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REGULATED INDUSTRIES COMMISSION

CONDUCTING PUBLIC CONSULTATIONS

RIC'S FINAL POSITION

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1 INTRODUCTION

1.1 Background

The Regulated Industries Commission (RIC) published for public comment its Conducting Public Consultation document in February 2005. The document was circulated for two (2) months and formed the basis for a National Public Consultation with the public and stakeholders. The National Public Consultation was held on April 5, 2005. Over 300 persons actively participated. The RIC also received comments on the draft document via e-mail. List of participants is attached as Appendix I.

Additionally, the Trinidad and Tobago Chamber of Industry and Commerce published its comments in *The Chamber Column* in the April 15th 2005 edition of the Express Newspaper.

1.2 Purpose of this document

This document summarises the responses to the RIC's consultation document, Conducting Public Consultation, published in February 2005. It also sets out the rationale for RIC's conclusion on each of the issues considered.

2 ACCOUNTABILITY, TRANSPARENCY AND STAKEHOLDER INVOLVEMENT

2.1 Original Position

As a public entity, the RIC has a duty to account for its activities as decisions taken by the Commission will have a significant impact on consumers, as well as on the regulated industries. For these reasons, the RIC considers that transparency and openness of the regulatory process is key to ensuring regulatory accountability and legitimacy of the regulatory regime in the eyes of the stakeholders; customers, Service Providers, and the State. The RIC believes, therefore, that its consultation process will:

- Improve the quality of its decisions;
- Guild understanding of the regulatory environment;
- Enable a solution by consent, where possible; and
- Help clarify the RIC's decision-making process to those who are affected by its decisions.

Comments Received

Generally there was full agreement on the RIC's position.

3 CONSULTATION PROCESS

3.1 Original Position

The RIC will hold public consultation on specific issues that arise in the regulation of the Service Providers. Typically, the first step will be to publish a Consultative Document, a public discussion paper, to promote public awareness and debate and to invite written comments from the general public and other interested parties.

With respect to written documents the RIC process will be as follows;

- Pre-Consultation
- Initial Consultation
- Comment and Reply Period

- Final Decision

Comments Received

Generally there was an agreement on the RIC's position and the following points were stressed for consideration:

- Pre-Consultation should also include NGO's, schools and the community;
- During **Pre-Consultation** the RIC should first meet with persons who are differently-able before meeting with the general public; and
- Relevant information should be shared with key interest groups in pre-consultation.

RIC's Final Position

Depending on the nature of the issue at hand, the RIC will consult as widely as possible at the pre-consultation stage.

4 METHODS OF CONSULTATIONS

4.1 Original Position

In order to be effective, the RIC consultation process must ensure that its stakeholders and individuals from the public have an opportunity to have their views presented and considered. Therefore, the RIC will communicate as widely as possible. This involves:

- Publicizing consultations by issuing press releases, public notices and media advertisements;
- Making every effort to bring the Consultation Document to the widest possible audience;
- Making the document readily available and free of charge;
- Placing the document on the RIC's website and in its Information Centre; and
- Writing to interested parties (for major policy initiatives) enclosing a copy of the document.

Depending upon the nature and importance of the issues the written Consultation Document may be complemented by other means in order to gather evidence and explore views and comments including:

- workshops, seminars and public meetings, where sufficient and advance notice will be given of such events to enable effective participation;
- individual meetings with the RIC;
- working groups of representatives of Service Providers, customers and other interest groups;
- open dialogue with the private sector; and
- consultation with independent advisors on matters of a technical nature.

Comments Received

It was felt that the RIC should work towards building capacity within stakeholder organisations and community groups. More over, meetings should be held in rural communities to facilitate members of the public who are not able to attend national consultations and that the timetable for consultation should be extended to at least eight (8) weeks.

RIC's Final Position

Given the importance of the issue at hand, the RIC will extend its consultation timetable to eight (8) weeks.

5 COMMUNICATION AND MOBILIZATION IN THE PUBLIC CONSULTATION PROCESS

5.1 Original Position

In its communication and mobilization process, the RIC will:

- Network with the Community Development Division of the Ministry of Community Development, Culture and Gender Affairs and the Consumer Affairs Division of the Ministry of Legal Affairs;
- Publish the dates, times and venues of its Public Consultations through media advertisements;

- Invite CBOs and NGOs to participate in the Public Consultation; and
- Ensure that all stakeholders have timely access to documents for public consultation at no charge.

Comments Received

With respect to communications channels utilized by the RIC to communicate with the public, participants suggested that the RIC use various information and communication media such as television, radio, community public address systems, posters, and flyers in daily newspapers to inform the widest cross section of the public.

The public had no problem with the adequacy of the proposed procedures to make available non-confidential documents.

RIC's Final Position

While the RIC recognises the importance of advertising and utilizing the media to communicate with the public effectively, it has to be cognisant of its finances and be frugal in its media spending. The RIC will seek to develop inexpensive innovative mechanisms to target the public at large.

6 RESPONSE TO CONSULTATION

6.1 Original Position

Depending on the nature of the issue under consideration, the RIC will allow sufficient time for written responses. Additional time may be permitted if the issue is particularly complex or at an early stage of development. The time allowed for responses will be set out in the timetable section of each CONSULTATION DOCUMENT. However, in most cases the consultation period will not be less than one (1) month.

To facilitate a transparent process, the responses will be made available to the public. However, respondents who have the resources and are so inclined can undertake publication on their own behalf. The RIC will also have responses available for viewing at its offices. The RIC is committed to publishing responses to stimulate debate. At the end of the consultation period responses will be placed on the RIC's website. The RIC will ensure that accurate records are kept for every consultation.

The RIC will allow a specific period for respondents to view other responses and to make comments on them either for correcting factual errors or for putting forward counter arguments.

Comments Received

Most respondents were in agreement with RIC's policy for providing feedback and suggested the publication of the comments in the newspapers.

RIC's Final Position

The RIC will continue to publish comments received and justification for decisions taken with respect to issues or consultations held.

7 OTHER CONSIDERATIONS

Comment Received

A view was expressed by one participant that consultations removed the public's right and opportunity to communicate directly with and request explanations from Service Providers. The participant considered that public hearing to be an important mechanism and suggested that the RIC develop an alternative form of hearing, which would provide consumers with the opportunity to question Service Providers. This should be seen in the context of citizen's participation in governance.

RIC's Final Position

The use of tribunals and inquiries to hear matters before any action is taken that affects personal interests, are only but a variety of ways that Parliament would have established to fulfil the rule of natural justice and ensure that every man has his/her right to be heard.

Parliament at times substitutes consultation for a statutory duty to hold a hearing by employing the use of such words "shall consult" "may consult" or even "consult". Generally however Parliament seems to prescribe consultation in situations that are inappropriate for a statutory hearing and that may be beyond the reach of natural justice. For example where the decision taken involves some degree of formulation and application of policy. In other words, as with the RIC, the RIC does not render the final decision for a rate review or the issuance of a licence, it simply advises on existing regulatory policies, recommending either a rate reduction/ increase or the issuance of a licence, which assists in determining the final decision.

Under this circumstance an individual interest will not be so drastically affected as to bring natural justice into play. However, Parliament, with the use of consultations simply ensures that no decision is taken without an awareness of an individual's position on a subject as all individuals have the right to be heard.

As such, based on the powers and duties of the RIC, there exist no need to conduct public hearings or hearings, as the act of the RIC does not amount to a final decision that would affect the rule of natural justice in totality.

However, the RIC still has to recognise that there was always the right to be heard, which Parliament had ensured the RIC adheres to by stipulating that it "may consult".

Appendix I

List of Participants

Appendix II

Summary of the Comments Received