the Office sent Flow an RFI letter regarding Flow’s maintenance and work activities on the towers in question. Flow submitted a partial response on **26 June 2024** and a further response on **22 July 2024**.
42. On **13 June 2024**, the Office allowed the parties to make cross-comments on their submissions. The parties’ cross-comments were received on **28 June 2024**.
43. On **26 July 2024**, the Office sent Flow an RFI regarding Flow’s activity since 25 August 2023 on the towers in question.
44. On **9 August 2024** Flow responded to the RFI providing information on the activities that had taken place and explaining that such activities were as a consequence in confusion as to the naming of the relevant towers.

## Responses and Cross-comments to the Investigation and Draft Determination, the Office's Comments and Conclusions

45. In responding to the Office's Investigation and Draft Determination, the Parties provided comment on the various observations, analysis and conclusions and proposed actions to be taken by the Office.
46. Summarised below are the Parties' key responses and cross-comments along with the Office's comments and conclusions. As the Parties' responses do not adopt a common structure, the Office has endeavoured to capture and respond to the material elements of each. [See **Schedule 3 – Doc 10 to Doc 13** for complete responses and cross-comments.]
47. The Documents referenced in this section can be located in **Schedule 3** attached.
48. To note, where appropriate to do so, the responses and cross-comments may be used at a later date and in a separate regulatory process whereby the Office seeks to establish greater efficiency, clarity and accountability in the infrastructure sharing process generally. The Parties will be accordingly informed if this is the case.

## Logic

### Logic's Responses to the Investigation and Draft Determination

#### 49. Logic's Response

Logic stated that: *"...given that this matter has been before the Office from February 2023, Logic has not been afforded the opportunity to negotiate in good faith with Flow as there have been consistent delays in addressing these issues and Flow taking the obligations under the regulations seriously."*

#### 50. Office's Comments and Conclusion

The Office's position is that a matter being before the Office does not preclude the Parties from negotiating in good faith to reach a resolution of that matter between themselves. By way of support, the Office facilitated a meeting with the Parties where agreement was reached that Flow would provide Logic with a response to Logic's infrastructure sharing requests by 27 April 2023.

#### 51. Logic's Response

Logic requested regarding the current state of disrepair of the six [6] towers in question that: *"... stricter and shorter timelines be implemented for Flow's compliance", "Flow would be granted a period of 136 days to take remedial steps to remedy the issues on the towers"* and since the report on the infrastructural standing of the towers had already been addressed by Neptuno, *"Flow now should be compelled to address the defective issues on the towers in a shorter timeframe of 45 days instead of 90 days."*

Logic then stated that: *"[a] lengthy timeframe of 90 days after a period of 46 days to facilitate the preparation of the action plan, emboldens further anti-competitive practices to the detriment of Logic. This timeframe also denies the inhabitants of the Cayman Islands, the choice of alternative internet service providers."*

#### 52. Office's Comments and Conclusion

The Office considers that the timeframes provided for in the Draft Determination, and as confirmed in this Determination, are as provided for at section 6 (4) of URC Act, namely reasonable and proportionate in the given circumstances. Flow will need the time proposed to plan and then undertake the identified work necessary to remediate the identified issues.

53. Logic's Response

Logic stated: *"...given that it was Logic's requests for infrastructure sharing that led to this investigation, we request Logic's requests be reviewed upon the completion of the remedial works to the towers within 14 days of the completion of the remedial works to the towers" and that, "Logic requests of the Office to implement measures to prevent a further recurrence of these practices by Flow or any other operator in the industry in the Cayman Islands."*

54. Office's Comment and Conclusion

As set out in paragraphs 69 to 75 of the Draft Determination, the INI Regulations state that a responder shall not refuse to provide infrastructure sharing services except where: there is insufficient capacity, taking into account its reasonably anticipated requirements; and/or such provision would create a technical or engineering difficulty that could not be reasonably addressed. As mentioned in those paragraphs, the Office considers that there are no reasonable remedial steps identified that can be provided that would not create a technical or engineering difficulty, noting that the current loads or proposed additional loads on five of the towers do not allow for additional attachments at this time. This is not to say, however, that the current load or the proposed additional loads on the towers will not change over time, and the Office reserves its position to revisit its consideration of the referenced five towers at an appropriate time.

55. Logic's Response

Logic stated that: *"is of the view that 90 days taken to conduct the remedial works noted in paragraph 10 of Page 38 of the Draft Determination puts Logic at a further disadvantage. We urge the Office to consider a period of 45 days as Flow has had this information on hand to remedy the defects on the towers."*

56. Office's Comments and Conclusion

As the proposed remedial works are related to safety matters rather than to address the ability of the Flow towers to accommodate Logic's infrastructure, the Office cannot see where the length of time taken to complete the remedial works will disadvantage Logic.

57. Logic's Response

Logic requested: *"the Office to consider what penalties or mediating measures will be put in place for all licenses if the timelines continue to not be adhered to set out in INI regulations are not adhered to?"*

58. Office's Comments and Conclusion

The Office has various powers regarding the issuance of administrative fines and/or mediating measures, as set out in its regulatory framework. Any exercise of such powers is to be assessed on a case-by-case basis, and whether the Office acts and how it may act in a particular given situation will depend on the facts under consideration.

59. Logic's Response

Logic also requested: *"whether, in the remedial reports that are being produced by Flow, assessments can be done as to whether the towers would be able to accommodate additional equipment being requested by Logic for the purposes of infrastructure sharing arrangements between the two licensees."*

60. Office's Comments and Conclusion

As mentioned in paragraph 54 above, the Office considers that there are no reasonable remedial steps currently identified that can be provided that would not create a technical or engineering difficulty. For the purposes of this dispute, Logic is free to enter into commercial negotiations with Flow, should Flow be minded to do so.

61. Logic's Response

Logic noted that: *"in paragraphs 4 and 5 of page 38 of the draft Determination that the Office determines that Flow shall grant access to the Southside Bluff tower to Logic. Logic requests whether this grant for access is immediate."*

62. Office's Comments and Conclusion

The Office requires that Flow provide Logic with the determined access to Southside Bluff Tower within 46 days of this Determination, which the Office considers appropriate to allow Flow the time to make the necessary safety updates.

63. Logic's Response

Logic enquired that: *"Paragraph 8 of page 38 of the draft Determination notes the state of disrepair of Flow towers, detailed in Neptuno reports, creates a safety risk to personnel tasked to work on the towers, damage risk to antennas and other equipment attached to the towers including those owned by third party operators and creates a risk of outages to ICT services and ICT Networks reliant on the proper functioning of the towers. Logic enquires as to whether Flow will be fined for its inaction in maintaining the facilities."*

64. Office's Comments and Conclusion

The Office notes Logic's response. The Office, having concluded its review of the facts and information before it may take any other action it considers appropriate based on the information before it.

65. Logic's Response

Logic noted that: *"the Office has instructed Flow to develop a tower sharing application process guide which details the reasonable and anticipated steps and actions to be followed by both Flow and applicants. What is the stipulated timeline for the implementation of these processes?"*

66. Office's Comments and Conclusion

As set out in this Determination, Flow has 90 days by when to develop or update its internal processes and develop a tower sharing application process guide.

67. Logic's Response

On future capacity planning arrangements, Logic stated that: *"the current condition of Flow's cellular towers, it is essential for Flow and all licensees to transparently share their future capacity plans with OfReg whenever they want to upgrade their equipment. Flow and all licensees should include a detailed cell tower load analysis. Also in cases where licensees are sharing a tower, those on the tower should be advised as well. This protocol will enhance public safety and safeguard the assets of all stakeholders using the tower. The report should include assessments of structural integrity, the tower's lifespan, hurricane resilience post-upgrades, the radio frequency characteristics of equipment, types of transmitters and other equipment, environmental impact, and records of previous maintenance."*

68. Office's Comments and Conclusion

The Office notes Logic's comment. Any future work which the Office may undertake to strengthen the regulatory plan and framework in these areas will include the appropriate processes to ensure input from relevant stakeholders is considered.



## Logic's Cross-comments on Flow Responses to the Investigation and Draft Determination

### 69. Logic's Cross-comment:

*Logic is open to considering what expenses need to be paid to facilitate its infrastructure on the towers owned by Flow. Clause 3(b) of the Infrastructure Sharing Regulations noted:*

*A responder shall not refuse to provide infrastructure sharing services except where:*

*(b) such provisions would create a technical or engineering difficulty that could not be reasonably addressed.*

*Flow has provided reasons as to why the technical or engineering facilities on the towers cannot be reinforced to withstand high windspeeds. Logic is willing to discuss the expenses with Flow to see whether it can be accommodated. However, it would be in breach of the Infrastructure Sharing Regulations if Flow is to reject Logic's requests without detailing the technical and engineering reasons why Logic's facilities cannot be accommodated.*

### 70. Office's Comments and Conclusion

See the Office's comments in paragraph 54 above

### 71. Logic's Cross-comment

*Further to the point made at paragraph 2 herein, Flow cannot draw the conclusion about a purported concession by the Office that it should remove the towers. It is for Flow pursuant to the regulations to see what accommodations can be made to facilitate other operators on its towers.*

### 72. Office's Comments and Conclusion

The Office is not aware of "a purported concession by the Office that it [Flow] should remove the towers".

As the Office explained in paragraph 54 above, it is a matter of whether the lack of capacity can be "reasonably addressed". Based on the information currently before the Office, it is the opinion of the Office that the lack of capacity at the five sites where the Structural Analysis performed by Neptuno showed that the towers in question would fail the 150 MPH standard cannot at this time be reasonably addressed. The Office considers that the results from the Structural Analysis are sound, meaning that it would

not be reasonable to expect Flow to seek to make accommodations for Logic at this time. Note that the Office considers the Flow 150 MPH standard reasonable as it is in alignment with the Basic Wind Speed as set out in TB 0001-May 2020 from the Department of Planning<sup>1</sup>.

73. Logic's Cross-comment

*It is Logic's position that it is within the Office's authority to query the status of the towers given that Flow is unable to account for information about the design of the towers. Flow cannot assert that it has given proper consideration, as a responder, to deny access to WestTel when there is insufficient information to determine to the true capacity of its towers and whether in fact the facilities are being sufficiently managed by Flow as a licensee. Flow should not be allowed to come a unilateral position regarding 'reasonably anticipated'. It for the Office to determine whether Flow's position to deny Logic assess, is reasonable considering other factors such as Flow's obligations noted under its licence.*

74. Office's Comments and Conclusion

As a result of the Office's **25 August 2023** Directive, Flow's contractor Neptuno completed the necessary Structural Analysis, the resulting 6 (six) reports provided to the Office were a part of the information considered by the Office in making this Determination.

75. Logic's Cross-comment

*Flow's inability to provide this information and noting that it is not under an obligation to facilitate a responder considering its 'reasonably anticipated requirements', is in breach of the INI regulations and should be fined for its anti-competitive actions. Additionally, it was raised with the Office on the 13<sup>th</sup> of May, 2024 that Flow has been recently launched 5G services within the Cayman Islands. WestTel has made enquiries as to the Office's position on these actions of the licensee.*

*The Office's silence on Flow's actions are concerning given that it was noted in the regulations that Flow was not to make any changes to its infrastructure but have conducted upgrades to its network, seemingly unchecked by the Office. WestTel stands corrected if in fact there were no changes made to the network to facilitate the launch of 5G services by Flow. However, if these actions were conducted by Flow, WestTel will be taking further steps to determine how this could be facilitated in light of a position issued by the Office to both operators. The Office has not provided a*

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<sup>1</sup> TB 0001-May 2020 - <https://www.planning.ky/wp-content/uploads/docs/TB0001-Design-Criteria-for-the-2016-Cayman-Island-Building-Codes.pdf>

*position on Flow's conduct which unfortunately, enables the persistent anti-competitive activities that reduces investment into the ICT infrastructure in the Cayman Islands.*

76. Office's Comments and Conclusion

The Office, having concluded its review of the facts and information before it, may take any other action it considers appropriate based on the information before it.

77. Logic's Cross-comment

*Additionally, Flow should not be allowed to consider whether they can do an assessment of its towers in a period of 46 days. Such conduct appears to not take the Office seriously and it appears as though Flow is conducting this as a commercial negotiation rather than an obligation to comply with the terms of licence and the laws of the Cayman Islands. Given that this investigation has been ongoing for almost a year, Flow should be able to readily comply and provide the necessary information to bring this matter to an end. Neptuno has already done a review of the towers and should be available to provide the necessary guidance and information needed to complete this investigation.*

78. Office's Comments and Conclusion

The Office considers that the period of 46 days of this Determination by when Flow is to confirm to the Office its current space utilisation of its towers is appropriate, in particular noting the work that is needed to be done along with the safety work (e.g. arrange the inspection, undertake the inspection once the safety work on the particular tower is finalised and then draft the report to send to the Office).

## Flow

### Flow's Responses to the Investigation and Draft Determination

#### 79. Flow's Response

Flow raised issues of confidentiality, in that: *“All information submitted to the Office by Flow since the Office declared a dispute between Flow and Logic was submitted under confidential and privileged cover. Therefore, in accordance with the ICTA (Confidentiality) Regulation 2023, none of the documents submitted by Flow, can, in whole or in part, be published or otherwise disclosed by the Office in the Draft Determination or the Final Determination.*

*Flow's study of the document has however revealed disclosure of confidential and privileged information which has not been identified for redacting for the public version. Therefore, for the public version, the Office is to redact the following information:*

*i. 'Flow's Internal Emails': 'Summary of comments in email' - pg.7 Draft Determination*

*ii. All Flow emails: pg. 17 Draft Determination*

*iii. Extract of Neptuno Report: pgs. 21 – 26 Draft Determination*

*iv. All Flow's emails: pgs. 31 -36 Draft Determination*

*Notwithstanding that Flow has identified information to be redacted, the duty is the Office's to exercise due care in maintaining the confidentiality of Flow's submissions.”*

#### 80. Office's Comments and Conclusion

Flow, having *“been operating under the ICT Act for approximately twenty (20) years”*, must be aware that if a respondent chooses to file any information in confidence with the Office, it should, ***at the time of making its filing***, also file redacted versions for the public record along with the reasons for each confidentiality claim and the other requirements for confidentiality claims as specified in **section 107** of the URC Act and in the Information and Communications Technology Authority (Confidentiality) Regulations 2003 particularly **Regulations 4 (1) (b) and (c)** of those Regulations which set out what needs to be included in such a request.

The submissions by Flow have not met the requirements set out above. In particular, the Office notes that each RFI sent to Flow contained the following requirements:

*“If Flow chooses to file any information in confidence with the Office, it must, at the time of making the filing, also file redacted versions for the public record along with the reasons for each confidentiality claim and the other requirements for confidentiality claims as specified in section 107 of the URC Act and in the*

*Information and Communications Technology Authority (Confidentiality) Regulations 2003. The Office refers Flow particularly to Regulations 4(1)(b) and (c) of the Confidentiality Regulations, which set out what needs to be included in such a request.”*

As Flow did not meet the statutory confidentiality requirements the Office considers the information provided by Flow as part of this regulatory process non-confidential.

In any event, the Office does not consider that the information identified by Flow is confidential because:

- a) The towers and the equipment mounted on each of the towers are visible from outside the perimeter fence of each site,
- b) The status of the towers and the equipment mounted on the towers is plainly visible from outside the perimeter fence, e.g. a rusted climb ladder,
- c) The Office is obligated to protect the interests of other licensees and ensure the safety of the public,
- d) The Office has a duty to publish such information as it deems is of public interest.

Notwithstanding this, the Office has redacted certain information where it felt that the information concerned was not in the public interest.

#### 81. Flow's Response

*Flow was mandated to share its towers and other providers co-locate on Flow's towers because it is considered less expensive to co-locate on Flow's towers than for other operators to build their own towers and this is the intent of the ICT Act and INI Regulations. This is called the build vs. buy model.*

#### 82. Office's Comment and Conclusion

The Office notes that the obligation to share ICT Infrastructure is one shared by all ICT Licensees pursuant to the regulatory framework and is not limited to Flow. Indeed, the Office notes that Flow also has its infrastructure mounted on the towers of other ICT Licensees.

#### 83. Flow's Response

*Flow stated that: “Neither the URC Act, the ICT Act or the INI Regulations propose any specification for the build of towers for the reason that it is recognised that such financial decisions are outside the purview of policymakers and regulators.”*

84. Office's Comment and Conclusion

The Office strongly disagrees with Flow's statement. In particular, section 6. (2) (t) of the URC Act sets out that the Office may "*establish technical standards for the provision of covered services*". Further, Licence Condition of Flow's ICT Licence<sup>2</sup> states that Flow: "*shall comply at all times with relevant standards and/or specifications established by the Office to establish, operate and manage the Licensed ICT Networks (including ICT Network equipment) and/or provide the Licensed ICT Services.*" Therefore, the Office considers that the setting of standards for the specifications of towers sits squarely within the purview of the Office. That the Office has not established a specific standard does not follow that it may not do so, if it sees fit, in the future.

85. Flow's Response

Flow submitted that: "*Therefore, based on the table in paragraph 60 of the Draft Determination, it is obvious that it is the mandated requirement to share, and co-location on Flow's towers that is causing the failure of the existing Flow towers to achieve 150mph or close the gap.*"

86. Office's Comment and Conclusion

The Office's view is that in 2019, when Flow self-imposed the 150MPH standard, Flow already had longstanding agreements for sharing its towers with other licensees and should have taken this into consideration when planning the tower loads.

87. Flow's Response

Flow stated that: "*We are of the view that the failure of the existing Flow towers to attain the 150mph windspeed is not due to Flow's fault, but rather due to a regulatory framework that emphasizes competition and ignored the limitations of leasing tower infrastructure built to facilitate the business of only one (1) operator, Flow, versus operators building their own towers for their own use and purpose. We submit that this is a failure of the regulatory framework and if not considered a failure of the regulatory framework, it must be considered at least, as a disadvantage of the build vs. buy model of competition adopted for tower build in the Cayman Islands.*"

88. Office's Comment and Conclusion

The regulatory framework that Flow refers to, including the URC Act and the INI Regulations, serves to benefit all licensees along with promoting the interests of consumers through increasing choice of provider. Flow itself has access to and utilises other ICT Licensees' Infrastructure, particularly other licensees' tower infrastructure. As

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<sup>2</sup> Flow ICT Licence - <https://www.ofreg.ky/viewPDF/documents/cable-and-wireless/2021-08-06-01-34-35-TL-R3-2021CableandWirelessCILtdTelecommunicationsLicenceSigned1622717179.pdf>

the other licensees would have the same obligations as Flow, the Office is unable to ascertain how this regulatory framework specifically disadvantages Flow in this context. The Office also notes its response at paragraph 86 above.

89. Flow's Response

Flow notes that: *"the Office carries a thread throughout the Draft Determination that Flow has failed to discharge its responsibility to parties co-located on its towers or desiring to co-locate on its towers, which Flow refutes. To the contrary, it is the co-location of other providers on Flow's towers that is majorly preventing Flow's towers from achieving windspeed resilience of 150mph, which Flow established for its own towers, and is putting Flow's services at risk should there be a defining hurricane. Based on the foregoing, we are of the view that the risk of service outage that the Office is concerned about is a creation of its own regulatory framework, not Flow.*

*The Office concedes at paragraph 63 of the Draft Determination that "... **Flow currently co-locates with another operator on its towers and this arrangement seemingly contributes to the max windspeed thresholds not being adhered to**". Therefore, realistically, for existing Flow towers to meet 150mph windspeed would require operators co-locating on Flow's towers to remove their equipment from the towers.*

90. Office's Comment and Conclusion

The Office notes that Flow, in its 3 May 2023 response to the Office, stated:

## [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ##

Flow knew that it had *"the **co-location of other providers** on Flow's towers that is majorly preventing Flow's towers from achieving windspeed resilience of 150mph"* [Office emphasis added] in 2019 when it established *"Flow's standard Tower Design Specification"* as these co-location agreements, and indeed also those where Flow accesses other licensees' towers, had already been in place for a significant time.

That being said, the Office has a duty to take such action as it considers necessary to protect the health and safety of the public in relation to utility services, including telecoms. As a consequence, and as referenced in paragraph 54 above, the Office considers that there are no reasonable remedial steps currently identified that can be provided that would not create a technical or engineering difficulty, noting that the current loads on five of the towers do not allow for additional attachments at this time. This is not to say, however, that the current load on the towers will not change over time, and the Office reserves its position to revisit its consideration of the referenced five towers at an appropriate time.

#### 91. Flow's Response

*Flow submitted that: "For transparency, the full report containing both the Structural Evaluation and the Site Surveys were sent to the Office. The Office would note from the submission of the Structural Evaluation, the various technical standards that were used by Neptuno's engineers. As the Office is aware, based on the submission of Neptuno, the towers are structurally sound. Except for one tower, all fail the windspeed test of 150mph with the load proposed by Logic.*

*Per Flow's instruction to Neptuno for its own maintenance programme, Neptuno conducted site surveys and noted the maintenance work required on the towers, per Flow's instructions. It must be noted that the Site Surveys are independent of the Structural Evaluation and did not amplify the Structural Evaluations. Therefore, the Office is mistaken to think that the Site Survey is a part of the Structural Evaluation and that the Site Surveys and its maintenance findings are an unveiling due to the Office's doings as the Office asserts, rather it was based on Flow's instructions to Neptuno. There is therefore no merit to the Office's assertion that "... Flow did not have details of maintenance status and repair needs of its towers. Flow only obtained this information after the Office directed Flow to conduct the necessary surveys to answer questions related to safety and capacity of the towers".*

*Neptuno are experts at doing tower assessments and there is nothing in Neptuno's report that states that any of the Flow towers are unsafe. Flow is not aware of the Office having similar skillsets for the work that Neptuno has done nor has the Office advised Flow that it has engaged its own expert to assess Neptuno's Report or Flow's towers. Accordingly, in our considered view, the Office does not have the competence to determine any of Flow's towers as unsafe. It is evident that the Office has substituted its own words for the expert Neptuno Report.*

*Flow has been operating under the ICT Act for approximately twenty (20) years and at no time have there been any report of Flow's tower infrastructure causing harm to the public, and Flow's services have been continuously available. Flow has a comprehensive process in place that, together with the documentation it maintains,*



*ensures that Flow can operate, manage, maintain, and ensure the safety of its communication tower infrastructure. It is our considered view that based on Flow's track record and Neptuno's report, the Office's damaging conclusion is unfounded and egregiously unreasonable.*

*In light of all of the above, Flow rejects the Office's unsound assessment of the technical information provided by Neptuno and rejects the Office's unsound and damaging assertions."*

## 92. Office's Comment and Conclusion

The Office has considered the information submitted to it, including the substance of the Neptuno reports. Based on the entirety of the reports submitted by Flow, the Office notes that, in particular:

- a) four [4] towers have reports of bad condition or incomplete lightening discharge systems, which should be replaced;
- b) two [2] towers have reports of the safety climb system being in bad condition, which should be replaced;
- c) five [5] towers have reports of bad access ladders, which should be replaced; and,
- d) Southside Bluff tower, except for tower legs, is in an advanced state of rust.

This list is not exhaustive; however, it is based on the reports which Flow shared with the Office.

The Office's draft determinations in the Draft Determination were based solely on the Report from Neptuno (which the Office replicated within the Draft Determination) which the Office consider are relevant.

Further, the Office notes that Flow, in its **20 December 2023** response to the Office, stated: "*The industry standards/ industry practice referred to is ANSI/TIA-222-Rev G.*"

The Office notes that ANSI/TIA-222-Rev G states in Section 14:

### *14.2 Maximum Intervals*

*Maintenance and condition assessment shall be performed as follows:*

- a) *Three-year intervals for guyed masts and five-year intervals for self-supporting structures.*
- b) *After severe wind and /or ice storms or other extreme conditions.*

- c) *Shorter inspection intervals may be required for Class III structures and structures in coastal regions, in corrosive environments, and in areas subject to frequent vandalism.*

The responses received from Flow to the Office's **11 June 2024** RFI regarding Flow's maintenance activity on the towers in question show that some of the same issues reported by Neptuno in the reports shared with the Office on 14 November 2023 were reported by Flow's other contractor Ericsson from as early as 2019.

Of note is that none of the maintenance activity Flow provided documentation on seemed to be activity which would seek to "*recondition the tower [or] monopole*" but rather seemed to be reports of the status or condition.

The Office is of the opinion that properly maintained towers would not require the items needing attention as set out in the Neptuno Report Recommendations "*in order to recondition*" the tower or monopole(s). [Office emphasis added]

93. Flow's Response

Flow stated that: "*Based on Clause 4(3)(a) of the INI Regulations, which clearly provides that "A responder shall not refuse to provide infrastructure sharing services, except where- (a) there is insufficient capacity, taking into account its reasonably anticipated requirements; or ...", we find it incomprehensible that the Office has demanded from Flow, that it shows proof that it intended to deploy South Side Bluff in its rollout of new services before Logic requested to co-locate on the tower. Based on the INI Regulations, Flow has a right to refuse to provide infrastructure sharing services as long as sharing will be detrimental to Flow and prevent Flow from in the future, engaging in its own legitimate and lawful planned activities on its own towers to provide services to its customers in accordance with its License.*

*In any event, Flow is persuaded that the INI Regulations protects its right to refuse co-location at Southside Bluff based on "insufficient capacity taking into account (Flow's) **reasonably anticipated** requirements." [Office emphasis added].*

94. Office's Comment and Conclusion

Flow was provided an opportunity in its **20 December 2023** response to the Office's **6 December 2023** request for "*evidence of Flow's plans for future use of the tower at Southside Bluff in Cayman Brac, at a minimum this evidence should include previous communications regarding engineering plans, business plans, budgets or any other such documents which help to confirm Flow's intentions prior to receiving the infrastructure sharing request from Logic*".

Flow did not provide such evidence for consideration by the Office. The Office does not consider there is before it cogent evidence that Flow had "*anticipated requirements*" to

utilise the space identified on the specific mast. Therefore, the Office maintains and, in this Determination, confirms its position as set out in paragraphs 76 to 98 of the Draft Determination.

95. Flow's Response

Flow submitted that: *"It would be remiss of us if we did not make it categorically clear that Flow does in fact have a process for managing requests to attach to its towers which has worked well with another operator. Notwithstanding, with the passage of time and changes in organizations, a review of processes may become necessary and therefore we have no issues with reviewing our processes to make them better and more efficient. It is also necessary to disaggregate Flow's internal processes from the processes to be provided to customers requesting to co-locate on Flow's towers. Flow will therefore review and optimize its processes as necessary."*

96. Office's Comment and Conclusion

In this regard, the Office notes that in an **8 May 2024** email to the Office, Flow stated:

*"The Draft Determination on Tower Sharing, we believe is also instructive for duct sharing. Flow has started to review its processes for tower sharing, both internal and external."*

The Office commends Flow for this undertaking to review and update its Infrastructure Sharing processes as relates to Towers.

97. Flow's Response

Flow commented that: *"In our view, attributing a larger portion of blame to Flow is unfair. Flow has been complying with the requirements of the INI Regulations*

*We agree with the Office that Flow's failure to meet some of the timelines in the INI Regulations was not due to any ill intent."*

98. Office's Comment and Conclusion

The Office is unable to reconcile the two comments in the first paragraph above. In support of the Office's position as set out is that, in particular:

- a) The number of days for which Logic was awaiting an answer from Flow are much higher than that of the days that Flow was awaiting an answer from Logic, in some cases Flow did not respond to Logic for more than 70 days.
- b) Flow itself admitted that they *"have no issues with reviewing our processes to make them better and more efficient"*

- c) Flow are responsible for numerous contraventions of the INI Regulations as set out in paragraph 19 of the Draft Investigation Report shared with the parties on **2 July 2023**.

99. Flow's Response

*Flow stated that it: "rejects the Office's Draft Determination preventing Flow from attaching to its towers based on Draft Determinations 10 and 11, which respectively address business as usual maintenance and the regulatory framework, which is outside of Flow's control. Therefore, in our view, there is no grounds for the Office to direct Flow to refrain from attaching new equipment to its towers.*

*The Office's Determination is unreasonable and interferes with Flow's right to conduct its lawful and licensed business, which is detrimental to Flow's customers and the public."*

100. Office's Comment and Conclusion

In performing its functions, the Office's may take such action as the Office considers necessary to protect health and safety of the public. The Neptuno Reports have identified a number of safety issues as reproduced in paragraph 126 below. The Office considers it appropriate to monitor the current and future loading of the towers, through Flow reporting to it when it intends to carry out work on the towers.

[Flow's Cross-comments on Logic Responses to the Investigation and Draft Determination](#)

101. Flow's Cross-comment

*Flow already has a maintenance programme in place for its towers. However, Flow is unable to confirm that it will be able to remediate the issues identified within 90 days following production of its plan of action, as timelines will depend on the vendor who will carry out the works. Flow will advise the Office at the appropriate time. For this reason, Flow disagrees with the arbitrary and accelerated timeline proposed by Logic.*

*The 90-day period recommended by the Office is essential.*

*Flow already has a maintenance programme in place for its towers. With regards to these six (6) towers, a plan will be scoped to comply with 46 days. If more time is required, Flow will advise the Office at the appropriate time.*

*Flow disagrees with Logic's imputation of an arbitrary and accelerated timeline.*

102. Office's Comments and Conclusion

See the Office's comments in paragraph 52 above.

## 103. Flow's Cross-comment

*The Office noted in the Draft determination that Flow's failure to meet some of the timelines in the INI Regulations was not due to any ill intent.*

*Logic also failed to abide by the Regulations.*

*We do not believe that either Logic or Flow should be penalized in this matter. Flow is actively scrutinizing its existing process and will make changes where required. We recommend the same to Logic.*

## 104. Office's Comments and Conclusion

The Office notes Flow's cross-comment and reserves its position to take any further regulatory action, where appropriate.

## 105. Flow's Cross-comment

*The ongoing operational maintenance of Flow's towers does not affect the Structural capacity of the towers. The remedial work identified by Neptuno is operational maintenance. Accordingly, there will be no change to the Structural Evaluation completed by Neptuno and sections 73 and 74 shall apply.*

## 106. Office's Comments and Conclusion

See the Office's comments in Paragraph 54 above.

## 107. Flow's Cross-comment

*Flow maintains its right under clause 4(3)(a) of the INI Regulations to refuse co-location at Southside Bluff based on 'insufficient capacity taking into account (Flow's) reasonably anticipated requirements'*

## 108. Office's Comments and Conclusion

See the Office's comments in paragraph 94 above.

## 109. Flow's Cross-comment

*Logic's calling for a fine is unfounded. The Structural Evaluation completed by Neptuno evidences that Flow's towers are structurally sound. Flow has a comprehensive process in place that, together with the documentation it maintains, ensures that Flow can operate, manage, maintain, and ensure the safety of its communication tower infrastructure. Flow's ongoing maintenance program ensures the structural integrity and operational functionality of its towers. Flow has been operating under the Information and Communications Technology Authority (ICT Act) for approximately*

*twenty (20) years and at no time has there been any report of Flow's tower infrastructure causing harm to the public, and Flow's services have been continuously available.*

110. Office's Comments and Conclusion

See the Office's comments in paragraph 64 above.

111. Flow's Cross-comment

*Logic's proposal, in furtherance of its business objectives, to have Flow disclose detailed, commercially sensitive future plans for its towers raises significant concerns. The INI Regulations do not grant Logic or any authority ownership rights over Flow's towers. The information Logic is requesting is commercially sensitive and confidential to Flow and not available to any third-party service provider. The regulations protect Flow's right to maintain the confidentiality of its operations and strategic plans and Flow is obligated to safeguard its business operations and competitive strategies. Logic's proposals are not only unreasonable but also outside the scope of the regulatory framework. Flow rejects any assertions from Logic that it has an inherent right to dictate terms regarding Flow's use of and improvement of its assets.*

*Finally, Flow is confused about how Logic's business interest promotes 'public safety and safeguard the assets of all stakeholders..'. Indeed, it is Flow that has the track record of protecting public safety. Flow has been operating under the ICT Act) for approximately twenty (20) years and at no time has there been any report of Flow's tower infrastructure causing harm to the public, and Flow's services have been continuously available.*

112. Office's Comments and Conclusion

See the Office's comments in paragraph 68 above.

[Flow Response to the 11 June 2024 RFI, the Office's Comments and Conclusions](#)

113. Flow's response

*The Office has quoted sections of the Information and Communications Technology Act (2019 Revision) (the 'ICT Act') with regards to public health and safety, with reference to maintenance of Flow's towers, yet Flow has been operating under the ICT Act for approximately twenty (20) years and at no time has there been any report of Flow's tower infrastructure causing harm to the public, and Flow's services have been continuously available.*

#### 114. Office's Comments and Conclusion

The principal functions of the Office as set out at Section 6 (2) (q) and (w) of the URC Act state:

- (q) *initiate and conduct inquiries and investigations into any matter or complaint, either on its own initiative or referred to it, which in the opinion of the Office, is not frivolous;*
- (w) *take such action as the Office considers necessary to protect the health and safety of the public in relation to covered services;*

Flow stated to the Office in its **3 May 2023** response to the Office's **28 April 2023** interrogatories that "*Flow confirms that it is not in possession of the "Original Manufacturing and Design Information".*"

The Office's concern with regards to public "*health and safety*" was raised from Flow's confirmation that it did not possess the *Original Manufacturing and Design Information* which meant that Flow's contractor Neptuno was not "*in a position to issue an official professional opinion as to these towers ability to withhold additional weight loads at a demanding wind requirement of 150MPH. We are hereby recommending performing a tower inspection to be able to gather missing data as it relates to the structural components, thickness and manufacturing details of the towers in question*".

#### 115. Flow's response

*The fact that Logic is copied on the letter to Flow in the current context, suggests that the Office's RFI on the maintenance of Flow's towers has been prompted by Logic, for the furtherance of Logic's business objectives. This appearance of bias is deeply concerning to Flow.*

*It must be noted that information on the maintenance of Flow's towers is commercially sensitive information that Flow is not required to provide to any competitor. It would appear, by the precedent set by the Office, that the Office would submit Flow's confidential information to Logic.*

*The Office, in support of its demand from Flow for further information, cites Paragraph 5 of the Act: "...the Office may demand further information, documentation or data from the parties". In pursuing this RFI, the Office's use of paragraph 5 to force disclosure of confidential information is in our considered view unreasonable and unfair, and likely to have a deleterious effect on Flow. Flow therefore advises that the following information, submitted in response to the Office's RFI, is submitted under protest.*

116. Office's Comments and Conclusion

The Office does not consider that information about the safety of a Tower is confidential, this includes information relating to structural matters and their maintenance. Generally, such information is important to be shared with those who have a direct interest in such information, including those who are in commercial arrangements with the Tower provider, be it Flow or otherwise.

117. Flow's response

*Flow cannot provide the granularity of information requested by the Office because of the passage of time and the movement of people in and out of the Company. Flow does not maintain or inspect the facilities of other licensees who are attached to its towers and so has no information in this regard.*

118. Office's Comments and Conclusion

The Office is most concerned that "*Flow does not maintain or inspect the facilities of other licensees who are attached to its towers*". In the event that this is correct, how can Flow have stated in its Sworn Certification (dated 14 November 2023):

*"I hereby certify on behalf of Flow that to the best of Flow's knowledge and belief, based on the Structural Evaluations conducted by Neptuno and assessments contained in Structural Analysis and Maintenance Reports dated November 2023 provided by Neptuno, the existing six (6) towers (subject the Office's investigation) in their current configuration meet the levels of structural integrity and safety required and comply with all applicable industry standards or industry practice and are safe to operate in their current state."*

Direct knowledge of ALL facilities attached to the towers in question is required in order to be in a position to make the statement above. The Office considers that any prudent infrastructure provider should have the relevant information to ensure that any infrastructure is compliant with relative safety standards, which may include undertaking its own inspections at regular meaningful intervals. In this regard, the Office notes ANSI/TIA-222-Rev G states in Section 14 as referenced in paragraph 92 above.

119. Flow's response

*Flow is concerned regarding the scope and feasibility of this specific request, which we find to be excessively broad and wide-ranging, nor is it connected at all to the matter of maintenance of Flow's towers. The purpose of the RFI remains unclear and is even more unclear with the Office requesting 'c. Details of all works (other than Maintenance and/or Inspections) performed since 1 January 2019 (whether for Flow or other ICT Licensees who may be sharing Flow's towers): (emphasis added). Is this request then a new matter since it is unrelated to the maintenance of Flow's towers?*

*Flow seeks clarity from the Office on the purpose of the RFI and clarity on Section c, on the type of works and particular information required. A more targeted and specific request would enable us to focus our efforts on gathering the most relevant information.*



*We believe it necessary for the Office to consider that wide ranging requests for vast amounts of data, and for purposes not specified by the Office, require significant time and effort, is at times overwhelming for the Business and diverts from critical operational activities. We believe that Paragraph 5 of the Act is not inconsistent with these considerations.*

120. Office's Comments and Conclusion

As mentioned above in paragraph 100, the Office considers it appropriate to monitor the current and future loading of the towers, or indeed towers not subject to this Determination, through Flow reporting to it when it intends to carry out work on the towers.

## Discussion

### Key Elements of the Directive

121. The Documents referenced in this section can be located in **Schedule 4** of this document.
122. The Office's Directive obligated Flow to take certain actions and make certain submissions within specified timeframes necessary to facilitate the ultimate production of a response to Logic's request.
123. As a result of the Directive issued by the Office, Flow took actions aimed at complying with the Directive and provided its full response to Logic's infrastructure sharing request on **14 November 2023**.
124. Although Flow's submissions were submitted fourteen days after the deadline specified in the Directive, Flow provided regular updates to the Office throughout the related process. In turn, the Office provided status updates to Logic. The reasons given for the delay related to the fact that Flow was reliant on a third-party contractor to complete the work the Office had directed Flow to do. The delays in this part of the process did not appear excessive and the Office considers reasonable in the circumstances considering that Flow regularly provided evidence that it was taking reasonable action to comply with the Directives.

### Paragraph 2(c) of the Directive

125. Paragraph 2(c) of the Office's Directive required Flow to: *"Within seven (7) days of the completion of (a.) and (b.), to provide to the Office a sworn certification by an authorised Director/Officer of Flow, attesting to the structural integrity and safety of the existing towers in their current configuration, based on the Structural Evaluation obtained. This certification shall include confirmation as to Flow's belief that the towers comply with any applicable industry standard or industry practice and are safe to operate in their current state and shall also include copies of all reports, findings, recommendations and any other information or data arising out of the work conducted in (a.) and (b.)"*
126. Flow responded to this Directive and submitted a sworn certification stating that the towers meet the levels of structural integrity and safety required and comply with all applicable industry standards or industry practice and are safe to operate in their current state. Flow also provided copies of the Neptuno Maintenance Reports [see **Schedule 4 Doc 1 to Doc 6**], which contained the following observations and conclusions summarised below:

## i. Cayman Brac – South Side Bluff

### Report Conclusions:

- *“The tower structure, except for the tower legs, is in an advanced state of rust and many of these elements have lost their galvanized coating, which is why they require replacement.*
- *Some handrails, clamps, platforms and bolts of the antennas mounting supports are in bad condition.*
- *All the bolts in the tower show rust.*
- *Concrete tower base for each leg is in good condition.*
- *Base plates are in good condition.*
- *The anchor bolts are in good condition.*
- *The lightning discharge system is in bad conditions, very rusty and incomplete.*
- *The obstruction light system on top is in good conditions but the support is rusty.*
- *The safety climb system is in bad condition.*
- *Vertical Waveguide Bridge is in bad conditions.*
- *The paint on the tower is not in good condition, it needs maintenance.”*

### Report Recommendations:

*“In order to recondition the tower, the inspection provided the following recommendations:*

- *Install a new lightning rod system.*
- *Install a new safety climb system.*
- *Replace the access ladder, all the backings and the angles that hold the access ladder on the tower.*
- *Replace the vertical bridge for waveguide cables.*
- *Replace some handrails, clamps, platforms and bolts of the antennas mounting supports, they are in bad condition.*
- *Replace all the bolts in the tower.*
- *Replace a total of 297 pieces (secondary members) in the tower structure.*
- *Scrape and apply cold galvanizing on the tower legs that have rust points.*
- *Brushing and painting to all tower. “*

## ii. Grand Cayman – Northwest Point

### Report Conclusions:

- *The structure is in good condition, but the access ladder and the pieces that holds the access ladder are in bad condition.*
- *Concrete tower base is in good condition, levelling concrete is cracked in some areas.*
- *Base plates are in good condition but begins to show signs of rust. The anchor bolts are in good condition.*
- *The lightning discharge system is in good conditions.*
- *The obstruction light system on top is in good conditions.*
- *Grounding system is in good condition.*
- *The safety climb system is in good condition, begins to show signs of rust.*
- *Vertical Waveguide Bridge does not exist, because the waveguides are inside the Pole.*
- *Access ladder is in bad conditions.*
- *The paint on the tower is in good condition.*
- *The wiring of the equipment is messy and loose, making it difficult to install new equipment on the monopole.*
- *Platforms on the upper level where the antennas are located are rusted and deteriorated.*

### Report Recommendations:

“In order to recondition the monopole, the inspection provided the following recommendations:

- *Install the insulators to the lightning discharge system.*
- *Replace the access ladder.*
- *Replace all the backings and the angles that hold the access ladder on the tower.*
- *Replace platforms on antennas mounting support.*
- *Patch the concrete base and the base plate.*
- *Sort out the wiring of the equipment, in order to achieve capacity for new installations.*
- *Brush the rust on the Anchor Bolts and Base plate and apply a coat of Zinc Coated Paint to prevent the deterioration then apply final paint if needed.”*

### iii. Grand Cayman – Red Bay

#### Report Conclusions:

- *The structure is in good condition, but the access ladder and the pieces that holds the access ladder are in bad condition.*
- *Concrete tower base is in good condition, levelling concrete is cracked in some areas.*
- *Base plate and anchor bolts are in good condition but begins to show signs of rust.*
- *The lightning discharge system is in bad conditions.*
- *The obstruction light system on top is in good conditions but it is necessary replace the support.*
- *Grounding system is in good condition.*
- *The safety climb system is in good condition, begins to show signs of rust.*
- *Vertical Waveguide Bridge does not exist, there are some waveguides inside the Pole and others one outside the Pole.*
- *Access ladder is in bad conditions.*
- *Some clamps of the antennas (bars) are in bad condition.*
- *The paint on the tower is in good condition.*
- *The Platforms on both, antennas mounting support are rusty, replace them.*
- *The threaded bars, that connect both mounting supports to the pole, are in bad conditions.*

#### Report Recommendations:

*“In order to recondition the monopole, the inspection provided the following recommendations:*

- *Install the downspout copper cable and the insulators to the lightning discharge system to comply with protection standards.*
- *Replace the access ladder.*
- *Replace all the backings and the angles that hold the access ladder on the tower.*
- *Replace platforms on antennas mounting support.*
- *Replace all the threaded bars, that connect both mounting supports to the pole, are in bad conditions.*
- *Replace the support of Obstruction light system.*
- *Replace some clamps of the antennas (bars).*
- *Patch the concrete base and the base plate.*

- *Brush the rust on the Anchor Bolts and Base plate and apply a coat of Zinc Coated Paint to prevent the deterioration then apply final paint if needed. “*

#### **iv. Grand Cayman – Salt Creek**

##### **Report Conclusions:**

- *The structure is in good condition, but the access ladder and the pieces that holds the access ladder are in bad condition.*
- *Concrete tower base is in good condition, levelling concrete is cracked in some areas.*
- *Base plate and anchor bolts are in good condition but begins to show signs of rust.*
- *The lightning discharge system is in bad conditions.*
- *The obstruction light system on top is in good conditions.*
- *Grounding system is in good condition.*
- *The safety climb system is in bad condition, it is deteriorated.*
- *Vertical Waveguide Bridge does not exist, there are some waveguides inside the Pole and others outside the Pole.*
- *Access ladder is in bad conditions.*
- *Some supports and clamps of the antennas (bars) are in bad condition.*
- *The paint on the tower is in good condition.*
- *The Platforms on both, antennas mounting support are rusty, replace them.*
- *The threaded bars, that connect the second mounting support to the pole, are in bad conditions.*

##### **Report Recommendations:**

*“In order to recondition the monopole, the inspection provided the following recommendations:*

- *Replace lightning discharge system to comply with protection standards.*
- *Replace the access ladder.*
- *Replace all the backings and the angles that hold the access ladder on the tower.*
- *Replace all the platforms on antennas mounting support.*
- *Replace the threaded bars, that connect the second mounting support to the pole.*
- *Replace some supports and clamps of the antennas (bars).*

- *Patch the concrete base and the base plate.*
- *Brush the rust on the Anchor Bolts and Base plate and apply a coat of Zinc Coated Paint to prevent the deterioration then apply final paint if needed.”*

#### **v. Grand Cayman – Prospect**

##### **Report Conclusions:**

- *“The structure is in good condition.*
- *The access ladder begins to show rust, especially in the first section from the top.*
- *Concrete tower base is in good condition, levelling concrete is fractured and cracked in some areas.*
- *Base plate and anchor bolts are in good condition but begins to show signs of rust.*
- *The lightning discharge system does not comply with the protection standards.*
- *The obstruction light system on top is in good conditions.*
- *Grounding system is in good condition.*
- *The safety climb system begins to show rust.*
- *Vertical Waveguide Bridge does not exist, there are some waveguides inside the Pole, where there is not more space for new installations, and others one outside the Pole. Both installations are in a messy manner.*
- *The paint on the tower is in good condition.*
- *The Platforms on antennas in the first mounting support are rusty.*
- *The threaded bars, that connect antennas mounting support to monopole in all mounting supports.”*

##### **Report Recommendations:**

*“In order to recondition the monopole, the inspection provided the following recommendations:*

- *Replace lightning discharge system to comply with protection standards.*
- *Replace the first section of the access ladder corresponding to the top.*
- *Replace all the platforms on antennas mounting support.*
- *Replace all the threaded bars, that connect the mounting supports to the pole.*
- *Patch the concrete base and the base plate.*

- *Brush the rust on the Anchor Bolts and Base plate and apply a coat of Zinc Coated Paint to prevent the deterioration then apply final paint if needed.”*

#### **vi. Grand Cayman – Morritts**

##### **Report Conclusions:**

- *“The structure is in good condition.*
- *The access ladder and the pieces that holds the access ladder are in very bad condition.*
- *Concrete tower base is in good condition, levelling concrete is cracked and split in some areas.*
- *Base plates are in good condition but begins to show signs of rust. The anchor bolts are in good condition.*
- *The lightning discharge system is in bad conditions, very rusty.*
- *The obstruction light system on top is in good conditions.*
- *The safety climb system is in bad condition.*
- *Vertical Waveguide Bridge does not exist, because the waveguides are inside the Pole.*
- *The paint on the tower is in good condition.*
- *Loose waveguide cables in the monopole, poorly fixed and disordered.”*

##### **Report Recommendations:**

*“In order to recondition the monopole, the inspection provided the following recommendations:*

- *Install a new lightning rod system.*
- *Install a new safety climb system.*
- *Replace the access ladder, all the backings and the angles that hold the access ladder on the tower.*
- *Replace entire handrails, clamps and screws of the antennas mounting supports, they are in poor general condition.*
- *Patch the concrete base and the base plate.*
- *Sort out the waveguide cables, in order to achieve capacity for new installations.*
- *Brush the rust on the Anchor Bolts and Base plate and apply a coat of Zinc Coated Paint to prevent the deterioration then apply final paint if needed.”*



127. A summary of the Neptuno Reverse Engineering Study (below) highlights that four of the six towers are currently over-loaded to the extent that they cannot withstand windspeeds of 150mph. Further, the new loads proposed by Logic would render a fifth tower at Red Bay incapable of withstanding wind speeds of 150mph.

Site Name	Existing collocation	Working condition (% at 150 mph)	Current Working Condition			Adding Logic Equipment	
			Maximum wind speed (mph) supported by tower with existing load	Max hurricane wind speed	Working condition (% at 150 mph)	Maximum wind speed (mph) supported by tower with existing load	Max hurricane wind speed
Morritts	Y	173.7	114	CAT3	197.6	107	CAT2
Northwest Pt	Y	261.2	93	CAT1	287.5	88	CAT1
Prospect	Y	190.8	109	CAT2	221.5	101	CAT2
Red Bay	N	88.9	150	CAT4	102	148	CAT4
Salt Creek	Y	249.2	95	CAT1	280.5	89	CAT1
South Side Bluff	N	85.6	150	CAT4	93	150	CAT4

### Paragraph 2(e) of the Directive

128. Paragraph 2(e) of the Directive required that: *“Within seven (7) days of the completion of 2(a.) and 2(b.)<sup>3</sup> above provide Logic with the cost of determining if “the tower[s] can withstand the proposed new loads”, to allow Logic to decide if they wish to proceed with the Infrastructure Sharing application.”*

129. In addition to complying with the directions at paragraph 2(a) and 2(b) of the Directive, Flow confirmed that it had also arranged for an assessment (at no cost to Logic) to determine whether the Towers could withstand the new loads proposed by Logic. By taking this approach, Flow satisfied the ultimate objective of part 2(e) of the Directive—that is to have a structural evaluation conducted on the Towers to determine whether they could accommodate the additional proposed load. Consequently, as a result of information obtained from the evaluation, Flow provided its final response to Logic’s infrastructure sharing request.

130. Flow’s response [See **Schedule 4 Doc 6**] to Logic’s infrastructure sharing request stated:

*“Based on the Structural Evaluations, with the additional load proposed by Logic to attach to the towers, the towers fail the windspeed of 150 mph and accordingly cannot*

<sup>3</sup> (a) – To obtain the required missing data on the six towers necessary to conduct structural evaluation, and; (b) To obtain a detailed structural evaluation evaluating current load condition, structural integrity and safety of the six towers.

**“withstand the proposed new loads”**. Therefore, based on the Structural Evaluations, Flow is unable to permit attachments, as requested by Logic. [...]

Based on the Structural Evaluation, with the additional load proposed by Logic to attach to the tower, Southside Bluff, does not fail the windspeed of 150 mph. Flow is however unable to permit attachments by Logic because, in accordance with the Interconnection and Infrastructure Sharing Regulations, there is **“insufficient capacity taking into account its (Flow’s) reasonably anticipated requirements.”** [Office’s emphasis in bold]

131. Although the reports support Flow’s position that the new loads proposed by Logic cannot be accommodated (on five out of six towers) because the loads would exceed the towers assumed windspeed threshold of 150 mph, the Office considers that Flow’s position conflicts with its current practices. While the Office does not suggest that windspeed ratings should be ignored, from the findings set out above, the **current** configuration on four towers do not comply with the assumed 150mph max windspeed threshold. The Office notes that Flow currently co-locates with another operator on its Towers and this arrangement seemingly contributes to the max windspeed thresholds not being adhered to.
132. With respect to the sixth tower situated at Southside Bluff Cayman Brac, Flow submits that while there is physical space to accommodate the new loads proposed by Logic, due to Flow’s *“reasonably anticipated requirements”*, it is unable to share space. Flow did not provide any detail to support its position on this point. Consequently, on **6 December 2023** [see **Schedule 4 Doc 7**] the Office requested that Flow provide it with an explanation of what its reasonably anticipated requirements were. Flow responded on **20 December 2023** [see **Schedule 4 Doc 8**] giving general reference to previous correspondence [see **Schedule 4 Doc 12**] with the Office discussing plans to rollout **##** **##**. However, the response did not reference in any reasonable way, use of available space on the tower.

## Conclusions

133. Notwithstanding the fact that Flow took an additional 14 days to comply with the 25 August 2023 Directive to Take Immediate Action – the Office, having monitored Flow’s progress and having been kept updated by Flow, concludes that Flow took reasonable action to meet the timelines, when considering the factors external to Flow, such as availability of its contractors and work permit requirements.
134. For the reasons referenced, the Office does not consider that Flow’s **14 November 2023** responses to Logic regarding the refusal of Logic’s Infrastructure Sharing requests contains supported details regarding the reasons for denial at the Cayman Brac – Southside Bluff site.

135. Flow's certification that the Towers "*meet the levels of structural integrity and safety required and comply with all applicable industry standards or industry practice and are safe to operate in their current state*" contradicts some of the information contained in the reports received from Neptuno. The Office notes that the Neptuno reports highlight numerous issues at each of the sites resulting in the production of the above list of suggested and necessary corrective measures. Concerningly, these measures relate to mitigating risks to personnel safety, addressing the compromised integrity of crossmembers, fixtures and attachments (particularly at the Southside Bluff site), replacing components that protect equipment and operation of networks supported by the towers (which include third-party networks); such as replacing or repairing lightning discharge systems and replacing rusted antenna mounts and other general tower maintenance issues to address degradation.
136. These findings suggest that little to no corrective maintenance has been conducted on the Towers, despite there being reports going back to 2019 which highlighted the issues. These findings also suggest that Flow may not reasonably adhere to a particular standard or regular routine with respect to reparative maintenance and operation of its towers. Consequently, the poor state of some of the Towers and the lack of corrective maintenance to mitigate against both natural and other disasters poses a risk not only to Flow's equipment and networks but also to third party operator equipment and networks. Ultimately, these issues could pose serious risks to the public communications infrastructure of the Country. Therefore, the Office as part of this Determination requires Flow to address and remediate all of the maintenance issues identified in the Neptuno Reports.
137. The Office will also follow-up separately with Flow to enquire as to what steps Flow will take in order to reduce the wind load vulnerability of the four identified towers at Morritts, Northwest Pt, Prospect, and Salt Creek.

#### [Logic's Objection to Flow's Refusal to Share Infrastructure and Request for Remedial Action](#)

138. The INI Regulations state:

*4(3) A responder shall not refuse to provide infrastructure sharing services, except where-*

- (a) there is insufficient capacity, taking into account its reasonably anticipated requirements;*
- (b) such provision would create a technical or engineering difficulty that could not be reasonably addressed.*

*(4) Where a requestor disagrees with the basis for any refusal, it may refer the matter to the Authority in accordance with the Dispute Resolution Regulations.*

8(8) *Where the responder denies a request, the responder shall provide detailed written reasons for such denial to the requestor within 20 days of the receipt of a complete and accurate request.*

139. The ICT Act states:

*Section 9(3)(h) [...] the Office shall promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure.*

*Section 65(4)- A request by a licensee to make any interconnection or infrastructure sharing with another licensee shall be refused only on reasonable grounds, and such refusal shall be in writing.*

*Section 69(3)- A licensee shall not deny another licensee access to its infrastructure or infrastructure arrangements except —*

- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;*
- (b) there are reasons of safety or security; or*
- (c) there are technical and engineering matters which would make such access difficult or impossible.*

140. On **7 February 2024**, Logic submitted to the Office a formal objection [See **Schedule 4 Doc 9**] to Flow's refusal to share infrastructure communicated to Logic on the 14 November 2023. The objection stated:

*"Logic formally objects to Flow's position on the aforementioned sites because Flow has not indicated whether remedial steps are available to accommodate Logic's requests. As such, Logic will be bringing this objection to the attention of the regulator for review and action."*

141. ICT Licensees are obligated by the INI Regulations to share infrastructure where there is available capacity and may only refuse to share where the remaining space will not be available based on the "*reasonably anticipated requirements*", where the "*infrastructure owner or where the provision would create technical or engineering difficulty that cannot be reasonably addressed or where there are reasons of safety or security.*"

142. The reports produced by Flow's structural evaluator - Neptuno - confirm that four of the towers currently exceed the prescribed 150mph maximum windspeed load threshold and, with the new loads proposed by Logic, five towers would exceed the 150mph threshold. Additionally, as discussed above at paragraph 122 - 129, there are numerous safety issues associated with the towers.

## Conclusion

143. The Office considers that, in keeping with its obligations *to promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure*, it may be necessary for Flow to demonstrate that it is using space efficiently. Further, the Office considers it reasonable to separately consider whether obsolete technologies requiring specific space on the towers throughout the Islands should be shut down in accordance with industry practices globally.

## Flow's Refusal to grant access to the Southside Bluff Tower

144. The Office reviewed Flow's internal correspondence in which key decision making personnel discussed readiness to establish agreements to share tower infrastructure with Logic. The finalisation of which being subject only to structural fitness considerations.

145. The Office also reviewed correspondence between Flow and Logic which also indicated Flow's readiness to share subject to radio frequency ("RF") interference considerations and structural considerations only.

146. **17 February 2022** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## [See **Schedule 4 Doc 1**]:

*"Hello ## [REDACTED] ##,  
I am referring the attached video to ## [REDACTED] ## and ## [REDACTED] ## to confirm the status of the tower.*

*Physically it appears to be ok but just need the RF team to confirm no issues anticipated @ ## [REDACTED] ##. Please confirm that the requested access to CYB 102 [Southside Bluff] is acceptable."*

147. **17 March 2022** – Flow ## [REDACTED] ## email to Logic ## [REDACTED] ## [See **Schedule 4 Doc 2**]:

*"I am working on finalizing the Tower Share monthly charge. [re: southside Bluff site]  
I will submit once completed and approved."*

148. **17 May 2022** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## [See **Schedule 4 Doc 3**]:

*"Please see mail below and attached documents from WestTel.*

*Please review these 2 sites with the revised documents and confirm if suitable."*

149. **18 May 2022** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ##  
[See **Schedule 4 Doc 4**]:

*“Could you please align this process with @## [REDACTED] ##, @## [REDACTED] ##, and @## [REDACTED] ##?”*

*Last week we were in another meeting and we discuss to stop the collocation approvals to Logic.”*

150. **24 May 2022** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## and others) [See **Schedule 4 Doc 5**]:

*“Please confirm how we should proceed regarding this Tower Share request.*

*In addition, I observed we did not sign the requisite NDA. As such the attached was recently done and submitted internally for signature.*

*Customer is asking for update, however, based on email below [above] from Tomas I am unclear how to proceed.”*

151. **24 May 2022** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## and others) [See **Schedule 4 Doc 10**]:

*“Correcting ## [REDACTED] ## feedback. We are not stopping collocation approvals to Logic. We are in the process of evaluating said request in view of another matter related to spectrum previously assigned to Logic.*

*A few key members of the team are out of office one due to illness another on vacation. We will finalize evaluation early next week so we can proceed with colo request where applicable.”*

152. The Office notes that on **5 May 2022**, in a matter unrelated to tower sharing, the Office wrote to Flow and Logic confirming; with reasons, that it would not be unilaterally rescinding radio spectrum resource previously assigned to Logic in order to reassign it to Flow.

153. **06 September 2022** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## [See **Schedule 4 Doc 11**]:

*“Just received this other mail from WestTel:*

*Can we get an update today on the tower co-locate request for CBrac & GCM? This has been dragging on for way too long!*

*And the below regarding the sub-duct:*

*There has been no update from you or your team on the progress & timeline for completing this survey.*

*Can I please receive one today.*

*Really need your urgent response”*

154. **6 September 2022** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## [See **Schedule 4 Doc 13**]:

*“The sites visit with Westel were completed several weeks ago. The purpose of those visits was to make sure that they were aligned with us on the requirements for each site. There should not be any further requirements from our side so surprise to see these notes when the ball is sitting in their court to move further.”*

*Please arrange a call with them in order to close this out.*

155. **13 September 2022** – Email from Flow ## [REDACTED] ## to Logic ## [REDACTED] ## [See **Schedule 4 Doc 14**]:

*“This is our final approval process. All the information [Site Engineering Documents] thus far has been approved by C&W, however with this information it is more detailed and will allow our team to analyse the infrastructure and supports required by WestTel and thus provide their finalized approval to collocate on each tower. In addition, this information will highlight if there are any compliance issues such as, will any of your equipment generate any interference with our system etc. If so, we will highlight these issues and request they be corrected by WestTel.*

*Once final approval is given we will move towards having the costing finalized and agreement submitted for signing. After signing we will proceed with installation.*

*Please see below details regarding the document required. [...]*

156. **24 January 2023** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## [See **Schedule 4 Doc 15**]:

*“Westel (our competitor in Cayman) has requested collocation on the attached 6 sites. Could you please check their viability form the RF perspective?”*

157. **25&26 January 2023** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## and others) [See **Schedule 4 Doc 16**]:
- “From side of Mobile Engineering, the colocations are approved.*
- To final approved, the support of @## [REDACTED] ##, @## [REDACTED] ## is required, because we don’t know the maximum load designed for these sites.”*
158. **13 February 2023** - Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## [See **Schedule 4 Doc 17**]:
- “From side of mobile antennas location, this was approved, but the structural risk is to be defined.*
- We don’t have technical support to structural analysis of these sites, also we don’t have allocated budget to contract this support.*
- Your advice is appreciated.”*
159. **13 February 2023** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## [See **Schedule 4 Doc 18**]:
- “The infrastructure approval must come from the local and infrastructure [team], in this case, @## [REDACTED] ## and @## [REDACTED] ## respectively.*
- Could you guys help us with this one?”*
160. **13 February 2023** - Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## and others) [See **Schedule 4 Doc 19**]:
- “Do we have a co-location agreement with this new operator (logic?)?”*
- We will need to send a structural engineer to the site to do a proper survey and load analysis to confirm whether the tower can support additional antennas or not.*
- With Digicel we pay the survey of they want to collocate on our sites and they pay in the case of us requesting access to their site. The easiest option would be for this new company to request the survey from a company we assign? Would this be possible? If not the hunt for budget to pay for this will go in circles.”*



161. **13 February 2023** - Flow internal email ## [REDACTED] ## to ## [REDACTED] ##  
[See **Schedule 4 Doc 20**]:

*“We are finalizing the agreement.*

*Survey? I was never informed of this. We have been actively working on this request since June 2022. I was told that after receiving the blue print for each site this will be reviewed for approval. Once approval is done then we would Submit agreement for signing.*

*Please confirm. If this is so, I am expecting that the customer will be lodging a complaint with the Regulator based on the feedback I am currently receiving from them. Their last communication to us stated*

*“It appears Flow is no longer even attempting to hide its delaying tactics. Logic has spent time and financial resources providing Flow with the necessary information to consider our request for infrastructure sharing.”*

162. **13 February 2023** – Flow internal email from ## [REDACTED] ## to ## [REDACTED] ## [See **Schedule 4 Doc 21**]:

*“I don’t think that we are delaying on purpose – rather we don’t have the OPEX budget for unforeseen activities like site surveys – we should probably try to allocate some in the next budget cycle.*

*A site survey is quite standard for various reasons:*

- *Validate that the tower is structurally sound for an additional work load (structural engineer)*
- *Site design including power, grounding etc.*

*If we add that they have to pay for this structural survey with companies approved by CWC, this will facilitate this otherwise tedious process (Digicel has the same complaints).”*

163. On **20 December 2023**, Flow responded [See **Schedule 4 Doc 8**] to the Office’s 6 December 2024 request for “evidence of Flow’s plans for future use of the tower at Southside Bluff in Cayman Brac, at a minimum this evidence should include previous communications regarding engineering plans, business plans, budgets or any other such documents which help to confirm Flow’s intentions prior to receiving the infrastructure sharing request from Logic”.

164. Flow's response stated, in part:

*"In relation to this request, kindly note that electronic communication dated March 15, 2023 which was sent by our Drexel Woods to Logic and copied to the Office, states the date of receipt of application form from Logic to share two (2) of Flow's towers as 8 October 2021.*

*In the Office's letter to Flow, Re: Cable and Wireless (Cayman Islands) Limited's request for reassignment of spectrum currently assigned to WestTel Limited, dated May 5, 2022, the Office states:*

*"6. In March 2017 Logic submitted an initial application for assignment of Band 71 for deployment of 5G mobile, fixed and nomadic wireless services. In February of the same year Flow also submitted an inquiry to the Office seeking confirmation of availability of spectrum for deployment of ## [REDACTED] ## mobile services. The spectrum bands listed by Flow did not include Band 71. The bands sought by Flow were: ## [REDACTED] ##.*

*7. In November 2018, Logic updated and resubmitted its application setting out its proposed utilisation of the Band 71 for both FWA and ultimately for mobile services once the 5G market are more mature. The application included required supporting technical documentation. After consideration, the Office approved assignment of the spectrum to Logic in March 2019."*

*The Office's letter referenced above supports the fact that Flow expressed interest in spectrum for ## [REDACTED] ## services from February 2017, several years before Logic submitted infrastructure sharing request to share any of Flow's towers. As with Flow's earlier generation of technologies, ## [REDACTED] ## will be rolled out across Flow's mobile network in the Cayman Islands, including to Southside Bluff in Cayman Brac."*

165. Flow's response to the request for information did not provide any information or documentation relating to *Flow's plans for future use of the tower at Southside Bluff in Cayman Brac, at a minimum [including] evidence [of] previous communications regarding engineering plans, business plans, budgets or any other such documents which help to confirm Flow's intentions* demonstrating its considered and intended use of the tower.

166. The Office notes that the 2017 communication Flow references as evidence to support its claim of having *"reasonable anticipated requirements"* rendering it unable to share space on the Southside Bluff tower, does not speak in any measure to intended use of that infrastructure or related equipment. Instead, the letter received from Flow was a general *"enquiry on availability of spectrum [...] frequency bands"* for eventual rollout of ## [REDACTED] ## service. Notably, at the time of this correspondence standards for ## [REDACTED] ## had not been finalised. [see **Schedule 4 Doc 12**].

## Conclusions

167. Notwithstanding what Flow's ##[REDACTED]## rollout plans may have been, the various and more recent emails detailed above, make clear in the opinion of the Office that between 2021 to November 2023, Flow did not believe and therefore had no concerns that sharing space on the Southside Bluff tower would interfere with Flow's anticipated use of the tower.
168. Consequently, having considered Flow's emails, the Office cannot reasonably reconcile Flow's previous apparent willingness to share tower infrastructure, with its recent **14 November 2023** position that it is now unable to share infrastructure due to its reasonable anticipated requirements.

## Determinations

169. The following Determinations arise out of and are supported by the discussions and conclusions set out above. **The amendments the Office has made to the Draft Determination are tracked in red.**

170. **The Office makes the following Administrative Determinations:**

### Compliance with the process timings in the Interconnection and Infrastructure Sharing Regulations.

1. The Office determines that Logic was not fully compliant with application process set out in the INI Regulations in some submissions to Flow. However, due to multiple subsequent requests for information from Flow and Logic's attempts to satisfy the requests, any delays on Logic's part are immaterial and do not give rise to the level of "contravention" of the provisions in the INI Regulations. Further, as stated above, minor delays on Logic's part had no evidenced negative impact on any other party other than itself, if at all.
2. The Office determines that Flow was not compliant with the various timelines set out in the INI Regulations, not necessarily due to any ill intent but more so it appears due to lack of proper internal communication and absence of clear process. The Office determines that it will consider **whether a** warning or fine under the statutory Administrative Fine process set out in section 91 of the URC Act is **appropriate.**
3. The Office determines that Flow does not appear to have a clear and established process for the internal management of infrastructure sharing request for access to towers that is familiar to all persons responsible for processing requests. The Office therefore further determines that **within 90 days of this Determination** Flow shall:
  - I. Develop or update its internal process for handling tower sharing applications to include all reasonable activities required to be carried out in order to respond to a request in a timely manner.
  - II. Develop a tower sharing application process guide which details the reasonable and anticipated steps and actions to be followed by both Flow and applicants. Flow shall make this guide available to all current and future ICT licensees applying to share tower infrastructure. The guide shall comply with the process set out in the INI Regulations.

**Flow is to provide the Office with a copy of its internal processes developed or updated as required by this Determination, along with tower sharing application**

process guide which details the reasonable and anticipated steps and actions to be followed by both Flow and applicants.

## Flow's Refusal to Grant Access to the Southside Bluff Tower

4. The Office determines that Flow did not have and therefore could not evidence any reasonable anticipated requirements related to the Southside Bluff tower.
5. The Office determines that **within 46 days of this Determination** Flow shall grant access to the Southside Bluff tower to Logic.

## Logic's Objection to Flow's Refusals and Request for Remedial Action

6. The Office determines that Flow is not obligated to provide Logic with remedial options.
7. The Office determines that within 46 days of this determination, Flow shall confirm to the Office whether it is utilising space on its towers efficiently by:
  - I. Confirming whether all its attached antennas are both connected to a transceiver; and are actively in use providing service.
  - II. Confirming whether all other operator's attached antennas are both connected to a transceiver; and are actively in use providing service.

## Current State of Disrepair of the 6 Towers in Question

8. The Office determines that the state of disrepair of the Flow towers detailed in the Neptuno reports **could create** a safety risk to personnel tasked to work on the towers, damage risk to antennas and other equipment attached to the towers including those owned by third party operators and creates a risk of outages to ICT Services and ICT Networks reliant on the proper functioning of the towers.
9. The Office determines that the state of disrepair of the Flow towers detailed in the Neptuno Reports fail to meet Flow's Licence obligation **at Licence Condition 8.1** to *"establish, operate and maintain the Licensed ICT Networks and/or provide the Licensed ICT Services according to standards of performance in line with international best practices."*<sup>4</sup>
10. The Office determines that Flow shall, within 46 days of this Determination, produce to the Office plans to address all of the maintenance issues detailed in the

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<sup>4</sup> Flow ICT Licence - <https://www.ofreg.ky/register-of-licensees/cable-and-wireless-ci-ltd-ta-lime?sector=ict>

Neptuno Reports (“**the Maintenance Plans**”), such plans shall detail Flow’s activities necessary to remediate the various issues **identified at 3. Recommendations in the Neptuno Reports** within 90 days following production of its plan of action.

11. **Flow shall undertake those identified activities within 90 days from the Maintenance Plans being produced pursuant to paragraph 10 above.**
12. The Office determines that Flow shall, within 46 days of this Determination, produce to the Office what measures it has taken or will take to ensure that the towers not meeting the 150mph wind speed do not pose a risk to public health and safety and interest of other licensees.
13. The Office determines that Flow shall not attach or modify any transmitter or other apparatus to any tower requiring repair (as set out in the Neptuno reports) until Flow complies with the Determinations **at paragraphs 10 and 12 above.**

*(Nothing in this determination is to be taken to restrict any action where such action is necessary or would be reasonable to protect health and safety of a person or property. Therefore, exception to this restriction applies in the case of emergency, meaning actual, imminent or likely risk to health and safety of any person or damage or loss to critical national or other infrastructure, service or property. Where Flow or any party acting on behalf of Flow intends to take emergency action, Flow shall notify the Office within one hour of Flow becoming aware of the need to take emergency action.)*

## Appendix 1

In considering this dispute, the Office was guided by its statutory remit, in particular as set out in the URC Act, the ICT Act, and the INI Regulations.

The following provisions are of particular relevance:

### URC Act Section 6

(1) The principal functions of the Office, in the markets and sectors for which it has responsibility, are -

[...]

(b) to promote appropriate effective and fair competition;

(c) to protect the short and long term interests of consumers In relation to utility services and in so doing –

(i) supervise, monitor, and regulate any sectoral provider, in accordance with this Law, the regulations and sectoral legislation and any general policies made by Cabinet in writing;

(ii) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services; and

[...]

(d) to promote innovation and facilitate economic and national development.

(2) In performing its functions and exercising its powers under this or any other Law, the Office may –

[...]

(d) make administrative determinations, decisions, orders and regulations;

[...]

(w) take such action as the Office considers necessary to protect the health and safety of the public in relation to covered services;

(cc) resolve disputes between sectoral providers, and between sectoral providers and sectoral participants;

[...]

(gg) take appropriate enforcement action, including the imposition of administrative fines, in any case where a sectoral participant has contravened this Law, the regulations and any sectoral legislation or any administrative determination;

(hh) take any other action, not expressly prohibited by Law, that is necessary and proper to perform its duties under this Law and sectoral legislation;

[...]

(4) In performing its functions and exercising its powers under this or any other Law, the Office shall —

(a) act in a timely manner;

(b) rely on self-regulation and co-regulation, where appropriate;

- (c) act in a reasonable, proportionate, impartial and consistent manner;
- (d) operate transparently, to the full extent practicable;
- (e) engage in reasoned decision-making, based on the administrative record;
- (f) act without favouritism to any sectoral participant, including any sectoral participant in which the Government has a direct or indirect financial interest; and
- (g) subject to section 12, act free from political interference.

### **URC Act Section 87**

(1) Subject to subsection (2), where the Office is satisfied that action is necessary to —

- (a) protect public health, safety or the environment;
- (c) protect the interests of other licensees;
- [...]
- (d) prevent a licensee from contravening or attempting to contravene a term, condition or requirement of its licence or a provision of this Act or any other Law;

[...]  
the Office may, by notice in writing, direct the licensee concerned to immediately discontinue or refrain from a practice or to do or perform such act or thing as may be specified in the notice or procure that such act or thing be done.

### **ICT Act Section 2**

**“Infrastructure sharing”** means the provision to licensees of access to tangibles used in connection with a public ICT network or intangibles facilitating the utilisation of a public ICT network; and for the purposes of this definition —

- (a) “tangibles” include lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; ...”
- (b) “intangibles” includes agreements, arrangements, licences, franchises, rights of way, easements and other such interests;

### **ICT Act Section 9**

[...] the principal functions of the Office are -

- (a) to promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so;
- [...]
- (g) to resolve disputes concerning the interconnection or sharing of infrastructure between or among ICT service providers or ICT network providers;
- (h) to promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure;



[...]

- (4) The Office may regulate the rate, prices, terms and conditions of any ICT service or ICT network that is required to be licensed where the Office is of the opinion that it is in the interests of the public to do so.

### **ICT Act Section 65**

- (1) Subject to this section, a licensee that operates a public ICT network shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection with its ICT network or the sharing of any infrastructure and shall, in accordance with this section, ensure that the interconnection or infrastructure sharing provided is made at technically feasible physical points.
- (2) A licensee who wishes to make any interconnection or share infrastructure shall make the request for interconnection or infrastructure sharing with another licensee in writing.
- (3) A licensee to whom a request is made in accordance with this section shall, in writing, respond to the request within a period of one month from the date the request is made to him and, subject to subsection (5), provide the interconnection or infrastructure sharing service in a reasonable time.
- (4) A request by a licensee to make any interconnection or infrastructure sharing with another licensee shall be refused only on reasonable grounds, and such refusal shall be in writing.
- (5) Any interconnection or infrastructure sharing provided by a licensee under this section shall be provided at reasonable rates, terms and conditions which are not less favourable than those provided to —
- (a) any non-affiliated supplier;
  - (b) any subsidiary or affiliate of the licensee; or
  - (c) any other part of the licensee's own business.
- (6) Without prejudice to subsection (5), the Authority shall prescribe the cost and pricing standards and other guidelines on which the reasonableness of the rates, terms and conditions of the interconnections or infrastructure sharing will be determined.

**ICT Act Section 67**

- (1) Where, during negotiations for the provision of interconnection or infrastructure sharing , there is any dispute between the parties (hereinafter in this section referred to as the “pre-contract dispute”) as to the terms and conditions of such provision, either of them may refer the dispute to the Office for resolution.
- (2) The Office may make rules applicable to the resolution of pre-contract disputes by means of arbitration or other dispute resolution mechanisms.
- (3) A decision of the Office in relation to any pre-contract dispute shall be consistent with any agreement reached between the parties as to matters that are not in dispute.

**ICT Act Section 67A**

- (1) The Office may decide, on its own initiative, to consider and determine what, in its view, is a dispute between any persons concerning the potential or actual operation of an ICT network or provision of an ICT service and in so doing shall notify all parties to the dispute that it is doing so.
- (2) The Office shall include in any notification under subsection (1), a timetable for considering and determining the dispute and may give directions with which the relevant persons to the dispute are to comply in order to enable the Office to carry out its functions, responsibilities and duties.
- (3) The Office’s determination shall be one which it considers will enable the dispute to be resolved in a way which best contributes to the fulfilment of its functions, responsibilities and duties, and may include any one or more of the following —
  - (a) the making of a declaration setting out the rights and obligations of the parties to the dispute;
  - (b) the giving of a direction fixing the terms or conditions of transactions between the parties to the dispute;
  - (c) the giving of a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by the Office;
  - (d) for the purpose of giving effect to a determination by the Office of the proper amount of a charge in respect of which amounts have been paid by one of the parties of the dispute to the other, the giving of a direction, enforceable by the party

to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment; and  
(e) such other course of action as the Office considers necessary to resolve the dispute.

- (4) The procedure for considering the dispute and making a determination is the procedure that the Office is required, by Law, to follow. (5) Where the Office makes a determination under this section, the Office shall publish the determination.
- (5) Where the Office makes a determination under this section, the Office shall publish the determination.

### **ICT Act Section 68**

- (1) The cost of making any interconnection or infrastructure sharing to the ICT network of another licensee shall be borne by the licensee requesting the interconnection or infrastructure sharing.

[...]

- (3) The cost referred to in subsection (1) shall be based on cost-oriented rates that are reasonable and arrived at in a transparent manner having regard to economic feasibility, and shall be sufficiently unbundled such that the licensee requesting the interconnection or infrastructure sharing service does not have to pay for network components that are not required for the interconnection or infrastructure sharing service to be provided.

### **ICT Act Section 69**

- (2) The Office, in order to promote an efficient, economic and harmonised utilisation of infrastructure, may-

[...]

- (b) inquire into and require modification of any agreement or arrangements entered into between a licensee and another person or licensee which has the effect of limiting either the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.
- (3) A licensee shall not deny another licensee access to its infrastructure or infrastructure arrangements except —
- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;
  - (b) there are reasons of safety or security; or
  - (c) there are technical and engineering matters which would make such access difficult or impossible.

## INI Regulation 2

[...]

“infrastructure sharing” means the provision to licensees of access to tangibles used in connection with a public ICT network or intangibles facilitating the utilisation of a public ICT network; and for the avoidance of doubt-

- (a) tangibles include lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; and
- (b) intangibles include agreements, arrangements, licences, franchises, rights of way, easements and other such interests.

## INI Regulation 3

3. In these regulations, the word “licensee” refers only to licensees under the Law that hold licences for major public ICT networks as prescribed in the notice gazetted pursuant to section 23(2) of the Law.

## INI Regulation 4

- (1) In accordance with the provisions of section 44 of the Law, a licensee shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection or infrastructure sharing arrangement.

[...]

- (3) A responder shall not refuse to provide infrastructure sharing services, except where-
  - (a) there is insufficient capacity, taking into account its reasonably anticipated requirements; or
  - (b) such provision would create a technical or engineering difficulty that could not be reasonably addressed.

## INI Regulation 5

5. Interconnection and infrastructure sharing arrangements shall be concluded as quickly as possible and in any event, no later than the time limits set out in these regulations, unless otherwise agreed between the parties.

## INI Regulation 6

The following general principles and guidelines shall apply to the provision of interconnection and infrastructure sharing services –

- (a) each licensee has an obligation to treat requests, to negotiate interconnection and infrastructure sharing agreements and to provide interconnection and infrastructure sharing services in good faith;
- (b) consistent with sections 44 to 46 of the Law, licensees shall, in the first instance, attempt to reach agreement on interconnection and infrastructure sharing by negotiation;

where there is a dispute, the parties may refer the matter to the Authority for resolution in accordance with the Dispute Resolution Regulations;

(c) interconnection and infrastructure sharing services shall be provided by the responder to the requestor at reasonable rates, on terms and conditions which are no less favourable than those provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder and shall be of no less favourable quality than that provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder;

(d) interconnection and infrastructure sharing rates shall be determined in a transparent manner;

[...]

(f) costs and tariffs shall be sufficiently unbundled so that the requestor shall be obliged to pay the responder only for the network elements or infrastructure sharing services that it requires;

(g) costs shall be borne either by the requestor or the responder or both based on whether their respective requests and compliance with those requests cause those costs to be incurred; and in accordance with an interconnection or infrastructure sharing agreement between the two parties;

(h) 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;

[...]

(j) interconnection and infrastructure sharing services shall be provided in a manner that –

- (i) maximises the use of public ICT networks and infrastructure;
- (ii) minimises the potential for negative environmental impacts; and
- (iii) enables the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner;

(k) interconnection and infrastructure sharing services shall be provided by the responder to the requestor at any technically feasible point on terms and conditions that are just,

reasonable and non-discriminatory and in accordance with an interconnection or infrastructure sharing agreement between the two parties;

### **INI Regulation 8**

- (1) Licensees shall have a right and, when requested by other licensees, an obligation to negotiate interconnection and infrastructure sharing services in order to ensure the provision and interoperability of services throughout the Islands.
- (2) A request for a quotation to provide interconnection or infrastructure sharing services shall contain at least the following information-
  - (a) the reference number of the requestor's ICT licence;
  - (b) a technical description of the requested services;
  - (c) locations;
  - (d) dates required; and
  - (e) projected quantities to be ordered with a period of 3 years forecast.

- (3) A requestor shall be responsible for the reasonable costs incurred by the responder in processing the request, and shall include with the request a non-refundable deposit of \$2000 or such other amount as specified from time to time by the Authority.
  - (4) Requests may be cancelled at any time by the requestor.
  - (5) The responder shall acknowledge receipt of each request no later than 3 days following receipt of the request; and the responder shall provide the Authority, with a copy of the original request and the acknowledgement receipt.
  - (6) The responder shall consider and analyse each request and advise the requestor within 14 days of the acknowledgement of receipt of the request, or such other time period as agreed between the parties of-
    - (a) the need for any further information for purposes of having a sufficiently complete and accurate request; or
    - (b) that the request is sufficiently complete and accurate to provide a quotation.
  - (7) The responder shall provide a quotation as quickly as possible and in any event no later than 30 days, or within such other time period as agreed between the parties, after receipt of a complete and accurate request.
  - (8) Where the responder denies a request, the responder shall provide detailed written reasons for such denial to the requestor within 20 days of the receipt of a complete and accurate request.
- [...]
- (11) For the purposes of paragraph (10), the following actions or practices violate the obligation to act in good faith-
    - [...]
    - (d) obstructing or delaying negotiations, the provision of services according to a final interconnection or infrastructure agreement, or the resolution of pre-contract disputes;

### **INI Regulation 9**

The rates offered by the responder to the requestor shall clearly identify all charges for interconnection or infrastructure sharing.

### **INI Regulation 10**

- (1) A responder's charges for interconnection or infrastructure sharing shall be-
  - (a) determined in a transparent manner, subject to any confidentiality claims under the Confidentiality Regulations to which the Authority may agree;
  - (b) non-discriminatory in order to ensure that a responder applies equivalent conditions in equivalent circumstances in providing equivalent services, as the responder provides to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder;

[...]

(e) such that charges that do not vary with usage shall be recovered through flat charges and costs that vary with usage shall be recovered through usage-sensitive charges; and

### **INI Regulation 30**

30. In accordance with section 70(2) of the Law, the contravention of any provision of these regulations constitutes an offence and any person contravening any provision of these regulations shall be liable, on summary conviction, to a fine not exceeding \$20,000 or to imprisonment for a period not exceeding one year.





## Schedule 1

Document	Date	File
1	06 October 2021	Doc 1 INT9 - Oct6-7_2021.pdf
2	21 October 2021	Doc 2 INT11 - Oct21_2021.pdf
3	18 February 2022	Doc 3 INT18 - Feb16-18_2022.pdf
4	18 May 2022	Doc 4 INT26 - May18_2022.pdf
5	24 May 2022	Doc 5 INT28 - May24_2022.pdf
6	18 August 2022	Docs 6 to 8 INT45 - Aug18_Sept7_2022.pdf
7	06 September 2022	Docs 6 to 8 INT45 - Aug18_Sept7_2022.pdf
8	06 September 2022	Docs 6 to 8 INT45 - Aug18_Sept7_2022.pdf
9	09 September 2022	Doc 9 INT46 - Sept9_2022.pdf
10	13 February 2023	Doc 10 INT60 - Feb13_2023.pdf

“This determination contains reference to documents, some of which are considered confidential. Requests for specific referenced documents should be made to the Office in writing to [foi@ofreg.ky](mailto:foi@ofreg.ky)”

## Schedule 2

Document	Date	File	Document Title
1	02 July 2023	Doc 1 Draft Investigation Report_Logic Flow_02_July_23.pdf	<b>OfReg</b> – Draft Investigation Report of the Utility Regulation and Competition Office on: Infrastructure Sharing Dispute between Logic and Flow
2	18 July 2023	Doc 2 Cayman_Ofreg_Response_Draft Report_Dispute_Flow_Logic_July 18_2023.pdf	<b>Flow</b> Letter – Re: Draft Investigation Report of the Utility Regulation and Competition Office on: Infrastructure Sharing Dispute between WestTel Limited (“Logic”) and Flow
3	18 July 2023	Doc 3 Logic Response to Draft Investigation Report of the Utility Regulation and Competition Office.pdf	<b>Logic</b> Letter - Re Draft Investigation Report of the Utility Regulation and Competition Office on: Infrastructure Sharing Dispute between Logic and Flow dated 2 July 2023
4	04 August 2023	Doc 4 04_Aug_2023 Flow Logic Investigation Update 2.pdf	<b>OfReg</b> Letter – Re: Notice pursuant to Section 67A of the Information and Communications Technology [Act] (2019 Revision)
5	25 August 2023	Doc 5 2023_08_25_DIRECTIVE to FLOW Tower Infrastructure Safety.pdf	<b>OfReg</b> – DIRECTIVE TO CABLE AND WIRELESS CAYMAN ISLANDS LIMITED (“FLOW”)
6	30 November 2023	Doc 6 Logic - Response on Section 87 Directive Regarding FLOW 11.30.2023 F.pdf	<b>Logic</b> Letter – RE: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)
7	06 December 2023	Doc 7 06_12_2023 Flow follow up reports on towers.pdf	<b>OfReg</b> Letter – Re: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)
8	20 December 2023	Doc 8 Cayman_Ofreg_Structural Evaluation Reports_December 20_2023.pdf	<b>Flow</b> Letter – Re: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)
9	07 February 2024	Doc 9 Flow Cayman - Noticed of Objection 02.07.2024.pdf	<b>Logic</b> Letter – RE: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)}
10	07 February 2024	Doc 10 Complete_with_DocuSign_Cayman_Ofreg_Directiv.pdf	<b>Flow</b> Letter – Re: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)
11	13 February 2024	Doc 11 C&W Response_WestTel Letter Jan7_2024.pdf	<b>Flow</b> Letter – RE: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)

## Schedule 3

Document	Date	File	Document Title
1	08 October 2021	Doc 1 4.pdf	<b>Flow</b> Email – RE: Lower Valley Cellular Site access request.
2	13 September 2022	Doc 2 Confidential EXT47 - Sept9-13_2022.pdf	<b>Flow</b> Email – RE: [EXT] Micro Wave Frequencies
3	13 February 2023	Doc 3 INT60 - Feb13_2023.pdf	<b>Flow</b> Email – RE: Site Plans for Masons Lodge Site
4	02 July 2023	Doc 4 Draft Investigation Report_Logic Flow_02_July_23.pdf	<b>OfReg</b> – Draft Investigation Report of the Utility Regulation and Competition Office on:  Infrastructure Sharing Dispute between Logic and Flow
5	18 July 2023	Doc 5 Cayman_Ofreg_Response_Draft Report_Dispute_Flow_Logic_July 18_2023.pdf	<b>Flow</b> Letter – Re: Draft Investigation Report of the Utility Regulation and Competition Office on: Infrastructure Sharing Dispute between WestTel Limited (“Logic”) and Flow
6	18 July 2023	Doc 6 Logic Response to Draft Investigation Report of the Utility Regulation and Competition Office.pdf	<b>Logic</b> Letter – Re Draft Investigation Report of the Utility Regulation and Competition Office on: Infrastructure Sharing Dispute between Logic and Flow dated 2 July 2023
7	28 April 2023	Doc 7 28_04_2023 Flow Logic Investigation Update Final.pdf	<b>OfReg</b> Letter – Re: Notice pursuant to Section 67A of the Information and Communications Technology [Act] (2019 Revision)
8-con 8-pub	03 May 2023	Doc 8 Con Cayman_Response_Ofreg_No tice_Dispute_Tower_Sharing_Flow_Logic_Confidential_May_3_2023.doc x.pdf  Doc 8 Pub Cayman_Response_Ofreg_No tice_Dispute_Tower_Sharing_Flow_Logic_Public_May_3_2023.docx.pdf	<b>Flow</b> Letter – Re: Notice pursuant to Section 67A of the Information and Communications Technology [Act] (2019 Revision)
9	27 April 2023	Doc 9 Neptuno_SOW_April 2023.pdf	<b>Neptuno</b> SOW – Statement of Work N-035-I-2023

## Schedule 4

Document	Date	File	Document Title
1	17 February 2022	Doc 1 Confidential INT18 - Feb16-18_2022.pdf	<b>Flow</b> Internal Email – RE: Southside Bluff Cellular Site access request. WestTel
2	17 March 2022	Doc 2 Confidential EXT19 - Mar17_2022 - Mar 25_2022.pdf	<b>Flow</b> External Email – RE: [EXT] RE: Invoice for NEW Co-Location Site Request
3	17 May 2022	Doc 3 Confidential INT24 - May17_2022.pdf	<b>Flow</b> Internal Email – FW: [EXT] RE: Invoice for NEW Co-Location Site Request
4	18 May 2022	Doc 4 Confidential INT26 - May18_2022.pdf	<b>Flow</b> Internal Email – RE: [EXT] RE: Invoice for NEW Co-Location Site Request
5	24 May ] 2022	Doc 5 Confidential INT28 - May24_2022.pdf	<b>Flow</b> Internal Email – Re: [EXT] RE: Invoice for NEW Co-Location Site Request
6	30 November 2023	Doc 6 Logic - Response on Section 87 Directive Regarding FLOW 11.30.2023 F.pdf	<b>Logic</b> Letter – RE: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)
7	06 December 2023	Doc 7 06_12_2023 Flow follow up reports on towers.pdf	<b>OfReg</b> Letter – Re: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)
8	20 December 2023	Doc 8 Cayman_Ofreg_ Structural Evaluation Reports_ December 20_2023.pdf	<b>Flow</b> Letter – Re: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)
9	07 February 2024	Doc 9 Flow Cayman - Noticed of Objection 02.07.2024.pdf	<b>Logic</b> Letter – RE: DIRECTIVE TO TAKE IMMEDIATE ACTION PURSUANT TO SECTION 87 OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION)
10	24 May 2022	Doc 10 Confidential INT28 - May24_2022.pdf	<b>Flow</b> Internal Email – Re: [EXT] RE: Invoice for NEW Co-Location Site Request
11	06 September 2022	Doc 11 Confidential INT45 - Aug18_Sept7_2022.pdf	<b>Flow</b> Internal Email –RE: [EXT] Micro Wave Frequencies
12	03 February 2017	Doc 12 2017_02_03 Letter to OfReg Availability of Spectrum for Cayman ##■■■■## Network.pdf	<b>Flow</b> Letter – Re: Enquiry on availability of spectrum for a ##■■■■## network deployment in The Cayman Islands
13	06 September 2022	Doc 13 Confidential INT45 - Aug18_Sept7_2022.pdf	<b>Flow</b> Internal Email – Re: [EXT] Micro Wave Frequencies

14	13 September 2022	Doc 14 Confidential EXT47 - Sept9-13_2022.pdf	<b>Flow</b> External Email – RE: [EXT] Micro Wave Frequencies
15	24 January 2023	Doc 15 Confidential INT55 - Jan24-26_2023.pdf	<b>Flow</b> Internal Email –FW: Site Plans for Masons Lodge Site
16	25&26 January 2023	Doc 16 Confidential INT55 - Jan24-26_2023.pdf	<b>Flow</b> Internal Email – RV: Site Plans for Masons Lodge Site
17	13 February 2023	Doc 17 to 21 Confidential INT60 - Feb13_2023.pdf	<b>Flow</b> Internal Email – Re: Site Plans for Masons Lodge Site
18	13 February 2023		<b>Flow</b> Internal Email – Re: Site Plans for Masons Lodge Site
19	13 February 2023		<b>Flow</b> Internal Email – Re: Site Plans for Masons Lodge Site
20	13 February 2023		<b>Flow</b> Internal Email – Re: Site Plans for Masons Lodge Site
21	13 February 2023		<b>Flow</b> Internal Email – Re: Site Plans for Masons Lodge Site