Decisions on Recommendations on the Revised Authorisation Framework for the Telecommunications and Broadcasting Sectors in Trinidad and Tobago v1

The following summarizes the comments and recommendations received from stakeholders on the first draft of this document (dated May 2014), and the decisions made by TATT as incorporated in the revised document (August 2014)

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Entire Document	Digicel	Consultation documents from the Authority should be appropriate given the size of the market in Trinidad and Tobago. It is becoming increasingly difficult for operators to respond to regulatory demands or to have regulatory resources available to deal with a large number of documents in a short space of time. Hence the request for extensions on a regular basis. In addition, the complexity of the regulatory issues driven by the Authority requires expertise in economic, legal and technical regulatory issues which does not exist entirely within the operators - leading to the need for all sets of parties to engage expensive consultants. Maintaining the level of resources to facilitate such excessive regulatory workloads raises costs to unreasonable levels in relation to the size of our market and the benefits that can be obtained.	Less and simpler is a better approach to regulation than providing a document like this which is repetitive and unnecessarily complex. It would be easy, as well as a mistake, for the Authority to be drawn too far into the vast array of details that may arise in an increasingly complex ICT environment. With a close examination of the market, the Authority can always discern or perceive existing "imperfections". Two major factors need to be noted (a) the limits on resources, especially in Trinidad and Tobago given comparatively small population size and (b) consequential practical limits on the size of the operators and what can reasonably be afforded. The Authority's approach should be more pragmatic, focusing on the concerns raised by the public and the industry. To do otherwise would mean that the burden of work imposed on both the regulator and the industry can become disproportionate and	The Authority notes Digicel's concern however disagrees with its recommendation. Although the Authority is and shall remain committed to addressing the issues raised by the public and industry stakeholders it must be principally guided by its mandate and achieving the objectives under the Act. Thus, guided by Section 3 (e) of the Act, it is imperative that the Authority aligns its policies and regulations to fulfilling the wider obligations of the Government of Trinidad and Tobago, which includes ensuring compliance to the requirements of various treaties signed.

[1] Regional regulatory or Governmental agencies, Existing service and/ or network provider and affiliates, Potential service and/ or network providers and affiliates, Service/ Network Provider Associations/ Clubs/ Groups, General Public

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			unmanageable and lead to a net dis-benefit.	
Section 1				
Introduction	CCTL	CCTL welcomes the opportunity to provide input to the Draft Revised Authorization Framework for the Telecommunications and Broadcasting Sectors of Trinidad and Tobago. The views expressed in this response are not exhaustive. Where issues are not specifically addressed this does not in any way indicate acceptance, agreement or the relinquishing of any of CCTL's rights. We reserve the right to comment in more details on any issues that relate to this process in subsequent phases of the consultation. We note that the key driver for the proposed changes is to ensure compliance with the Economic Partnership Agreement (EPA) to which the Government of Trinidad and Tobago is a signatory. In referencing the EPA, TATT notes that the applicable conditions of EPA specific to the telecommunications sector are covered in Section 4 and Articles 94 to 102 of the EPA. We note that these sections address a range of issues as follows; -Article 95 deals with Regulatory Authority -Article 96 Authorization to Provide Telecommunications Services -Article 97 Competitive Safeguards on Major Suppliers -Article 98 Interconnection -Article 99 Scarce Resources - Article 100 Universal Service		The Authority notes CCTL's comments and wishes to reassure CCTL that all relevant policies, frameworks and regulations drafted by the Authority would be consistent with the relevant provisions of the EPA.

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		-Article 101 Confidentiality of Information -Article 102 Dispute Between Suppliers This consultation is related to Article 96 on the authorization framework. As consistency with the EPA is given as the main driver to this process, CCTL would request that TATT state a position as to whether in the other areas noted above, the current framework is consistent with the EPA.		
1.1 Rationale	Digicel	It is unclear to Digicel as to where the Authority has derived this "mandate" in relation to Articles 94 to 102 of the Economic Partnership Agreement ("EPA"). From our review of Act No. 9 of 2013, from which the Authority deems that this said "mandate" is derived, it is clear from Section 2 thereof, which gives a listing of the Articles of the EPA that shall come into effect, that Articles 94 to 102 of the EPA have not been ratified as they are not comprised in this list. As these Articles of the EPA are evidently not in force there is no resultant obligation on the Authority to impose an authorization framework for the provision of services by mere notification. To continue with this "mandate" of allowing service providers to enter the market through mere notification will be tantamount to the Authority stepping outside of the parameters of its enabling legislation. Section 21 (1) of the Telecommunications Act 2001 as amended ("the Telecommunications Act") clearly states that "No person shall operate a public telecommunications network, provide a public telecommunications service or	Digicel recommends that the Authority revert to the original position contained in the Authorisation Framework, whereby service providers are required to obtain a concession in order to operate within Trinidad and Tobago, which would be in keeping with Section 21(2) of the Telecommunications Act, which reads: "A person who wishes to operate a network or provide a service described in subsection (1), shall apply to the Authority in the manner prescribed." To do otherwise, would be overreaching on the part of the Authority as the EPA does not require changes to the current authorization framework that requires services providers to obtain a concession. This is clearly illustrated by the report prepared in September 2013 by the South	Section 2 of the EPA Act provides for those articles of the EPA which are to come in force by a later date of proclamation. All Articles of the EPA not captured by Section 2 of the EPA act are therefore currently in force as at date of the assent to the Act. Moreover, Section 21 (1) of the Act does not absolve the GoRTT and by extension the Authority from fulfilling its obligations under the EPA. In fact it is because of these contradictions existing within the two legislations, that this document in addition to proposing changes to the authorisation regime, also outlines the necessary amendments required by the Act to bring our current authorisation framework in compliance with the country's wider obligations. It is worth mentioning that this interpretation

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		broadcasting service, without a concession granted by the Minister." In any event, even if Article 96(1) of the EPA were ratified, from the wording of the section which reads "Provision of services shall, as much as possible, be authorized following mere notification." [emphasis added], it is clear that there is no "possibility" of allowing mere notification for access by service providers into this market based on section 21 (1) of the Telecommunications Act.	Center entitled: *The EU-CARIFORUM EPA: Regulatory and Policy Changes and Lessons for Other ACP Countries.* In that report South Center noted that following a two-day meeting that was held in Trinidad and Tobago on May 7-8, 2013, to allow Caribbean legislative drafters to consider and refine draft model bills intended to give effect to the provisions of the EPA that Barbados was fully compliant with the requirement of section 96(1) even though they require certain services providers to obtain a license.	was not made in isolation but also based on external counsel advice sought by the Authority who reaffirmed that our commitments to the EPA require the amendments proposed. Further, T&T's obligations are contextualised by the reservations agreed to at the signing of the Treaty. We are not aware of any reservations by T&T's with regard to Articles 94 to 102. Barbados may have recorded reservations in this regard. Given the variance in the countries' positions, an evaluation of the Barbados' compliance cannot be used as an indicator of T&T's compliance.
1.1 Rationale	TTPBA	In this section the Authority outlines the rationale for the Revised Authorisation Framework for the Telecommunications and Broadcasters Sectors of Trinidad and Tobago as being to ensure compliance with the Economic Partnership Agreement, ("EPA").The CARIFORUM (Caribbean Community and Dominican Republic) Economic Partnership Act ("EPA ACT"), was passed in 2013 and was assented to on the 17th July 2013. As a consequence the references to Articles 94 and 96 of the Agreement are in fact references to the law of Trinidad and Tobago. As such there are currently two conflicting authorisation regimes for telecommunications and broadcasting in Trinidad and Tobago as a matter of	The Authority must provide immediate clarification as to how new applications for broadcasting services are to be treated, whether under the Telecommunications Act or the EPA Act.	The Telecommunications Act is and continues to be the enabling legislation that empowers the Authority and its subsidiary legislations and policies governing the telecommunications and broadcasting sectors. Until the Act amendments with the changes prescribed in this document are approved and promulgated, the existing authorisation regime pursuant to Section 21 of the Telecommunications Act Chap 47: 31 shall remain in effect. Further, without the amendments to the

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		law. One is set out under the Telecommunications Act and the other under the EPA Act. If for example an application for a FTA TV broadcasting service was made to the Authority now, how would such an application be treated? Would it be an application under the Telecommunications Act or an authorisation under the EPA. The revised Framework is consequently replete with references as to the necessity to amend the Telecommunications Act to ensure compliance with the EPA, but the TTPBA is not aware that any public consultation has taken place as to proposed amendments to the Telecommunications Act to reflect EPA Compliance. The TTPBA is aware that a public consultation on amendments to the Telecommunications Act took place between May and July 2013. That public consultation did NOT include any amendments to deal with the EPA. This is a clear breach of the Authority's Procedures for Consultation in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago ("the Consultation Procedures"). Moreover to date no Decision on Recommendations Matrix ("DORs") have been published which is in apparent violation of clause 6.3.4 of the Consultation Procedures.	The Authority must consult in accordance with its own Consultation procedures on the further amendments to the Telecommunications Act to give effect to the EPA. The Authority must publish the DOR Matrix on the amendments to the Telecommunications Act following the public consultation which took place between May and July 2013	Telecommunications Act, the EPA Act would only be applicable for parties applying to be authorised as a provider of telecommunications services, where that party originates from the EU. The Authority has recognized that unless these two Acts are aligned there will be discriminatory treatment between parties originating from the EU and local providers. As such this document proposes, in addition to the suggested changes to the authorisation regime, the aforementioned Act amendments required to achieve a standard authorisation regime across all potential market participants. With respect to the consultation procedures of the Telecommunications Act, this is not under the remit of the Authority but a prerogative of the Ministry, and thus is not bound by The Authority's Consultation Procedures.

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1.2 The Authorisation Regime as required of the Act	TSTT	*"Additionally best practices observed around the world, have also suggested that telecommunications numbers, being identified as a scarce require usage restrictions via licences"* TSTT understands that telecommunications numbers can be identified as a scarce resource. However, our concern arises with the proper management of the said resource given Number Portability (NP). By simple definition, NP allows end users of a telecommunications services to retain his/ her existing telecommunication number(s) without impairment of quality, reliability, or convenience when switching from one carrier to another. At present the Authority distributes telecommunications numbers upon application in blocks of 10,000 to operators. Now envision the market with NP and customers moving freely across carriers, we argue that, the current assignment regime by block is clearly not feasible. For example, if Operator (A) obtains a block of 10,000 from the Regulatory, but over an unspecified period of time Operator (A) experiences customers churning to another Operator – Operator (B), the following concerns arises: 1) Will the Regulator continue to charge Operator (A) by block given the likelihood that some customers will churn? 2) Will Operator (A) be required to continue payment for blocks of 10,000 when in reality only a portion of this amount are existing customers? (Due to porting all else being constant). 3) The frequency of request for additional numbers due to exhaustion by either Operator (A) or (B)	TSTT recommends that the Authority modify the Numbering Plan for Trinidad and Tobago regarding numbering conservation and cost: 1) For instance, allocating blocks of 1,000 numbers instead of 10,000. "The infrastructure developed for MNP has been used to solve other problems in some countries. Where directory number resources (i.e. number ranges) were being exhausted, the infrastructure to make NP possible was also used to allow numbering plan administrators to assign numbers in a more efficient manner (to assign a block of 1000 numbers to an operator rather than a block of 10,000 numbers)." http://www,boloji.com/index.cfm?md=content&sd=Articles&ArticleID-437 2) Cost per block may need revising.	The Authority notes TSTT's comments however these issues will be considered when the Numbering Plan for Trinidad and Tobago is revised. The Authority notes TSTT's comments however these issues will be considered when the Numbering Plan for Trinidad and Tobago and the Fee Methodology are revised.

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		will be in decline as customers keep their existing numbers moving among carriers. This makes it difficult for operators to forecast when a particular block will become exhausted.		
1.3 Framework Objectives *Specifically, the Framework is intended to ensure that:* • *There is the promotion of fairness, innovation and efficiency in the allocation and assignment of* ***national resources*** *in the provision of telecommunications and broadcasting services, and that* ***these resources are efficiently and effectively utilised;***	TTPBA	We need to know what are considered "national resources". For example, are the poles of T&TEC and TSTT "national resources"?	The framework needs to be specific on: (1) What is a "national resource" (2) What would be considered efficient use of a "national resource"? If a radio station only attracts 10 listeners, is that efficient use of a national resource?	Within the given context, national resources refer to finite valued resources required in the operation and provision of telecommunications and broadcasting services and include radio frequency spectrum and telecommunications numbers. With respect to '*efficient use of a national resource*', this statement has been removed from the document since the notion is adequately captured by '*efficiency in the allocation and assignment of* ***national resources***'. This revised statement is associated with how the Authority allocates spectrum in terms of the radiocommunication services (as in the TTFAT) and usually an entire band is allocated. Frequencies are then assigned through an established process by the Authority to individual users.
1.5 The Consultation Process	TSTT	Based on our understanding, a previous Authorisation Framework was finalized in 2005. Even though this is a revision to the earlier document, we assume that this is the first (1st) round of a two (2) round consultation process.	Clarification needed.	The Revised Authorised Framework, having been considerably altered since its original publication in 2005, shall undergo two (2) rounds of consultation as in accordance with the Authority's Procedures for Consultation in

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				the Telecommunications and Broadcasting Sectors of Trinidad and Tobago.
1.6 Other Relevant Documents	TSTT	"This document should be read in conjunction with all current policies, and in particular with regulations developed by the Authority…" We must be mindful not to use the word 'policy' loosely; in that, a document should not be considered to be "policy" unless it has been ratified; it remains simply a proposed policy. According to the Authority's website the documents listed below have not been ratified as policy given that they are 'before the minister and not yet passed' (the Authority's words). These are: • Universal Service Policy and Regulations • Consumer Quality of Service Policy and Regulations • Pricing Policy and Regulations • Accounting Separation Guidelines and Regulations • National Numbering Plan • National Broadcasting Code While it is prudent to read this consultative document in conjunction with relevant policies for the sector, it is unwise to deliberately confuse draft policy documents as actual 'policy documents' as the conditions in those document may be subject to amendment before ratification.	TSTT recommends that the Authority should avoid using draft documents as support when creating other framework documents.	TSTT's concern is noted, and the document has been revised to indicate the current status of the mentioned documents. However it should be noted that the purpose of this section is to provide the reader with a greater context of the Authority's position on other applicable topics, and therefore reference to these documents, whether in its draft or final stages remains relevant.

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Competitive process not listed	TSTT	We note that, the competitive process, as a process towards awarding concessions, is not listed by the Authority. Can we assume that the Authority will be abandoning the competitive process? If this is the case, can the Authority clarify how scarce spectrum will be allocated fairly, given that the other processes mentioned do not effectively deal with the scarcity of resources, as with spectrum for example?	Clarification needed.	The Authority's criteria and process for employing a competitive selection method for the award of specific types of authorisation is expounded in Section 5.2.1, which in part, states: "*Where competition is introduced for the first time in highly profitable markets, where there is demand for spectrum or other resources that may be limited, or where there is a need to limit the entry of providers in a particular market, the Authority shall utilise a* ***Competitive Selection Method*** *to facilitate transparent determination of award."*
Section 2				
2 The Structure of the Telecommunications and Broadcasting Sector in Trinidad and Tobago	CCTL	CCTL notes that for consistency with the Article 96 of the EPA , the change proposed is that going forward only providers of public telecommunications networks would need a Concession to operate. Service providers (telecoms and broadcasting) would only require an authorization. The authorization is simply a registration process to notify the Authority of their intention to operate before doing so. This facilitates easier entry into the service markets. This is consistent with licencing trends in mature markets, and could serve to promote innovation and creativity in the service sector, and promote economic activity. This is clearly consistent with the Government's development	The revised framework should be supported by the appropriate checks and balances to ensure the effective development of the sector.	The propriety of the proposed framework has been guided by market analysis and assessments conducted by the Authority within the local, regional and international arena. In this regard, notwithstanding the requirements of the EPA, the proposed revisions to the Authorisation Framework includes checks and balances in, for example, Sections 5.1 and 5.3, where: (i) market access; and (ii) procedural requirements are outlined, so as to ensure orderly

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		agenda. CCLT supports this development. For this to work efficiently we believe the framework should have the appropriate checks and balances to ensure the continued development of the sector.		development of the sector.
2 The Structure of the Telecommunications and Broadcasting Sector in Trinidad and Tobago	Digicel	Without prejudice to our comments to section 1.1., with regards to the Authority's statement, "Going forward, parties who function in the service layer would only be required to notify the Authority of their operation prior to initiating the provision of service", although these may be recommendations based on the EPA, there needs to be a level of practicality and ensuring that the general public service delivery is not diminished. Based on the proposed policy, for example, Mobile Virtual Network Operators ("MVNOs") would simply notify the Authority of their operation prior to initiating the provision of service. How then would the Authority enforce the quality of service delivered by these MVNOs to the general public? Is it the intent that the planned Quality of Service Regulations would apply to Service Providers as well as Network Providers? Under a concession such MVNOs would be bound by usual network standards.	It is necessary for the Authority to be mindful in terms of what it recommends in relation to MVNOs and other Service Providers ("SPs"), including VolP operators, ensuring that a high quality of service is provided to our customers at all times. Also SPs should contribute to Regulatory fees, Universal Service Fund, etc. and in the case of VolP operators, they should be subject to the same kind of regulation/ obligation as traditional operators. Digicel therefore recommends that the aforementioned SPs be subject to a concession to ensure quality of service to customers and other service obligations to the country.	Within the new authorisation regime, all authorised providers, comprising of those holding concessions and/or service authorisations shall be bound to all applicable obligations contained within the Act and its subsidiary regulations, which would necessarily include the regulations governing Network QoS, Consumer QoS, Universal Service and Fees. Specifically, those holding a service authorisation, including VNO's, are required to sign Part IV (Declaration) of the Notification which states: *"provide the services identified herein and in accordance with the Act and all regulations and other applicable laws"* For those holding a concession, adherence to all clauses in the Telecommunications Act, subsidiary regulations and the concession agreement are applicable.

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			It should also be remembered that VolP providers on-sell network services provided by domestic network operators at a profit and are therefore due to pay taxes to the Trinidad and Tobago Authorities which they will continue to be able to evade subject to closer scrutiny being applied by all the Trinidad and Tobago Regulatory Authorities. Requiring them to go through a Concession type application process would enable closer monitoring so that they pay the telecommunications fees and taxes owing and to ensure that they meet necessary other conditions in the legislation.	The Authority notes Digicel's comments in this regard. These VoIP issues are currently being addressed by the Authority in a document to be published shortly. A general point to note, however, would be the market access eligibility requirements outlined in Section 5.3 of the proposed Framework.
Page 10 – Diagram of what will require notification, licence or concession	TTPBA	Under the heading Licence Required, we are told that Commercial TVRO and VSATs will require TATT to give you permission to own one. This could be interpreted to mean that if someone wants to install a dish on the roof of his house, he will need permission from TATT. TATT has no authority over the frequency spectrum used with these 'dishes' and no control over the program content delivered. Why is a licence required from TATT.	TATT should not require a licence for a 'dish' that receives foreign programming.	It is not accurate to say that TATT has no authority over the frequency spectrum used for these dishes. The ITU, in conjunction with the spectrum management authority, always collaborate in the licensing of the spectrum used. Currently any commercial TVRO ustilised in the provision of a commercial telecommunications/ broadcasting service requires a station or spectrum licence from the Authority which provides protection for the spectrum used. However, a private/ residential TVRO does not require a licence from the Authority

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				because this equipment is a receive-only terminal, not used for commercial purposes and does not receive protection for the spectrum used from the Authority. The Authority is actively deliberating as to whether commercial use not associated with telecommunications/ broadcasting services, such as betting shops, etc,, would be subject to licensing.
Section 3				
3 Considerations for the Role of an Authorisation Regime in an Era of Industry Change	Digicel	With reference to the Authority's statement, "As a result, the trend in migration to general authorization regimes became increasing popular among developed and **developing** nations .. . " [emphasis added], Digicel asks that the Authority provide examples of developing nations taking this approach and confirm whether any of these developing nations are comparable in terms of market size to that of Trinidad and Tobago. It is notable that a crucial difference between other regimes such as in the EU which adopt general authorization approaches and that which the Authority is	It is our recommendation that more research be carried out by the Authority to establish how similar sized markets are currently dealing with the authorization framework process. That will reveal this "three-legged" problem to the Authority's approach.	The term general authorisation refers to a class license regime. Many small developing countries employ general or class authorisation regimes in a similar manner as the Authority. As an example, Digicel is directed to the regional examples of the ECTEL states who issue class licenses for the authorisation of the use of specific radiocommunication devices and other types of telecommunications services. Further, smaller states like Botswana have also adopted general authorisation regimes for some services. The reference to "network access and resale obligations" is analogous to the obligation of interconnection as outlined in the regulatory

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		proposing is that the authorisation approach in the EU is set against a fundamental underlying best practice approach to regulation that network access and resale obligations may only be considered where dominance has been found in a particular market. Otherwise regulation becomes excessive, ineffective and over-burdensome on market players. *"It is essential that* ex *ante regulatory obligations should only be imposed where there is not effective competition, i.e. in markets where there are one or more undertakings with significant market power, and where national and Community competition law remedies are not sufficient to address the problem."*[2] The Authority will surely not want to use only part of an overall regulatory regime applied elsewhere and omit such crucial other elements contained therein; that would be comparable to trying to build a square table with three legs.		framework of Trinidad and Tobago. Accordingly, this issue is covered in the Authority's Policy on Interconnection and Access – a forerunner to the Telecommunications (Interconnection) Regulations – which already treats with this matter at length. Accordingly the concern expressed by Digicel of the "three-legged" approach does not arise. Notably, there are aspects of the interconnection (termination) market which is still deemed to meet the criteria established by the EU's common regulatory framework as cited.
3.3 Reforms in Authorisation Practices in response to a Converged Environment.	Digicel	With reference to the Authority's statements, " ... many countries, such as Hong Kong, China and Nigeria have introduced technology and service neutrality in their authorization regimes ..... Some countries, such as the Argentina and the EU, have even taken further steps in simplifying their licensing process ... ", it is all well and good quoting these large countries or regions with	Digicel, once again, recommends that more research be carried out by the Authority to establish how similar sized markets are currently dealing with the authorization framework.	Digicel's comment and recommendation are noted. The Authority however is of the view that the issue of convergence and its emergent effects on technology and service offerings are not concepts foreign to the experience of the

[2] DIRECTIVE 2002/211EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (*) as amended by Directive 2009/1401EC (**) and Regulation 544/2009

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		millions in terms of populations and huge resources. We, once again, ask that the Authority provide examples of countries similar in market size to Trinidad and Tobago which are trying to change their authorization process. As indicated previously the Authority would be taking a "three-legged" approach to regulation if it does not bear in mind other crucial differences between the current Trinidad and Tobago regime and others which have adopted general authorization regimes.		telecommunications sector of Trinidad and Tobago. Thus, the Authority retains its position on the importance of maintaining and/ or introducing, where applicable, technology and service neutrality and flexibility within the authorisation regime. With respect to similar sized markets, Digicel is directed to the examples of Botswana, Bhutan and Equatorial Guinea, who have all made strides in simplifying their authorisation process by introducing varying degrees of converged forms of licensing.[3]
3.3 Reforms in Authorisation Practices in response to a Converged Environment.	TSTT	Technology and Service Neutrality *"…many countries such as Hong Kong, China and Nigeria have introduces…in their authorization regimes"* While there's some benefit to benchmarking, it equally, if not more important to evaluate the impact of the changes on the local market	In the second round greater consideration should be given to the effect of the proposed changes on the sector here in Trinidad and Tobago.	Noted. The Authority however is of the view that the issue of convergence and its emergent effects on technology and service offerings are not concepts foreign to the experience of the telecommunications sector of Trinidad and Tobago. Thus, the Authority retains its position on the importance of maintaining and/ or introducing, where applicable, technology and service neutrality and flexibility within the authorisation regime.
	TSTT	Flexibility	We submit that there must be a framework	With regard to addressing the issue of

[3] See Draft Final Report on Question 10-2/1: Regulatory trends for adapting licensing frameworks to a converged environment available at https://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR09/doc/STudyGroup_draftreportQ10.pdf

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		"In addition to introducing neutrality and simplifying their authorisation regimes, many regulators have also responded to the new converging environment by adding greater flexibility within their frameworks" While we appreciate the Authority desire to offer greater flexibility as the market moved rapidly towards convergence, this consultation fails to identify a framework for the exercise of the greater proposed flexibility.	within which this flexibility is proposed to operate.	convergence, flexibility is typically introduced through the reduction of administrative burdens on service providers in seeking authorisation for the provision of their services. The framework within which the Revised Authorisation Framework proposes this is done through, among other things, the continued adoption of technology and service neutrality in the awarding of concessions and service authorisations and the move to a notification-only authorisation regime for the provision of services. The Authority believes that this latter introduction in particular shall facilitate adequate flexibility within the system as service providers would thus be able to provide an array of services without requiring additional individual authorisations or concessions, thereby reducing the regulatory burden.
Section 4				
4. The Authority's Classification of Authorisation	TTPBA	The proposed new authorisation Framework is supposed to facilitate further liberalization according to the Authority in section 1.1 and allow for the entrance of new providers in the market without any material restrictions as set out in 3. However the regime proposed far from facilitating further liberalisation actually makes it more burdensome for FTA	Remove the requirement for Free to Air TV and free to Air Radio Broadcasters from the necessity of having to hold a Concession to operate a public Free to Air Broadcast Network.	Pursuant to the proposed amendments to the Telecommunications Act, the proposed definition of a "telecommunications network" is as follows: *"telecommunications network" means a system or any part thereof used for the provision of a telecommunications* ***or***

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		radio and TV broadcasters. Currently an FTA radio or TV Broadcaster only requires a Class 5 Concession as well as a licence for the use of frequency as the case may be. The new regime it appears will require an FTA radio or TV Broadcaster to have the following; (i) **Network Concession** – required for the operation of a public telecommunications and/or broadcasting network. (ii) **Service Authorisation** – Required for the provision of public telecommunications and /or broadcasting services (iii) **Resource Licence**- Required for the installation, operation and /or use of scarce telecommunications resources, ie spectrum used by radiocommunication services or radio-transmitting equipment or telecommunications numbers. Apart from the obligations being onerous no sound policy reason has been advanced as to why a free to Air TV or radio Network or what the Authority refers to as a Public Free to Air Broadcast Networks, now requires a Concession. In addition this appears to be inconsistent with section 36		***broadcasting service***" Accordingly, a network of towers and transmitters associated with the provision of a free-to-air broadcasting service would be considered a telecommunications network in the new regime. Given the requirement (of both the existing Act and the proposed Act amendments) for an operator of telecommunications network to obtain a concession, it follows that the use of such networks for the provision of a broadcasting service shall also require a concession. Within the context of this framework, the Broadcast Telecommunications Network (BTN) was specifically created as a classification because the FTA BTN (the traditional radio or television broadcast system) does not share the characteristics of either the DFTN or the DMTN. . As the country moves towards digital terrestrial television, the FTA broadcasters would not control the network of carriage, and would thus only require a service authorisation. The concession for the operation of the broadcast telecommunications network and the licence

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		of the Telecommunications Act. Section 36(1) provides as follows:- '*No person shall* *(a) establish, operate or use a radiocommunications service,* *(b) install, operate or use any radio transmitting equipment…..* *without a Licence granted by the Authority*" Section 37 further sets out conditions which must be included in the Licence including type of emission, power and other technical requirements for the radio communications service. The question then becomes what will go into a networks Concession that you do not already HAVE to include in a Licence under s.36.		for spectrum used will be granted to another party. The licence would include technical obligations associated with the use of frequencies. The network concession would include general contracting and socio-economic obligations associated with the grant of the right to operate networks. These are distinct authorisations.
4.1 Classification of Authorisation by Concession	CCTL	The types of networks identified are domestic fixed telecoms, domestic mobile telecoms, domestic broadcast telecoms and international telecoms. Given technology convergence which TATT discusses in Section 3 of the consultation document, it begs the question as to whether at the network level there continues to be a need to distinguish between broadcast and telecommunications networks. Considering the EPA definition for telecommunications service ;		The Authority agrees with CCTL's proposition. Indeed, in the proposed amendments to the Telecommunications Act, the revised definition of a "telecommunications network" is as follows: "*telecommunications network" means a system or any part thereof used for the provision of a telecommunications* ***or broadcasting service***

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		"all services consisting of transmission and reception of electro-magnetic signals and do not cover the economic activity consisting of the provision of content which requires telecommunications for its transport," The concept of the common transmission facility seem to be paramount, and is distinct from the economic activity in other words the application layer.		This reflects the converged, common transmission facility model that CCTL suggests.
4.1 Classification of Authorisation by Concession	Digicel	With reference to the Authority's statement that the "Authority shall grant a concession authorizing, but not limited to, the following types of public networks ... ", it is our view that there should be an exhaustive list for the types of public networks for which a concession can be granted; this is particularly so in order to avoid any ambiguity.	Digicel recommends that the Authority removes the phase "but not limited to" from this statement and provides an exhaustive list for the types of public networks for which a concession can be granted.	Noted. The document has been amended accordingly.
4.1.1 Domestic Fixed Telecommunications Networks	Digicel	It is unclear as to whether the type of concession that will be granted will fall into one category under "Domestic Fixed Telecommunications Network" or whether there will be three different versions of a concession that can be granted for a Domestic Fixed Telecommunications Network (i.e. wired, wireless and a combination of wired/wireless)	The Authority is asked to clarify this point	Operators of a Domestic Fixed Telecommunications Network shall be granted a concession that authorises the operation of all fixed networks, inclusive of those with wired, wireless or mixture of such components.
4.2 Classification of Authorisation by Notification	CCTL	In the context of this consultation which is seeking to revise the authorization framework for consistency with the EPA, in addressing multi channel subscription broadcasting TATT states,	We recommend that content related issues, be addressed as part of consultations relating to the Broadcast Code.	The Authority agrees that all matters related to the conduct of broadcasters in relation to the provision of content should be addressed in the Broadcast Code.

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		" even where the provider of the service does not produce a content channel of its own, the service provider exercises editorial discretion of a broadcaster in determining channel suite (or line up) included in its packages. " It is more than a stretch to suggest that by selecting channels for rebroadcast as part of a line-up one is exercising editorial discretion. This appears to be an attempt to bring all rebroadcast programming under the Broadcast Code. Further, these issues would be (and in fact have been) addressed in the consultation on the Broadcasting Code. We disagree with TATT's position that the process of selecting content for rebroadcast amounts to exercising editorial control. With respect to international content, programming choices are largely dictated the ability to secure the rights to rebroadcast such content under contract.		However the quoted section of the document does not treat with content related issues, and does not bring "*all rebroadcast programming under the Broadcast Code*" Instead it articulates the parameters whereby a suite of business activities is categorized as being "broadcasting service provision." Indeed, the sentence after the one quoted, reaffirms that the multi-channel subscription service provider is required to adhere to the provisions of the Broadcast Code – a situation that exists today, before the revisions proposed in this document.
4.2.1 Provision of Public Telecommunications Services	Digicel	We wish to draw the Authority's attention to section 5.1 of this draft revised Authorisation Framework, wherein it states that the number of concessions issued for network operators is proposed to be based on sustainability in market. It is our view that there should be a similar measure applied to service providers, in particular where their entry into the market would lead to significant establishment costs for network operators. This is especially the case, as there is no evidence of market failure in mobile; best regulatory practice	The Authority should therefore make it necessary for access seekers as a minimum, in addition to the requirements listed by the Authority, to provide proof, inter alia, that they have the necessary financial resources, ability to establish the services proposed to the standard necessary, and ability to provide the necessary level of customer service.	Digicel's comments and recommendations are noted. However, while the obligations of the EPA constrain the Authority from exercising discretion in this regard with respect to exclusive service providers (e.g. the virtual network operator), the Authority requires the submission of some certification of financial credibility via the notification form, included as Annex I to the document. Non-submission

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		worldwide dictates that access obligations should only be considered where market failure exists. Where Authorisation regimes are implemented around the world which require mere notification before services can be offered that occurs in the context of an overall regulatory regime that imposes resale and network access obligations only where dominance is present. In other words, only if a provider is dominant in a particular economic market and the regulator has decided to impose resale or other such obligations, can a service provider ask for those services. This is best regulatory practice internationally (including for example all EU countries). Levelling the playing field can only occur if the regulatory regime enables appropriate additional remedies to be placed on entities with dominance in a relevant economic market as it is only they which have the ability to distort the market place or to generate competition issues. By implementing a mere notification regime without the requisite underlying requirement to impose resale and similar obligations only where dominance has been determined, and even then only if absolutely necessary, the Authority risks inefficient market entry and burdening market players unreasonably with large numbers of unsustainable network access requests.	The Authority can implement best practice regulation by ensuring that mere notification by service providers will entitle them to obtain resale and network access requirements if dominance in a particular economic market has been proven and there is sufficient evidence of market failure to justify imposing additional requirements on them in that market. In order to implement that best practice approach, it would mean ensuring that that mere notification results in the designation as service provider save and except for certain exceptions such as resale and other forms of network access. A better approach altogether, however, would be to amend the Telecommunications Act to ensure that only where operators have dominance can the Authority consider the imposition of resale and network access obligations.	of such information would render the notification void. It is worth remarking however that the proposed change in the process of authorising providers of services from a concession based application to a notification system does not affect or in any way reduce the rights and obligations of authorised providers. As such, the Authority maintains its position with respect to the rights and obligations of all parties authorized under the Act to be "access seekers" and "access providers" as provided for in accordance with the Authority's policies and regulations addressing matters on interconnection and access to facilities.
4.3 Classification of Authorisation by	CCTL	We question the need to implement a licencing regime for issuing number blocks. We request that TATT provide		The Authority is responsible for managing and authorising the use of two resources,

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Licences		the industry with a justification for this proposed change.		spectrum and numbers. As such, all of the obligations that apply to the use of spectrum shall also apply to the use of numbers, since they are both recognized as scarce national resources by the Authority.
4.4 Geographic Coverage and Considerations	CCTL	We note that TATT is proposing to exclude the niche category of Concessions for small market players. CCTL is requesting that TATT provides the industry with the reason for this change. Not to pre judge the response from TATT, but we consider that part of the thinking maybe that such players would be accommodated as service providers under the current regime. With respect to the metrics for measuring geographic coverage , the commitments in the Concession is based on a mix of percentage of population covered, number of homes passed and incremental levels of digitization. The proposal is to revise this to 100% geographic coverage for each category of Concession or Authorisation. In telecommunications , coverage indicators defined as 100% of any geographical area are unrealistic. For example there may be areas of the country that are not populated, in such instances CCTL questions the merit of requiring coverage where it is not serving the public. This would essentially be requiring network operators for example to use scarce capital to establish networks with no opportunity to earn revenue from such networks. Consistent with standard industry practises coverage is	TATT should provide the industry with more information on the thinking in this regard. We recommend that percentage of population covered and number of households passed be maintained as the basis for measuring network and service coverage.	CCTL is directed to amendments made to *Section 4.4 Geographic Coverage and Considerations* that shall seek to provide clarification on the structure of roll-out obligations within the proposed new authorisation regime. In summary the proposal is as follows: - The retention of the "National", "Major Territorial" and "Minor Territorial" geographic classifications; - The replacement of the "Niche" geographic classification with the "sub-territorial" geographic classification; - A person may be authorized to provide service to a minimum of two (2) contiguous and a maximum of four (4) contiguous sub-territorial regions, beyond which a Major Territorial classification will be required. - Roll out obligation within each geographic classification of no less than 85% population coverage. - Where the geographical classification exceeds regional boundaries, the obligation shall include meeting at least

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		normally measured based on population coverage or household coverage. The indicators used by the ITU are notable in this regard. As indicated above, roll out commitments in the Concession are based on similar measures. In the revised framework it is proposed that roll out obligations will now be based on time stipulated to commence operations vs. the current incremental roll out targets. This change is not informed by the EPA. The rationale for this change is unclear. CCTL is of the view that time to start operations is not inconsistent with the current regime, as the first roll out increment would mean that operations would have commenced. Overall the proposed changes with respect to network and service coverage have no bearing on the EPA which is given as driver for the proposed change. It is unclear why TATT is proposing the above changes. Good regulatory practice would dictate that TATT provides the industry with the rationale for proposing to move away from current practises. CCTL is requesting that TATT clarifies what it is hoping to achieve with these proposed changes.		the 85% population coverage in each sub-territorial region covered.
4.4 Geographic Coverage and Considerations	TSTT	"…the Authority proposes that in the new dispensation an authorized provider's roll-out obligations shall also be tied to the stipulated time of commencing operations, as prescribed by the Authority."	Given that the time element already exists in the roll-out obligations of concessionaires, we seek further clarification on the reasons for the proposed changes.	TSTT is directed to amendments made to *Section 4.4 Geographic Coverage and Considerations* that shall seek to provide clarification on the structure of roll-out obligations within the proposed new

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		To the best of our understanding, the element of time is a component of a concessionaire's existing roll-out obligation.		authorisation regime. In summary the proposal is as follows: - The retention of the "National", "Major Territorial" and "Minor Territorial" geographic classifications; - The replacement of the "Niche" geographic classification with the "sub-territorial" geographic classification; - A person may be authorized to provide service to a minimum of two (2) contiguous and a maximum of four (4) contiguous sub-territorial regions, beyond which a Major Territorial classification will be required. - Roll out obligation within each geographic classification of no less than 85% population coverage. - Where the geographical classification exceeds regional boundaries, the obligation shall include meeting at least the 85% population coverage in each sub-territorial region covered.
4.4 Geographic Coverage and Considerations	TTPBA	Concessions and service authorisations will be granted at a national level, a major territorial level and a minor territorial level. All will authorise the holder whether for Trinidad and Tobago, Trinidad alone or Tobago alone to provide its network and /or services to 100% of the geographical area of those territories. It is interesting that it is framed as a right and not an obligation, which underscores the issue raised above concerning the		TTPBA is directed to amendments made to *Section 4.4 Geographic Coverage and Considerations* that shall seek to provide clarification on the structure of roll-out obligations within the proposed new authorisation regime. In summary the proposal is as follows: - The retention of the "National", "Major

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		necessity of free to air radio and TV Broadcasters to have a network Concession. There can be no roll out obligations since the geographical and coverage commitments are permissive and not mandatory.		Territorial" and "Minor Territorial" geographic classifications; - The replacement of the "Niche" geographic classification with the "sub-territorial" geographic classification; - A person may be authorized to provide service to a minimum of two (2) contiguous and a maximum of four (4) contiguous sub-territorial regions, beyond which a Major Territorial classification will be required. - Roll out obligation within each geographic classification of no less than 85% population coverage. - Where the geographical classification exceeds regional boundaries, the obligation shall include meeting at least the 85% population coverage in each sub-territorial region covered.
Section 5				
5.2 The Authorization Process for Concessions and Licences	CCTL	In item 5.2.2 (ix) where applications are rejected or returned to applicant with written notification, the process should allow for the applicant to be heard before a final decision is made. Item (xiii) gives the Authority total discretion and without notice to change the authorisation or licencing process. We consider that this lacks transparency and believe that any such change should be subject to consultation.	The process should allow for the applicant to be heard before a final decision is made. Such change should be subject to consultation.	Noted. The document has been amended accordingly. Noted. The item has been deleted from the document.

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5.2.2 General Submission Process for Concession and/ or Licence Applications	TSTT	*(vii) Provided that the applicant has submitted all the necessary information required to the Authority, the Authority shall:* *a. Make a determination in respect of an application for a licence within 90 days from the date of the receipt of the said application* *b. Make a recommendation to the Minister in respect of an application for a concession within 90 days from the receipt of the said application* *(viii) the Authority may at any time request further information from an applicant where such information is required to complete and/ or properly evaluate the application.* The document reads as though additional information can be requested by the Authority from operators subjectively. This is to say, if there's on standard from for all operators then on what basis will the Authority request additional information? Uncertainty can arise among the applicants if there's no document clearly identifying what additional items may be required by the Authority in print. Furthermore, it introduces subjectivity where the Authority can use clause (viii) above to its leverage and deny applicants by the will of the Authority.	The Authority must act fairly to all operators within the market at all times. In this sense, TSTT recommends that there should be only one standard form requesting all relevant information from all applicants to erase any belief that the Authority is performing its duty unjustly.	As it stands currently, the Authority employs the use of a standard application form for the evaluation of concessions. Clarification may be required when an application does not contain the required information that affords the Authority the ability to make a decision based on its pre-defined criteria. The document has been amended to reflect this.
Section 7				
7.1 Fees	TTPBA	Article 96 of the EPA Agreement enshrined in the EPA Act, is clear that Licence fees shall not exceed the	In the event that the Authority persists with the requirement for this unnecessary Network	While broadcasters will be required to obtain a concession and a service authorisation, only

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		administrative costs normally incurred in the management, control and enforcement of the applicable licences. The proposed fee regime falls into four categories (i) Concession Fees (ii) Service Authorisation Fees (iii) Licence Fees (iv) Resource (Spectrum and Numbers) Usage Charge The first three categories are supposed to reflect an activity based contribution towards the costs incurred by the Authority to administer all Concessions as well as to meet the operational costs incurred by the Authority. The last one is reflective of an economic rent and is acceptable. What is however alarming, is the creation in the case of Free to Air radio and TV Broadcasters of a new and unnecessary Network Concession for which these Broadcasters have to pay Concession Fees. This artificial creation of a requirement for a network Concession seems to violate the principle of Concession fee charging set out under article 96 of the EPA Act.	Concession, then it must ensure any amended Fee Regulations are structured in such a way that does not RESULT in Broadcasters having to pay MORE Concession or Resource usage fees than they currently pay to the Authority.	one fee will be charged pursuant to the Revised Fees Methodology as published by the Authority. Licence fees will be based on spectrum charges.
7.1.1 Concession Fees	CCTL	CCTL welcomes the reinforcement of the notion that licence fees should not exceed the administrative costs incurred in the management, control and enforcement of such licences. Good regulatory practise dictates that TATT adopts this approach, as it is seeking to ensure	The overall fee structure should be revised with the goal of meeting the cost recovery standard established in the Act and reinforced by the EPA.	Currently, the fee structure is designed towards the primary goal of meeting the cost recovery standard. In the light of the EPA, the details of how the

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		consistency with the EPA regime. TATT should not selectively determine areas of the EPA to which it seeks to align its policies and practises. Sections 41(1) and 52(2) of the Telecommunications Act 2001 speaks to regulatory fees relating to the management function on TATT being based on cost recovery. In this regard it is our considered view that the EPA is consistent with the Act in that the "reasonable" cost for the Authority should be covered. This is an important point, because if the role of the Authority is to ensure the efficient and sustained development of the market, as guardians of the proper development of the market, the cost that the industry has to bear for the Authority to operate should be efficient. Further the industry should be able to verify that the costs related to the running of the Authority are reasonable. The fees levied on the industry are a direct flow through of the Authority's budgeted expenditure. To ensure market efficiency (that the market does not bear unreasonably high cost) and to ensure transparency, the Authority's budgeted expenditure as well as information on financial performance should be readily available to the industry. This is standard practice in other regional and international markets.	TATT should follow international best practice and make information about its financial performance readily available to market participants and the public at large on the Authority's web site.	current structure is to be adjusting is addressed in the Revised Fee Methodology and proposed amendments to the Fees Regulations. Therein, these documents reinforce the notion that licence fees shall not exceed the administrative cost to manage such licences. The Authority's audited financial statements are available on its website.
7.2 Duration of Network	TTPBA	While 7.2 sets out the proposed periods for authorisations for new applications, the Consultation document is silent	The Authority must provide information as to the proposed transitional arrangements for	Noted. The document has been amended to make provisions for the proposed

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Concessions, Service Authorisations and Licences		on the transition regime which will apply to existing Concession and/or Licence Holders, who have unexpired terms in their Concessions and/or Licences.	existing Concession/Licence holders.	arrangements for existing concessionaires transitioning to the new authorisation and administrative regime.
7.2.1 Use or Lose Periods	CCTL	With respect to the introduction of concept of use or lose period for network or service authorizations, our initial thoughts are that consideration should be given to have separate processes for network operators authorisation and service provider authorisations. This should take account of the ease of entry and the different level of commitment for a network operator vs. that of a service provider. The process should also allow for the authorised provider to be heard before the Authority makes a final determination. In other words there should be due process.	There should be separate processes for the authorisation of network operators and service providers. No decision should be made without due process.	Noted. While the "Use of Lose Period" has always been an aspect of the Authorisation Framework, it shall be adjusted to reflect differing foci with respect to persons with network and service authorizations..
7.3 Renewals	CCTL	The process for renewal of an authorisation is the same as for new applications. For service authorizations this may be reasonable as the process is a simple notification process. For network authorisations, the initial application process is more onerous. In this case consideration should be given to simplify the renewal process as the entity is already operating, and would be in compliance with required regulations. In the case of non compliance, we would expect these issues to be addressed as part of a separate process. In discussing the timeframe for renewals, TATT seem to use the terms re-application and renewal interchangeably. CCTL view these terms as having different meanings and as such different processes with different requirements. A	The processes to renew the authorisation of a network operator should not be the same as that for a service provider. For network authorizations the renewal process should be simpler than the initial application process. In determining the renewal process for network authorizations in particular, TATT should consider the implications for the ease of doing business.	The document has been amended to reflect different processes for the renewal of service authorisations, licences and concessions. The Authority shall publish its requirements for concession renewal subsequently. Noted and agreed.

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		re-application implies redoing the process gone through in the initial application, whereas a renewal would be a less onerous exercise. This is related to the previous point. We would point out that in defining these processes TATT should consider the implications for the ease of doing business in Trinidad and Tobago. The requirement to renew Concession and licences two thirds of way through the term, will have a different impact depending on the term of the Concession or Licence. In the case of a Concession with a ten year term this would imply going through a renewal process about 3 years before expiry. We propose a shorter renewal period of one year before expiry. Given that TATT suggests a minimum period of six months, we believe a year is more reasonable.	We propose a shorter renewal period of one year before expiry.	Noted. The document has been amended in consideration to CCTL's comment.
7.5 Assignment of Authorizations, Trading of Authorizations, Change of Control and Disposal of Assets	CCTL	It is being proposed that concessionaires should seek approval from TATT for disposal of components of its network where such a disposal will have an adverse impact on the capacity and geographical reach of the network. We consider this to be unnecessary, as there are already provisions and related processes and penalties to address roll out commitments. Further the process has no objective criteria to determine what is "adverse impact on the capacity and geographic reach of the network" for example.	We recommend that the requirement to get approval from the Authority to dispose of network assets be excluded.	The Authority does not agree that this requirement should be removed. The purpose of this provision is to ensure that consumers are afforded reliable and sustainable access to telecommunications and broadcasting services. Where network components are legitimately decommissioned without impact to network operations or service delivery, the Authority has no concern. However, where disposal of network components require the

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				decommissioning of extant network infrastructure or the cessation of service without replacement, the Authority reserves the right to intervene such that this action does not result in undue disruption of services to consumers. Thus, where, in conjunction with proposals for disposal of network elements, plans for continuation of such services are not provided to the satisfaction of the Authority, the Authority reserves the right to withhold approval of the decommissioning of networks and services in the interest of protecting consumers. This approval however shall not be unreasonably withheld.
7.5 Assignment of Authorisation, Trading of Authorisation, Change of Control and Disposal of Assets	TTPBA	The justification given to justify the policy position outlined ie that obligations associated with specific users such as network and rollout requirements and public service broadcast commitments must be adhered to ensure that public access to the services is retained, is inconsistent with para 4.4 of the consultation document. That section provides that the authorised provider has the right but NOT the obligation to cover 100% of the geographic area of Trinidad and Tobago or Trinidad alone or Tobago alone. Similarly the proposed requirement that Concessionaires seek the approval of the Authority prior to the transfer or disposal of components of its network where such disposal will impact on the capacity and geographical	No approval from the Authority should be required for the assignment of authorisation, the trading of authorisation, change of Control or Disposal of assets. In the event that the above is not accepted the Authority needs to develop sound policy arguments why its approval is necessary in the scenarios outlined above.	TTPBA is directed to Section 4.4 of the document where amendments have been made to the document to clarify the geographic and coverage obligations by authorised providers. The purpose of this provision is to ensure that consumers are afforded reliable and sustainable access to telecommunications and broadcasting services. Where network components are legitimately decommissioned without impact to network operations or service delivery, the Authority has no concern. However, where disposal of network components require the

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		reach of the network is also inconsistent with para 4.4. No policy reason has been advanced to justify these approvals which by their nature infringe a person's constitutional right to freedom of expression in the case of broadcasters as well as a person's constitutional right to protection of property, in all cases.	Further the Authority should be given a fixed timeframe to consider such applications, and to respond to applications. Applicants should not have to languish indefinitely at the behest of the Authority while its applications are being considered.	decommissioning of extant network infrastructure or the cessation of service without replacement, the Authority reserves the right to intervene such that there this action does not result in undue disruption of services to consumers. Thus, where, in conjunction with proposals for disposal of network elements, plans for continuation of such services are not provided to the satisfaction of the Authority, the Authority reserves the right to withhold approval of the decommissioning of networks and services in the interest of protecting consumers. This approval however shall not be unreasonably withheld. Noted. It is proposed that the Authority be obliged to notify the party of its decision in this regard within ninety (90) days.
7.6 Broadcast Must-Carry/Must Offer	CCTL	To be clear the proposed changes here have no bearing on the EPA. TATT suggests that the Condition C19 is silent on the question compensation between FTA television broadcasters and multi channel subscription television service providers. CCTL believes that in our Concession		CCTL is advised that the relevant provisions will no longer be included in the Concession and are thus to be included within the Regulations established pursuant to this

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		it is clear that CCTL has a must carry obligation to all national and major territorial FTA television broadcasters. This is consistent with the concept of must carry in other jurisdictions. As this is a regulatory obligation, there are no fees. The policy impetus for must carry is to ensure the wider public interest is served by wide distribution of FTA programming. FTA uses government licensed broadcast spectrum and the programming is pervasive - that is the content is available free to anyone. In mature broadcast markets FTA type programming is primarily local programming produced by the broadcast entity for its public. Subscription television service on the other hand, the viewer has to explicitly request the service and pay to receive it. This content is a package of content sourced from content producers. TATT raised a question of seeming inconsistency[4] between intellectual property (IP) laws and the current must carry regime. The proposed solution is to change the current regime to a US type regime which gives FTA providers the option to require STVOs to seek consent for retransmission and thereby the FTAs can charge fees for royalty or elect	Framework. Agreed. In the proposal included in the Framework, it is maintained that there will be no fees charged to either party where the Must Carry option is selected. Noted. CCTL requests that the Authority clarifies whether where a FTA elects the must carry option, if some form of agreement would still be necessary.	The Authority believes that whichever option is chosen, a commercial agreements should be forged between the FTA broadcaster and the multi-channel subscription broadcaster. Even in the instance that the FTA elects the Must Carry option; there should at least be an agreement with regard to the carriage/ retransmission of the FTA broadcaster's IPR,

[4] The suggested inconsistency is that IP laws dictate that authorization for re-transmission is always necessary, while in the current must carry regime, subscription TV operators (STVO) are not required to gain IP rights to carry FTA broadcasters.

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		must carry status and so waive rights to seek payments for royalty. At this point CCTL will reserve comments on this proposal point. Particularly as we note below, some aspects of the proposal are unclear. TATT further proposes that going forward it is essential that all transmission agreements are covered by formalized agreements to ensure there are no ambiguities regarding the responsibilities of either party. However it is unclear whether TATT is proposing that there should be formal agreements even for must carry agreements. We are requesting clarification on this point, particularly as in the proposed framework where the FTA has a choice between electing to seek consent for retransmission rights or to fall under the regulatory must carry obligation, the difference seems to rest solely on the payment for the retransmission rights. This raises the question as to whether TATT is proposing that there are other terms and conditions that would have to be negotiated as part of a transmission agreement, since TATT suggests that all transmission agreements should be covered by formal agreements.		even though there will be no fee schedule associated with the agreement. Guidelines on the content of the commercial agreement would be addressed in a subsequent document to be published by the Authority.
7.6 Broadcast Must-Carry/Must Offer	Digicel	The Authority is proposing (based on Federal Communications Commission Retransmission Consent Rules) that free-to-air broadcasting service providers choose between requiring multi-channel subscription broadcasters to: (1) seek consent for retransmission and pay a royalty fee; or (2) be required to carry a free-to-air channel without receiving a royalty.	The two elements set out by the Authority are but a mere two elements of a set of complicated rules and procedures applicable to the "must carry" obligation applicable in the United States of America. In particular, the proposal of the Authority to focusing on only two elements of the applicable rules fails to consider the impact the implementation on	Digicel's comments are noted. While proposals in response to some of the concerns raised have been included in the document, further details will be addressed in a subsequent document on Broadcast Must Carry/Must Offer Arrangements.

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			the proposal will have on the industry, consumers and general interest. A non-exhaustive list of matters that the Authority has failed to take into consideration, are:	
			(1) free-to-air broadcasters could discriminate between multichannel subscription broadcasters *(e.g.*, charge one and not another) thereby reducing competition in the sector;	Digicel is directed to Section 7.6 of the document that states: *"Once an option is selected, the free-to-air broadcaster is obliged to treat all multi-channel subscription television service providers equally."*
			(2) free-to air broadcaster licensed to provide services in "niche" area allowed to expand the geographic scope of their license by demanding that multi-channel subscription broadcasters carry the channel throughout the national territory;	Noted. The Authority suggests that the free-to-air broadcaster who is only authorized for a regional geography should not be eligible to benefit from the Must Carry provision. In line with the principles of cost causality, the Authority believes, that, in the absence of an agreement between parties, the party who seeks to benefit should be responsible for signal acquisition/ delivery. Further, the person responsible will be the person that bears the financial burden of that responsibility.
			(3) who is required to deliver a usable signal to the head-end of multichannel	With respect to the must carry option, the FTA broadcaster shall be obliged to provide

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			subscription broadcasters; (4) who is required to pay for the delivery of a usable signal to the head-end of multi-channel subscription broadcasters; (5) in the event of a proliferation of free-to-air channels in Trinidad and Tobago would a multi-channel subscription broadcasters be required to carry all free-to-air channels which have a significant public service obligations. In light of the foregoing, Digicel recommends that further consultation with industry and civil society be carried out before the	the signal to the multi-channel broadcaster. This provision of signal could be via ensuring reception of the broadcast signal over the air or via dedicated transmission facilities. With respect to the retransmission consent option, the multi-channel broadcaster is obliged to take necessary steps to acquire the signal of the FTA broadcaster. According to legislative requirements all multi-channel broadcasters must carry FTA broadcasters. In any instance there is a natural limit to the number of free-to-air broadcasters can be licensed (vis-à-vis available spectrum assignments) which limits the scope of this problem. However, recognizing the work underway in deploying digital FTA systems, which do have the potential to expand the capacity of the FTA broadcast segment, the Authority has included the proposed regulatory regime governing the Signal Distributor Model in accordance with its Framework for DTT Implementation in Trinidad and Tobago. Noted. The Authority looks forward for more pointed feedback from industry and civil society in this forum as the Authority

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			adoption of the Authority's proposal.	streamlines its proposal.
7.6 Broadcast Must-Carry/Must Offer	DirecTV	Technical limitations faced by satellite service providers limit the ability to carry additional channels. Directv Trinidad Limited is owned by Directv Latin America LLC, a subsidiary of Directv. Directv is a satellite pay-tv provider to households in the United States, Latin America and the Caribbean. Directv Trinidad Ltd. is able to offer a superior service at a reasonable price to customers in Trinidad & Tobago through economies of scale achieved by using a single satellite to service its Latin America and Caribbean countries. Satellite technology is a viable option for such countries because DIRECTV is able to reach otherwise remote, underserviced areas. However, satellite technology presents capacity limitation issues – in other words, there are only a certain number of signals that can be transmitted via a satellite shared across a vast swath of territory. This challenge would be further exacerbated if there were also the legal obligation to carry additional must-carry channels. For that reason, most countries that have considered must-carry obligations have created separate regimes for the satellite industry, or have made must-carry obligations subject to satellite capacity and other technical constraints. DIRECTV's satellite constraints make it impossible to comply with a must-carry regime that does not take into	Should the policy be implemented, there should be a clear exception for Satellite providers.	The Authority requests clarification from DirecTV regarding the technical limitation faced by Satellite providers with respect to carrying local FTA content within their channel line up. In this regard the Authority would seek to appreciate as to whether a cap to the number of FTA's to be included in the DirecTV uplink would suffice to facilitate an alternate implementation of the Must Carry option.

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		account the reality under which it does business. Thus, should the obligation to carry mandatory channels be implemented, there should be a clear exception excusing satellite providers from having to comply due to technical or capacity limitations. Please note that such exceptions along these lines currently exist in many other jurisdictions, such as Brazil, Chile and Colombia.		
	DirecTV	Experience has demonstrated that the retransmission consent regime has resulted in many acrimonious and imbalanced negotiations between broadcasters and pay-TV operators in the United States. Such disputes frequently result in blackouts of channels for certain periods of time, depriving consumers of such channels. In addition, broadcasters have practiced discriminatory pricing, which prevents a level playing field for pay-TV operators. For this and other reasons, the retransmission consent regime is currently being reassessed by the US Congress. TATT's retransmission regime proposal mirrors to some certain extent the Cable Act 1992, of the United States of America. Experience shows that the retransmission consent regime has resulted in many imbalanced and acrimonious negotiations between broadcasters and pay-TV operators in the United States. Such disputes frequently lead to blackouts of channels for certain periods of time, depriving consumers of the ability to watch such channels. In addition, broadcasters have practiced discriminatory pricing, which prevents a level playing field for pay-TV operators. For this and other	It is not in the public interest for TATT to adopt a retransmission consent regime since such a regime has resulted in frequent blackouts and acrimonious negotiations.	Although DirecTV's concerns are noted, the Authority wishes to advise DirectTV on some noted differences between the US model and the Authority's proposed regime, which the Authority believes mitigates against the challenges experiences in the US. Firstly, the FCC is prohibited from intervening in retransmission consent negotiations. However, pursuant to Section 82 of the Act, the Authority shall retain the right to intervene in disputes between FTA broadcasters and multi-channel providers thus mitigating against these concerns about negotiations being overly lengthy. Further the Authority may consider other mechanisms, including establishing Reference Offers to be utilized by FTA broadcasters seeking to utilize the Retransmission Consent option, as different strategies to manage expedited conclusions to agreements. Secondly, due to the difference in structure of

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		reasons, the retransmission consent regime is currently being reassessed by the US Congress in part to the recognition of the inequity in bargaining power between broadcasters and pay-tv providers. According to the testimony of DISH Network L.L.C[5]: *"Broadcasters abuse their retransmission consent rights during negotiations, using brinksmanship tactics and blackouts to extract ever-greater fees from MVPDs, with no end in sight. Blackouts happen when companies like DIRECTV and DISH try to fight back and reject broadcasters' unreasonable price demands, which often involve rate increases of several hundred percent. Retransmission consent fees raised $758 million for broadcasters in 2009. They hit $3.3 billion in 2013. They are expected to reach $7.6 billion in 2019.* *In 2013, there were 127 broadcaster blackouts, compared with 96 blackouts in 2012, 51 blackouts in 2011, and 12 blackouts in 2010."* The proposed TATT policy is based on a flawed US model without taking into account the inherent peculiarities and problems associated with it, inclusive of a barrage of consumer complaints, and caused by its implementation. In addition, we note that the proposal does not reflect the totality of the limitations and		the broadcasting market in Trinidad and Tobago, the Authority does not believe that there is significant risk of the type of "upstream intervention," as experienced in the US, occurring in the domestic environment. The Authority's research notes that this "intervention" by upstream national networks has been identified as one of the key causes to the challenges that are occurring with the retransmission consent regime in the US. Notwithstanding same, the Authority has proposed in the revised document some further rules with respect to restricting co-operation of the persons who control the top four revenue generating FTA broadcasters in the negotiation with the multi-channel subscription broadcasters. Such a restriction would be pursuant to the Authority's role as a Competition Authority under the amended Telecommunications Act.

[5] Testimony of Alison A. Minea Director and Senior Counsel of Regulatory Affairs: DISH Network L.L.C. on "Reauthorization of the Satellite Television Extension and Localism Act" before the United States Senate Committee on the Judiciary. March 26, 2014

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		exceptions included in the US retransmission consent regime. Indeed, TATT's proposal is a -simplified version of the US regime, which may paradoxically result in even greater complexity and tension than its model. In light of the above, a retransmission consent regime should not be implemented without adequate safeguards to ensure that the dysfunctions, and especially consumer blackouts and discriminatory pricing, that have been seen elsewhere are reproduced in Trinidad and Tobago. TATT should therefore be poised to manage and regulate fees and deal effectively with re-transmission negotiation disputes to ensure that the telecommunications industry continues to operate in a free market system.		
7.6 Broadcast Must Carry	TTPBA	While the Authority is to be commended for giving Free to Air broadcast service providers the option of choosing between obtaining a royalty payment for re-transmission or waiving its rights to seek remuneration for royalties, the proposal to include in Authorisation regulations general guidelines as to re-transmission agreements is too vague.	The Authority should mandate appropriate terms and conditions in the Regulations to treat with retransmission agreements	Noted. The appropriate terms and conditions shall be addressed in the Authorisation Regulations, and subsidiary indicative frameworks which may be developed by the Authority.
8.1 Revised Structure of the Concession	TTPBA	When one considers the details of the general structure of the proposed new Concession laid out in table 6, it becomes readily apparent that it is designed for telecommunications networks and not for free to air radio or TV networks. Indeed it says so quite plainly in the title as well as in the outline of Section A, which speaks to the	Remove the requirement for Free to Air TV and free to Air Radio Broadcasters from the necessity of having to hold a Concession to operate a public Free to Air Broadcast Network.	TTPBA is reminded that, as discussed above, within the proposed Act amendments a telecommunications network is redefined to include "*the provision of a telecommunications* ***or broadcasting service*****".**

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		general conditions for the Operation of Public Telecommunications Networks. There is nothing in Conditions A1-A4, or A9-A13 that could not be included as part of a Licence issued under section 36 in the case of Free to Air Radio or TV Broadcasters. Indeed the requirements speak to Concessionaires complying with various laws and regulations which they will have to adhere to in any event as a matter of law. As a consequence it is otiose to repeat them in a Concession document. Further the proposed Schedule speaks to the List of telecommunications networks authorised as well as specific conditions including roll-out obligations and particulars of performance bonds. The former refers to telecoms networks and excludes broadcasting networks and the latter is inconsistent with para 4.4 of the consultation document. That section provides that the authorised provider has the right but NOT the obligation to cover 100% of the geographic area of Trinidad and Tobago or Trinidad alone or Tobago alone. The Authority is seeking to impose an artificial construct on radio and TV broadcasters which is not justified and which violates the authorisation principles set out in the EPA Act.		As such the infrastructure that supports the transmission of a broadcasters signal, free to air or wired, will be considered a network in accordance with the Act. Accordingly, it will be a statutory requirement pursuant to Section 21 of the Act for Free to Air TV and Free to Air Radio broadcasters' network operators to acquire authorisation via a concession for such Free-to-Air networks. Based on the above, FTA broadcasters will be required to apply for a network concession and a licence. In addition they will be required to notify the Authority for the provision of services.
Other Areas Not Address	CCTL	CCTL is of the view that this draft of the revised framework document is silent on some key issues that should be discussed as part of this process. Issues that comes readily to mind are, (1) a quota system for FTA broadcasters for local content, especially against the background of the proposed changes to the must carry regime. (2) Impact on existing Concessions	The document should address issues such as a local content quota system for FTA broadcasters, and transition arrangements between the current and proposed regimes.	Establishing a "local content quota system" for FTA broadcasters is a policy decision to be defined by the GoRTT.

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		(3) Transition arrangements between the current and proposed regimes. The development of local content is key component of the National ICT Strategy. The reality is that Trinidad and Tobago and the rest of the Caribbean Region for that matter is a net importer of content. There are many historical, cultural, economic and social reasons why this is the case. To foster the development of local content markets such as Europe and Australia stipulate quotas for national content in free-to-air television programming. In Australia for example free- to-air television licensees have to transmit 55% Australian programming between 6 AM and midnight. We are of the considered view that a similar approach should be used in this market.	FTA broadcasters should be required to provide a defined percentage of local content in their programming.	With respect to transition arrangements, the Authority has included in the document, under Section 8.4, a proposed framework which will guide the process of moving from the existing administrative framework to the revised approach outlined in the document.