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DRAFT NATIONAL POLICY ON BROADCAST AND THE BROADCASTING INDUSTRY

Early in August 2002, The Ministry of Science, Technology & Tertiary Education released their "Draft National Policy on Broadcast and the Broadcasting Industry" for public comment. The deadline for submission of comments is October 31, 2002.

The Draft Policy includes proposals on the ownership structure of the industry, a quota system for local programming content, non-profit and religious broadcasting among other issues.

Comments and recommendations may be submitted to: The Ministry of Science, Technology & Tertiary Education, Corner Agra and Patna Streets, St. James, Port of Spain, Trinidad or via email: cheryl.johnson@stte.gov.tt or patrice.lord@stte.gov.tt.

The full text of the "Draft National Policy on Broadcast and the Broadcast Industry" follows.

1. INTRODUCTION

The Broadcast Industry in Trinidad and Tobago has since the early 1990s, been largely self-regulated. However, Government recognizes that the Industry is unique and has the potential to reflect and explore every aspect of the nation's life and thus contributes in no small measure to the shaping of the nation's identity. It exerts a powerful influence on the kind of information readily available to citizens and helps to shape opinions and condition perceptions. It also has the unparalleled capacity to share experience and through programme selection and exposure, influences the agenda of topics and issues which are presented for the attention and consideration by the public. In short, it helps preserve our democracy and our cultural distinctiveness and diversity.

Government is concerned that since commercial broadcasters will favour programming that maximizes returns, this can restrict variety and the level of relatively high cost/low revenue local programming. Hence, Government is also seeking to ensure that desired "**content**" is produced that might not otherwise be available.

In light of the above, Government is seeking to outline its policy objectives for the industry, state its position in respect of Broadcast Content and detail the policy tools e.g. regulatory body, regulations, ownership of resources, which will be used to operationalize Government's policy.

Government recognizes that the industry is extremely dynamic and is both market and technology driven and proposes the following definition of broadcasting:

"any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication, for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programmes:

(a) made on demand of a particular person for reception only by the person; or

(b) made solely for performance or display in a public place."

Further, Government is mindful that while Spectrum Management and Policy impact on Broadcast policy, the former is to be treated separately.

2. PRESENT ENVIRONMENT

A cursory analysis of the radio and television sectors of the industry would seem to indicate that they are highly competitive. However, Government is mindful that a number of the radio stations only compete in certain niche markets and a number of the stations are owned by a few Media Holding Companies. The Table below gives a breakdown of the existing broadcast media:

Existing Broadcast Media

Total No. of Radio Stations	21 (2 AM stations are included)
Total No. of Television Stations	3
Cable Operators	1
Direct TV Operators	1

Government is mindful of the ever-changing technological landscape. Hence, with the advent of digital television which is a more efficient method of transmission, it is possible to squeeze several television channels into the space currently used to carry a single analogue channel. Digital television means not only more channels, but interactive services such as home banking, home shopping and connection to the internet being made available through the television set.

3. POLICY OBJECTIVES

The undermentioned policy objectives indicate the kinds of outcomes in the industry that Government wishes to see produced by the broadcasting sector as a whole. The extent to which these objectives are met will be measured against benchmarks, which will be outlined in the proposed Broadcasting Code provided for under Section 79 of the Telecommunications Act.

Non-Economic Objectives

- To promote national culture and national identity.
- To provide a wide range of programming which meets the informational, spiritual and entertainment needs of the public as a whole.
- To promote quality through the provision of new and innovative programming.

- To promote educational broadcasting through the concept of Distance Learning.
- To promote local programming through the introduction of incentives.
- To monitor advertising standards in conjunction with the advertising industry.
- To ensure that the broadcasting industry is effectively owned and controlled by the nationals of Trinidad and Tobago.
- To expand Universal Service.

Economic Objectives

- To create a competitive environment for the local broadcasting industry.
- To promote the economic viability and growth of the broadcasting industry.
- To ensure that the country is adequately compensated for the market value of the broadcast concessions issued under the Telecommunications Act.

4. OWNERSHIP STRUCTURE OF THE INDUSTRY

Government is mindful of its obligations under the World Trade Organisation (WTO) and to the Caricom Treaty with respect to direct foreign investment in the domestic economy and the freedom of movement of human resources and capital. However, Government is of the view that in order to promote the development of the local broadcasting industry, it is necessary that nationals of Trinidad and Tobago (resident or non-resident) be given the opportunity to own and operate broadcasting services.

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. Foreign ownership may be accepted in circumstances where proprietary technology is involved. Nothing in this section shall preclude any broadcasting company from engaging foreign experts in management positions to assist with the development of that company once the necessary immigration regulations are observed.

Since the issuance of broadcast licences a new reality has developed within the broadcasting industry. This reality is the Media Holding Company (MHC). One has witnessed the consolidation of a number of radio stations and cable companies to achieve economic efficiency. While public criticism focuses on the number of broadcasting stations that one commercial entity holds, 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.

5. CONTENT ISSUES

Government recognizes that new technologies make it possible for programmes that cater for a "**general audience**" to be created and broadcast by networks with a wide audience reach. However,

in the absence of mechanisms to provide for local content, there is a danger that the new technologies will reinforce the development of a globalized and undifferentiated culture. Concomitantly, any commercial venture targeting audiences less attractive to advertisers, may struggle to succeed. Hence, Government will consult with the stakeholders in the sector to explore the feasibility of instituting a quota system for local content.

Additionally, content regulation is practised in all societies to some degree. In Trinidad it plays a role in creating a balance between maintaining a wholesome society and becoming an economically dynamic, socially cohesive and culturally vibrant nation. It helps protect the young against undesirable influences, safeguards core values and maintains race and religious harmony and social stability. Hence, as in the case of the internet, Government will encourage the formation of 'watch dog' bodies and industry led bodies, which will work with government agencies to monitor content.

6. PUBLIC BROADCASTING

Government is aware of the extremely tenuous financial situation of the National Broadcasting Network (NBN). However, Government intends to retain ownership of that part of NBN, which will be utilized for its Distance Learning initiative, that is The Information Channel (TIC).

Consequently, 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.

7. INTERNET BROADCASTING AND MULTICASTING

The Internet is becoming the most important communications medium in history, with the potential to transform personal, social, economic and political behaviour and its use continues to grow exponentially.

In the face of this rapidly changing Internet environment, a traditional approach to regulation is simply too slow and too inflexible to cope with technological and market changes. Hence, Government is considering a different way to deal with public policy issues on the Internet. Therefore, 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. Hence, Government will set the legal infrastructure through legislation and encourage the formation of industry led bodies to help monitor such matters as child pornography.

8. NON-COMMERCIAL/NON-PROFIT ORGANIZATIONS

In 1995, a Government appointed Committee recommended that applications from religious and other organizations proposing to operate as commercial enterprises should be treated in a manner consistent with the existing policy.

That 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".

The Trinidad and Tobago Publishers and Broadcasters Association submitted that in the event that licences are granted to religious and non-profit organizations, no advertising of commercial products or services should be allowed on those stations.

The Government is mindful of both views and in deciding on how best to use this finite resource and took into account the intimate and potentially intrusive character of broadcasting, which makes it a very powerful form of communication. It therefore 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.
- 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.
- c. Facilitate the provision of services which are of high quality.
- d. Consider the ability of an applicant to maintain the service for the period of the licence.

9. CABLE TELEVISION AND DIRECT-TO-HOME SATELLITE TELEVISION

A multi-channel television system can be wireless or wired. However, since cable has no spectrum limitation, theoretically any number of companies may operate in the same geographical location. It must be observed that cable television is licensed in most countries by virtue of its definition as a broadcasting and/or telecommunications service under the relevant legislation. Therefore, Government is of the view that as cable television is regulated all over the world, Trinidad and Tobago should be no different.

However, it is suggested that preference should be given to applications for the establishment of cable television service in areas of the country which are not now served or which are not adequately served. In addition, all cable television providers should be required as a condition of their licences to make available to subscribers, devices to exclude specific channels with unsuitable viewing material for children.

Cable television systems should also be required to transmit all local off-air television broadcasting stations.

Applications for direct-to-home satellite service and wireless multi-channel services shall be treated in a similar manner as those for cable television stations.

10. REGULATORY AND INSTITUTIONAL FRAMEWORK

10.1 Roles and Responsibilities

The convergence of telecommunications, broadcasting and information technologies has forced countries to focus on an appropriate regulatory structure. Government has noted the increasing difficulty in differentiating between radio frequency spectrum used for telecommunications and that used for broadcasting and other services. Therefore a single regulatory body will be created, so as to avoid the high costs associated with maintaining separate regulatory structures requiring the same scarce technical skills and facilities.

The main legislation that will govern broadcasting will be the Telecommunications Act No.4 of 2001 and the regulatory body for all matters pertaining to broadcasting will be the Trinidad and Tobago Telecommunications Authority (TTTEL). Government is of the view that a single Ministry should have policy oversight of the entire broadcasting industry, replacing the few government departments and agencies that impact on the performance of the sector. The policy making function will be assigned to the Ministry responsible for Telecommunications. The Ministry's role will be to:

10.1.1 Promote the growth of the domestic broadcasting industry.

10.1.2 Ensure that the country is adequately compensated for the market value of the concessions awarded in respect of broadcasting.

10.1.3 Formulate the strategic direction of the National Broadcasting Network (NBN).

10.1.4 Allocate to the Regulatory Body, in accordance with the National Spectrum Management Policy, Radio Frequency (RF) spectrum for the purposes of planning broadcasting services.

10.1.5 Ensure adherence to Government's commitments to international conventions.

In the context of broadcasting, TTTEL's main responsibility shall be the formulation and enforcement of a Broadcast Code. Other duties will include:

10.1.6 Administering broadcast regulations.

10.1.7 Managing the broadcasting services frequency bands and other parts of the frequency spectrum that have been assigned by the line Ministry for broadcasting purposes.

10.1.8 Preparing and implementing criteria for the licensing of different categories of the broadcast services.

10.1.9 Granting and renewing broadcast licences.

10.1.10 Collecting appropriate fees.

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

10.2 Licensing for the Future

Traditionally, Governments have licensed the services to be provided by companies to which frequency has been allocated. While current trends dictate the need for reviewing the manner in which licenses are granted, the existing methodology of spectrum allocation should be maintained in order to influence the introduction of particular types of services for the benefit of the country.

The Government noted that as further technological changes impact upon our society, several different types of services would be possible using a single frequency. In the foreseeable future, Government will have to consider that the licensing regime will cover frequency in addition to services.

10.3 License Fees Structure

It is generally accepted that fees accruing from the licensing regime will finance the day-to-day operations of the Regulator. Recent worldwide trends point to a policy of auctioning of spectrum frequency, as an alternative revenue generator.

The Government is of the view that the manner in which licence fees are generated is an operational issue to be determined by the TTTEL. However, any proposed change to the existing formula must take into consideration the following:

1. The impact on existing organizations to ensure competitiveness;
2. The policy outlined by the Minister responsible for TTTEL;
3. Strict procedures for the process of auctioning, sale and transfer of licences, and renewal of same; and
4. A time frame should be set for the delivery of services by new licensees, after which the licence may be cancelled by the Authority.

11. SPECTRUM ALLOCATION

At present, licences are granted for a specific period, in some cases fifteen (15) years, but there is no requirement that the licensee establishes and commissions the broadcasting service within a specified time. The absence of such a requirement creates an opportunity for licences to be acquired and not utilised. As spectrum is a finite resource, an allocated frequency, which is not utilised, deprives other licensees of an opportunity to provide a service. To guard against this occurrence, it is suggested that a deadline of a period of two (2) years be imposed from the date of issue, for the applicant to establish and commission the broadcast service for which the licence has been granted. At the expiration of two (2) years TTTEL will review the licence.

**Ministry of Science, Technology
& Tertiary Education**