

# RIC ACTS WITHOUT FEAR OR FAVOUR

**LAST week the Regulated Industries Commission (RIC) announced two decisions that need to be put into context in terms of their relative significance.**

The first offers a permanent and positive impact on the 268,000 customers of TSTT. The second provides a temporary setback for an estimated 50 International Call Centres and those who have utilized their services. Details on these decisions follow in a separate article below. However, some background is necessary to contextualize these decisions.

The RIC replaced the Public Utilities Commission (PUC) as the Regulator of Utilities in the country. The Regulated Industries Act was passed in 1998 and the first Commission was appointed in April

2001. One reason for this shift was to update the regulatory law—including that relating to the method of adjusting rates charged by Utilities. Another was to bring the regulatory regime in line with the growing international trend of independent regulatory bodies.

## **RATIONALE FOR A REGULATOR**

A Regulator is needed to ensure that a monopoly supplier or a few dominant firms do not make decisions that adversely affect the interest of the consumer.

## **ROLE OF THE INDEPENDENT REGULATOR**

The main responsibility of the Regulator is to protect the interest of the consumer while ensuring that Service Provider earns an adequate rate of return to facilitate its growth

thereby providing the highest possible consumer standards. The role of the Regulator is to therefore foster competitive behaviour in industries, which fall under its regulatory remit. There are several strings in the regulatory bow in this respect.

1. The Regulator seeks to redress complaints of aggrieved consumers of the Utilities. The RIC, for example, currently receives some 90 monthly complaints from customers of TSTT, T&TEC and WASA.
2. The Regulator sets standards of performance for Utilities, which, if breached, would trigger, at least in some instances, compensatory payments to customers. The RIC has developed in consultation with stakeholders, standards for electricity. These are in the process of being gazetted. Draft Standards for WASA are out for public comment and public meetings have been held in

Tobago and Toco. Other community meetings will follow in coming weeks.

3. The Regulator keeps faith with the public by keeping it informed of its decisions. The RIC informed the public via press release and news conference, for example, of its request from T&TEC for a report on last year's fire at its Rio Claro substations. The same public accounting was done when there was a sewage-pollution problem at WASA's Caroni Water Treatment plant.
4. The Regulator ensures that any firm that falls within its regulatory remit complies with the necessary requirements as set out in enabling legislation. This is the basis of our recent decision on the International Call Centres. Further details on this decision are provided below.
5. The Regulator conducts reviews of rates charged by Utilities. This can be triggered by the RIC itself or be based on a request from

regulated Utilities. Neither of these has taken place to date.

In summary, these functions confirm that the role of the independent Regulator is to act without fear or favour in any matter that falls within its regulatory ambit.

Last week the RIC acted (without fear) in determining that TSTT's Rate of Return is in excess of the 15% legislated and therefore required adjustment. Relatedly, we have acted (without favour) in concluding that the International Call Centres fall within the RIC's current regulatory remit and require a license to operate.

To ensure the credibility and integrity of its independence the highest levels of propriety are required of its Commissioners. In this instance, for example, two Commissioners were excluded from the conclusions of the research conducted which informed the RIC's decisions on the basis of their having a conflict of interest.

## **FEARLESS DECISION ON TSTT'S RATE OF RETURN**

IN JULY 2003 the RIC began an internal investigation into the Rate of Return of TSTT over the last few years. By the end of the year, the internal RIC analysis came to the conclusion that TSTT's ROR was consistently in excess of the 15% limit. Out of an abundance of caution, however, we commissioned an independent consultant to undertake its own analysis of TSTT's ROR. On March 15, 2004 this consultant report was submitted, corroborating the RIC's own findings. The Trinidad and Tobago Telephone (Amendment) Act No 22 of 1990 clearly states in Section 5 that:

*"The rate to be charged by the Company shall be fixed by the Commission so as to enable the Company to earn a return of 15 per cent a year of the rate base."*

The RIC has advised TSTT to bring its rate of return more in line with the provisions of this Act and should among other things, make downward adjustments in its charges to customers including reduction in its international calling rates and provision of special services to vulnerable groups.

The RIC recognizes TSTT as a responsible corporate body and does not anticipate that it will not act other than with the highest level of social corporate responsibility. This conclusion is reinforced by the fact

that the 268,000 customers of TSTT who will benefit from the RIC's recommendations are simultaneously shareholders in TSTT via the Government's 51% majority shareholding. Nevertheless there is provision for addressing any such eventuality; specifically through the implementation of a Rate Review, which RIC can institute according to Sections 47 and 48 of the RIC Act of 1998. RIC however, does not anticipate that this will arise.

Why did the RIC take long to review TSTT's ROR since it became operational in April 2001?

In July of 2001, the New Telecommunications Act was passed to establish the new regulator for telecommunications matters. Specifically, certain sections of the Act have already been proclaimed and took immediate effect. The Telecommunications Authority has a functioning Board. The RIC therefore took a somewhat hands-off attitude but became convinced by July of last year that it needed to extend its regulatory activity beyond mere responding to consumer complaints about TSTT.

The Telecommunications Act was due to be tabled in the Lower House on April 16, 2004 and we wait in anticipation that the Act will be passed. Nevertheless, the RIC must continue to regulate the sector until the full regulatory remit passes, in law, to the Telecommunications Authority.

## **Without Favour Call Centres Decision**

The RIC Act specifies that no one can operate telephone services without a license, which must be sought through an application to the Ministry of Public Utilities and the Environment. International Call Centres have been deemed to be providing telephone service and hence require such a license.

The service the "International Call Centres" provide is Internet based or Internet Protocol Telephony (IP Telephony). There are three types of IP Telephony Service:

1. PC to PC;
2. Phone to Phone;
3. PC to Phone.

The Call Centres service is basically phone-to-phone as voice is converted into digital data and then decoded back to telephone. Ordinary telephone or mobile phone is used as origination or terminating terminal device. Service is offered to the public as substitute to traditional telephony and a public switched Telephony Network is involved at some point.

The RIC has investigated the treatment of VOIP Service in other jurisdictions.

The International Telecommunication Union and Regulators in a range of countries have stated that similar or equivalent service should be treated in a similar way for regulation purposes. They have referred to this concept as "technological neutrality". As a result, a number of Commonwealth countries have made similar determinations on VOIP. These include Canada, the UK, Australia and Singapore. Malaysia

and Finland have also come to such conclusions. A recent judgement in the Caymans Islands also has shared this determination.

In a judgment of the Grand Court of the Cayman Islands, Cause No. 738/00, Justice Graham, in a matter involving the provision of IP Telephony notes:

"When voice is converted into a data package and then decoded it is no more than an up to date and efficient method of voice telecommunication. The Court is not to permit itself to be blinded by science and must look at the reality of what is taking place. That reality is that the Plaintiffs are concerned with the production and marketing of cheap and efficient telephone system .....and I so find."

The USA's 1996 Telecommunications Act makes a distinction between an "information service" and a "Telecommunications service". The USA's Federal Communications Commission (FCC) report in 1998, separated VOIP service into three categories which are identified above. The report identified that PC to PC and PC to phone constitutes information services. The FCC to date has not ruled on the third category of service (phone to phone).

Finally, the amendment to the T&T Telecommunications Act of 2001 makes it abundantly clear that the Telecommunications Authority will regulate the delivery of all public voice service irrespective of the means used to provide the service (e.g. VOIP) and therefore subject to license by the Telecommunications Authority.