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The Ministry of Science, Technology & Tertiary Education,
Corner Agra and Patna Streets,
St. James, Port of Spain,
Trinidad

October 30th, 2002

Subject : Comments and recommendations on the
"Draft National Policy on Broadcast and the Broadcast Industry"

To Whom It May Concern :

The Trinidad and Tobago Computer Society (TTCS) is writing to express our comments and recommendations on the "Draft National Policy on Broadcast and the Broadcast Industry".

The following comments/recommendations are based upon the version of the Draft National Policy on Broadcast and the Broadcasting Industry released in August 2002 by the Ministry of Science, Technology & Tertiary Education and made available for download from the following URL:

<http://www.gov.tt/news/DraftNationalBroadcastPolicy.asp>

Explanatory Notes :

- For purposes of this document, the term "GOTT" shall have the same meaning as the phrase "the Government of Trinidad and Tobago".
- The terms "citizens", "consumers", "subscribers", "viewers", "listeners", "customers", "audience", "general audience" are used interchangeably and shall refer to members of the public who are the recipients of content (whether or not encrypted) being transmitted by broadcasters (via wired or wireless services, via subscription services or "for free").
- The term "subscription service(s)" shall refer to wired or wireless broadcasts for which consumers must pay fee to the broadcaster in order to access the content.
- For purposes of this document, the terms "The National Policy", "the Policy", "the draft Policy", "the National Broadcast policy" shall have the same meaning as the phrase "The draft National Policy on Broadcast and the Broadcast Industry".

Comments on Section 3: Policy Objectives

"To promote local programming through the introduction of incentives"

What sort of incentives? Legal? Financial? While both have their merits, a financial incentive is preferable. (see "Comments on Section 5: Content Issues).

"To ensure that the broadcasting industry is effectively owned and controlled by the nationals of Trinidad and Tobago".

How? (see "Comments on Section 4: The ownership structure of the industry").

"To expand Universal Service".

What is "Universal Service"? The policy should provide a comprehensive definition for the term "Universal Service" as well details on: a.)How GOTT will encourage such expansion (a financial incentive is preferable) and b.) What broadcasters will have to do to satisfy this requirement.

"To ensure that the country is adequately compensated for the market value of the broadcast concessions issued under the Telecommunications Act".

This "compensation" should be within the reach of local entrepreneurs since an exorbitant sum will force local investors to source funds from abroad thereby running the risk of foreigners having too large a stake (behind the scenes) in the operations of local broadcasters (such a situation would contradict the intentions of the Policy as outlined in Section 4 "Ownership structure of the industry").

Comments on Section 4: Ownership structure of the industry

"Concessions in respect of a broadcasting service will be granted to applications where there is a minimum fifty-one percent (51%) local ownership and decision-making responsibility".

Concessions should only be granted where there is a minimum 55% local ownership and decision-making responsibility in order to encourage more local involvement and discourage a situation whereby locals are only included in order to qualify for the concession.

Also it should be realised that determination of the percentage of decision-making responsibility held by the local portion of a local/foreign partnership is difficult. It is therefore quite possible that while the local contingent is publicly visible, the foreigners are the actual decision-makers behind the operation.

"the formula that is commonly used by regulators is the number of stations under one holding company in relation to the totality of stations that currently exist".

"Government, as a matter of policy, will not impose any quantum restriction on the number of broadcasting services that can exist under a single MHC".

There is a need for rules or laws to regulate mergers/take-overs of broadcast companies in order to avoid a monopoly or cartel situation. While there maybe legitimate reasons for such mergers/take-overs, the consolidation of the local broadcast industry into one or two media holding companies will not benefit consumers, on the contrary, the companies will be in complete control over what can and cannot be aired and thereby reduce choice for consumers.

Such a situation will contradict GOTT's intentions as outlined in Section 3: Policy Objectives: Economic Objectives: "To create a competitive environment for the local broadcasting industry" (a monopoly/cartel will not truly compete against itself) and Section 3: Policy Objectives: Non-Economic Objectives: "To provide a wide range of programming which meets the . . . needs of the public as a whole" (a monopoly/cartel will provide a range of programming/services that will maximise its return on investment in the local broadcast industry and not necessarily assist in the achievement of the various economic and non-economic objectives outlined by GOTT).

Comments on Section 5: Content Issues

"Government will consult with the stakeholders in the sector to explore the feasibility of instituting a quota system for local content".

The policy should define the term "local content". What is "local content"? and explain which medium will be subject to the quota. For example: Does it refer specifically to radio?

There is no one perfect way in which to implement a quota system for local content. Various countries throughout the world have implemented quota schemes and by all appearances, they are successful. It is important to note that these schemes are all mandated by law thus it can easily be said that the "success" is artificial. If the quota was voluntary then there would be a better means of assessing its success, but it is not.

Suggestions for the implementation of the quota:

- The maximum percentage for a quota should be 50%.
- A quota is usually used to protect a fledgling industry until it can stand on its own feet. Once the local industry has gained sufficient support, the quota should be reduced on a phased basis over a period of time. For example: if at the time of implementation it was 50% it can eventually be reduced by 2% to 5% increments to as little as 10% or less.
- The goal of the quota should be to assist local content/culture for a fixed period of time. It should not be used to provide permanent protection.
- A quota could be implemented only for content broadcast during prime time (as opposed to content broadcast 24 hours a day). For example: during prime time (6am to 6pm) in the broadcast day local content should account for 10% to 40% of broadcast material.

- There must be a provision/clause in the local quota policy to stimulate the production of new material. This is necessary to prevent producers of local content from collecting royalties, etc for existing works while not producing anything new.

GOTT should be aware that a quota is only part of an overall plan to enhance the financial viability of local content. It cannot, by itself, save an industry. The producers of local content must also do their part (e.g. their material must meet international production value standards, they need to do market research, they have to set up proper promotional systems in their target markets, seek out new (international) markets, etc).

Side Effects:

- A quota system forces consumers to subsidise local material.
- Force feeding local material to citizens will breed resentment that will ultimately hurt not help local culture!
- The stockpile of local material (be it for radio or television) is limited thus it is possible that, for the immediate future, broadcasters will have to air similar if not the same material in order to fulfill their obligations as defined by a quota system. If all the stations sound and look the same, where is the competitive advantage to keep them financially solvent? One possible alternative would be to provide financial incentives for local content instead of forcing/threatening broadcasters to adhere to a legal dictate. As stated in Section 5: "Content Issues" of the draft Policy ("any commercial venture targeting audiences less attractive to advertisers, may struggle to succeed"), GOTT realises that the production and broadcasting of local material is a serious financial risk thus if it truly wants to realise the objectives set forth in Section 3: "Policy Objectives" and address the "Content Issues", assisting the broadcaster/producer in the reduction of that financial risk (e.g. reduction/elimination of certain taxes, tax credits for producing/promoting/broadcasting local content etc.) would be a more appropriate step.
- A quota system looks good on paper but it could have a reverse effect and actually stifle the production of local material. A quota system would force local broadcasters to air local content and, by extension, pay royalties and copyright fees. Producers of local content would therefore be the recipients of "guaranteed" money (royalties, etc) yet have little or no incentive to produce new material. Where is the benefit to the consumer in such a situation? Where is the innovation? Where is the new material that the supporters of the quota system say will be produced? In other words, proponents of the quota system can offer absolutely no guarantee that it will improve the quality or quantity of local content on radio or television. Consumers will ultimately pay the price for such experimentation and mediocre content.
- A quota system provides for preferential treatment of only a fraction of the persons involved in local culture. The National Policy on Broadcast and the Broadcast Industry should help as many people (both consumers and producers) as possible thus it should not be used to implement, support or defend such preferential treatment.

"content regulation is practiced in all societies to some degree"

The quality (that is the degree) of regulation is of concern. Simply put, regulation without the proper checks and balances can easily degenerate into wholesale censorship. The National Policy must set rules and guidelines so as to prevent abuse of power by those whose job it will be to formulate regulations and those who will be charged with monitoring broadcasters for compliance with the regulations.

The artistic expression necessary for the production of local (or foreign) content should not be subjected to any form of censorship or "content management" by the GOTT. Such "content management" should be the province of parents and adult consumers. In this case, a voluntary rating or labelling system for local content would be better suited to assist parents in their decision making process.

"Government will encourage the formation of 'watch dog' bodies and industry led bodies, which will work with government agencies to monitor content".

GOTT should be aware that "watch dog" bodies can be formed by highly biased special interest groups who can claim to represent the opinion of the majority of citizens when in fact they do not (in other words, special interest groups pretending to be "watch dog" bodies in order to sway government opinion). Industry led bodies are notorious for doing whatever is necessary to appease the government while taking advantage of consumers behind the scenes.

In both instances, it is a case of the minority seeking to impose their, sometimes questionable, ways upon the majority. GOTT should, at all times, be cautious in accepting any advice, guidance or assistance from either "watch dog" groups or "industry led bodies".

Comments on Section 6: Public Broadcasting

"Government is aware of the extremely tenuous financial situation of the National Broadcasting Network (NBN)".

"Government will subsidize these operations. However, every effort will be made to partially divest NBN to a private sector investor, whose mandate will be to improve the financial and business performance of the company".

This is an interesting contrast. On the one hand (in Section 5 "Content Issues") GOTT has suggested that local content be a mandatory inclusion for all local broadcasters yet in Section 6 "Public Broadcasting" it is planning to divest the one station that should be promoting local content! If GOTT cannot operate the National Broadcasting Network (NBN) in a financially viable manner (given its percentage of local content) it is unlikely that a private sector investor will be able to maintain the current (or implement a higher) percentage of local content and still improve the financial and business performance of the company.

Divestment is a short term solution that does not address the need for the National Broadcasting Network to be the leader in the promotion of local content. If the state-owned television and radio stations are unwilling or unable to promote local content, it would not be appropriate to force the private sector broadcasters to "pick up the slack".

Comments on Section 7: Internet Broadcasting and Multicasting

The Internet is an "on-demand" system: content providers do not "broadcast" to "viewers" and material can only be presented if the user chooses to access it. As such, the Internet should not be subject to the influence/regulation of the National Broadcast Policy. It should be recognised that the nature of the medium (the Internet) does not allow for successful or efficient regulation. GOTT will waste scarce financial and manpower resources should it attempt to enforce "standards of decency", or control/eliminate "unacceptable speech" on the Internet.

However, should GOTT choose to disregard this recommendation and include the Internet in the National Broadcast Policy, these are the comments/recommendations for Section 7: "Internet Broadcasting and Multicasting" in the draft Policy.

"Government is considering a different way to deal with public policy issues on the Internet".

What are these public policy issues on the Internet? There is no specific mention of them in the Draft Policy or in any other public/government forum. GOTT should explain the nature of these issues and allow an appropriate amount of time for a response before implementing "a different way" to "deal" with them.

"Government will co-regulate the industry. That is, Government will set objectives for the industry, but ask the private sector to design and operate flexible solutions".

What sort of "objectives" will GOTT set for the industry? Is the term "flexible solutions" simply a pleasant way of saying "censorship"? GOTT should provide details about the "objectives" it will set for the industry. As stated in the Comments about "Content Issues", regulation without the proper checks and balances can easily degenerate into wholesale censorship. The National Policy must set rules and guidelines so as to prevent abuse of power by those whose job it will be to formulate regulations and those who will be charged with monitoring for compliance with the regulations.

"Government will set the legal infrastructure through legislation and encourage the formation of industry led bodies to help monitor such matters as child pornography".

The inclusion of the term/example of "child pornography" in this section appears to be an attempt to provoke an emotional reaction to the issue of Internet regulation. Such tactics are frivolous and serve only to distract from this fact:

Existing criminal and civil legislation in Trinidad and Tobago already provides a more than adequate legal infrastructure for the protection of individual citizens, local companies and even GOTT in relation to the Internet.

There is no need to create additional legislation!

The issue is education of the population (about their rights, responsibilities and legal liabilities) not the creation of new legislation.

In the case of protecting children from (as defined by the adults responsible for the child(ren)) negative material, there are software and hardware tools already available to protect both children (and adults where necessary) from such material. Parents can easily purchase and install such software and hardware tools thus, in such a case, there is no need for further legislation or government intervention.

Realistically, GOTT can only do so much with a law, individuals (e.g. parents) must educate themselves and take responsibility for their actions (e.g. allowing their children to "surf" the Internet without adult supervision).

Comments on Section 8: Non-Commercial/Non-Profit Organisations

"A Government appointed Committee . . . had recommended against the granting of licences to non-profit organizations operating non-commercial stations in view of the scarcity of spectrum and the fact that they could access air time through existing commercial stations on the basis of individual arrangements".

GOTT must be wary of granting licences to non-commercial organisations since, depending upon the nature of the organisation, such action can be misinterpreted as GOTT providing preferential treatment to special interest groups. In the event that licences are granted to non-commercial organisations, there must be rules/regulations in place to forbid advertising of commercial products or services on those stations. Such advertising would provide them with an unfair advantage over commercial stations.

Addressing the issue of airtime for local non-profit and other organizations: GOTT could implement a public-access system which would take advantage of existing facilities (e.g. the under-utilised channel 4 or the unused channel 9). This system will allocate airtime to, rather than give licenses to, such organisations. The public access station can also serve a secondary purpose: it can be used as a training ground for the youth and anyone else interested in learning the technical and other aspects of the film or broadcast industry.

There is a need for regulations to govern the sale/transfer of licences granted to non-commercial organisations. To avoid the formation of broadcast monopolies/cartels, licences granted to non-commercial organisations should be non-transferable and they should be forbidden from selling it to a commercial organisation. If the non-commercial organisation can no longer afford the licence/afford to provide the service, the licence should be surrendered to the Trinidad and Tobago Telecommunications Authority (TTTEL) and the frequency should be offered to the general public via the manner prescribed in Section 10: "Regulatory and Institutional framework" and in Section 11: "Spectrum Allocation".

"The Government . . . requires the Trinidad and Tobago Telecommunications Authority (TTTEL) to take the following into account when carrying out its licensing function".

a. Facilitate a wide range of programmes calculated to appeal to a variety of tastes and interests.

This would be difficult for non-commercial organisations to achieve since by their very nature they would be broadcasting programmes that are targeted at a narrow portion of the general audience.

b. Ensure fair and effective competition in the provision of services, therefore any broadcast licence granted to non-commercial organisations should be so designed as to avoid the non-commercial organisation from gaining advantage over commercial organizations.

This is essential in order to avoid the perception that GOTT is providing preferential treatment to special interest groups.

c. Facilitate the provision of services which are of high quality.

"High quality", in relation to broadcast content, is a subjective term; what is high quality to some may be low or no quality to others. TTTEL will be wasting its time if it seeks to define the term "high quality service" or enforce its provision by local broadcasters. Ultimately, the audience will decide what they like or do not like and the broadcaster(s) will have to abide such a decision.

d. Consider the ability of an applicant to maintain the service for the period of the licence".

If licences are granted to non-commercial organisations they should have the (financial and technical) ability (just like the commercial broadcasters) to maintain a reasonable standard of service to consumers for the period of the licence. In other words they should be subject to the same rules as the commercial broadcasters. As previously stated, If the non-commercial organisation can no longer afford the licence/afford to provide the service, the licence should be surrendered to the Trinidad and Tobago Telecommunications Authority (TTTEL) and the frequency should be offered to the general public via the manner prescribed in Section 10: "Regulatory and Institutional framework" and in Section 11: "Spectrum Allocation".

Comments on Section 10: Regulatory and Institutional Framework

"10.1.11 Monitoring the broadcasting sector to ensure compliance with licence conditions, relevant laws and regulations".

Again, there must be rules and guidelines so as to prevent abuse of power by those whose job it will be to formulate regulations and those who will be charged with monitoring broadcasters for compliance with the regulations.

"Section 10.3: "License Fees Structure"

Award of licences: Competitive bidding will certainly create a desirable revenue stream for GOTT but it may end up hurting the industry. As stated in "Comments on Section 3: Policy Objectives", licences should be within the reach of local entrepreneurs since an exorbitant sum will force local investors to source funds from abroad thereby running the risk of foreigners having too large a stake (behind the scenes) in the operation of the local broadcast industry. GOTT should avoid a situation where potential investors spend most of their money on acquiring spectrum with little left over for expenditure on content, personnel and equipment.

Final Words/Conclusion

- One size does not fit all! Broadcast and content regulation is unique to each country. In the process of formulating the Broadcast Policy, GOTT and its advisors/consultants may seek guidance by reviewing laws and policies that are used by other countries and may even uncover material which may appear to be beneficial. It is important to note that laws/policies which are successful in another country may not work/have the desired result/can fail outright if implemented in Trinidad and Tobago. Foreign laws/policies must be adapted to fit unique local conditions.
- The National Policy on Broadcast and the Broadcast Industry should help as many people (both consumers and producers) as possible and should not be used to implement, support or defend wholesale preferential treatment for any individual, group, company, industry or public sector entity.
- The Broadcast Policy in relation to content:
 - There is no guarantee of success. Local content can be given all the protection that producers desire but eventually the consumer will decide the success or failure of such material.
 - A national policy is only part of an overall scheme to enhance the (financial) viability of local content. It cannot, by itself, save an industry.
 - GOTT should at all times avoid censorship of the artistic expression necessary for the production of local (or foreign) content.
- GOTT must recognise that its primary responsibility is to the citizens of the nation i.e. the consumers, the people who will have to live with the (good and bad) consequences of the regulations proposed by the broadcast policy and not to the special interest groups, industry lobbyists or anyone seeking preferential treatment.