

IT News

PINHEIRO NETO ADVOGADOS

HIGHLIGHTS:

New bidding notice for the right to use 3.5 and 10.5 GHz frequency bands submitted for Public Consultation

ANATEL approves new Rules on Telephony Services

Law 11,196/05 (REPES, RECAP, Digital Inclusion Program, and Incentives to Technology Innovation)

OFFICES

R. Boa Vista, 254/280
São Paulo SP
01014-907 Brasil
Tel. (55-11) 3247-8400
Fax (55-11) 3247-8600

Av. Nilo Peçanha, 11
Rio de Janeiro RJ
20020-100 Brasil
Tel. (55-21) 2506-1600
Fax (55-21) 2506-1660

SCS, Quadra 1, Bloco I
Brasília DF
70304-900 Brasil
Tel. (55-61) 312-9400
Fax (55-61) 312-9444

www.pinheironeto.com.br
pna@pinheironeto.com.br

This is a monthly publication of Pinheiro Neto Advogados issued with the intention of providing our clients with news on developments in the legal field that may affect their businesses or personal affairs. For your convenience, this newsletter is also published on our web page.

FOREWORD

The year 2005 draws to an end, and the National Telecommunications Agency - ANATEL shows no sign of inactivity. Much to the contrary, it has just approved the new Fixed Telephony Services ("STFC") Regulation and submitted to public comments and suggestions the new Bidding Notice for the right to use 3.5 and 10.5 GHz frequency bands, among other issues.

This IT News issue presents special highlights on Fixed Telephony Services and Taxation of IT products and services. We also attach an article by Francisco Werneck Maranhão offering a view on Senate Bill No. 279/03, which deals with record keeping of e-mail accounts.

We trust 2006 will prove to be a year full of discussions and progresses in these and other fields, and expect that ANATEL will regain its former strength.

Happy Holidays!

Esther Donio Bellegarde Nunes
esthernunes@pinheironeto.com.br

Rodrigo d'Avila Mariano
rdavila@pinheironeto.com.br

BIDDING PROCEDURES

New bidding notice for the right to use 3.5 and 10.5 GHz frequency bands submitted for Public Consultation

On December 9, 2005, after having postponed the deadline for receipt of qualification documents and financial proposals from the parties interested in the bidding procedure for the right to use 3.5 and 10.5 GHz frequency bands, ANATEL called such procedure off to make some adaptations.

For that reason, ANATEL submitted, by means of a Public Consultation, a proposed bidding notice allowing the participation of companies without an authorization for Fixed Telephony Services or Multimedia Communications Services, provided that they obtain either or both such authorizations after being granted the right to use those frequency bands. Comments and suggestions to such Public Consultation can be made no later than January 16, 2006.

FIXED TELEPHONY SERVICES

ANATEL approves new Rules on Fixed Telephony Services

On December 5, 2005, ANATEL approved the new Regulation on the provision of Fixed Telephony Services. The new rules are in line with the concession contracts (which shall be extended for 20 years as of January 1st, 2006) and with the Public Telecommunications Guidelines established by means of Decree 4733/2003.

Among the important advances of the new regulation are the obligations of Fixed Telephony Services providers offering alternative service plans and the establishment of new consumers' rights such as the refund in double of amounts improperly charged and paid by users, and the breakdown of telephone bills, without any extra charge to consumers to allow a better control of the provided services.

ANATEL also approved, on December 6, 2005, the new Regulation on Fixed Telephony Services' tariffs, providing for a significant change in the remuneration system for local services. In substitution of the pulse-based system, telephone calls made under the local regime will now be charged on a time-basis, based on minutes.

ANATEL approves rule on calculation of the Telecommunications Service Index

ANATEL Resolution No. 420 of November 25, 2005 approved the Rule on Calculation of the Telecommunications Service Index ("IST"), to be adopted for the adjustment of Fixed Telephony Services concessionaires' contracts as of January 2006. The IST will be adopted in replacement of the IGP-DI index. The IST will also be used to adjust the amounts payable in connection with the use of the Dedicated Line Industrial Exploitation (EILD) and the Mobile Telephony Services and the Fixed Telephony Services networks.

Determination of the IST must take into account both the Fixed Telephony Services and the Mobile Telephony markets, which account for more than 90% of the telecommunications users.

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| | <p>The Rule was the subject matter of ANATEL's Public Consultation No. 647. The main change in the text submitted for comments was the exclusion of the Significant Market Power (PMS) concept, which will be regulated by ANATEL in the future. As a result, all Fixed Telephony Services concessionaires and Mobile Telephony providers must submit data for determination of the IST.</p> <p>The IST will reflect the variation in the costs incurred by service providers, and is composed of other price indexes. Since the IST shall have a smaller variation in comparison to other indexes, ANATEL expects to avoid surprises in tariff adjustments in the future.</p> |
| <p><i>Regulation of the Public Price for the Management of Numeration Resources opens for Public Consultation</i></p> | <p>On December 6, 2005, ANATEL released Public Consultation No. 653 proposing a regulation for the Public Price for the Numbering Resources Management. According to this draft regulation, ANATEL will charge telecom carriers a numbering fee retroactive to 1998.</p> <p>Under the proposed regulation, numbering concessions will be effective until 2015 and remuneration will be based on a formula taking into account the quantity of access numbers granted to a certain telecom carrier, the period of time of their use, and also a reference value to be further determined by ANATEL.</p> <p>Contributions and suggestions to this Public Consultation will be received by ANATEL until January 23, 2006.</p> |
| <p><i>ANATEL sets deadlines for submission of the DSAC</i></p> | <p>ANATEL Resolution No. 419 of November 24, 2005 establishes the terms for submission of the Document of Separation and Allocation of Accounts ("DSAC") by the concessionaries of the Fixed Telephony Services.</p> <p>The first DSAC must be submitted by April 30, 2006, and the subsequent DSACs must be submitted within 45 days after the end of each civil quarter.</p> |
| <p><i>ANATEL sets Methodology for Calculation of the "X" Transfer Factor</i></p> | <p>ANATEL Resolution No. 418 of November 18, 2005 approved the rules for calculation of the "X" Transfer Factor, which shall be adopted in the adjustment of the Fixed Telephony Services' tariffs.</p> <p>The "X" Transfer Factor shall enable the share of the economic gains resulting from modernization, expansion or rationalization of the services between the service providers and users, as provided for in the General Telecommunications Law.</p> |
| <p>INTERNET</p> <p><i>Central Office for Dot BR Information and Coordination assumes new function</i></p> | <p>At a meeting held on October 21, 2005, the Brazilian Internet Management Committee ("CGI.br") approved a proposal by which the administrative functions related to the domain ".br", such as domain name registration and IP address allocation, will be</p> |

assumed by the Central Office for Dot BR Information and Coordination (“NIC.br”).

Effective December 5, 2005, NIC.br will manage Registro.br in keeping with the regulations in force, maintaining the quality of current services without any interruptions or changes in prices or structure.

TAXATION

Law 11,196/05 (REPES, RECAP, Digital Inclusion Program, and Incentives to Technology Innovation)

On November 21, 2005, Law 11,196/05 introduced some special tax conditions to information technology (IT) enterprises and to exporting entities. According to this Law, two special tax regimes, a Digital Inclusion Program, and incentives to technology innovation were conceived in order to foster the export capacity of eligible entities.

The two special tax regimes are the “Export Platform for IT Services (REPES)” and “Acquisition of Capital Goods for Exporting Enterprises (RECAP)”. They have different eligibility requirements. REPES is available to enterprises that: (i) perform activities solely related to software development or provision of IT services; and (ii) undertake to earn 80% or more of their annual gross income from exports for two/three years. RECAP is granted to enterprises that: (a) obtained 80% or more of their total gross income from exports in the previous year; and (b) undertake to obtain 80% or more of their annual gross income from exports for two/three years.

The most important tax benefit enjoyed under these programs is the suspension of the assessment of the Profit Participation Program Contribution (PIS/Pasep) and the Social Security Financing Contribution (COFINS).

The Digital Inclusion Program offers a reduction to 0% of PIS/Pasep and COFINS assessed on the gross income from retail of some computer machines and computer parts. Other benefits are available under the Digital Inclusion Program, such as an IPI reduction; a Corporate Income Tax (IRPJ) reduction; and credits related to Withholding Income Tax (IRF). Other Technology Innovation Incentives may be given to enterprises to encourage technology research and innovation.

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THE TELECOM AND IT PRACTICE GROUP

Our Telecom and IT Practice Group gathers professionals skilled in the various fields of information technology, from straight telecommunications regulatory matters through Internet, Computer Law, Software and Industrial/Intellectual Property issues.

SÃO PAULO

Partners

Noemia C.M. de Oliveira Novaes

Esther Donio Bellegarde Nunes

Raphael de Cunto

Rodrigo d'Avila Mariano

noemianovaes@pinheironeto.com.br

esthernunes@pinheironeto.com.br

rapdecunto@pinheironeto.com.br

rdavila@pinheironeto.com.br

Associate Lawyers

Ana Paula Bialer Ingham

Rachel B. Mejlachowicz Camargo

Camila Martino Parise

Juliana R. Mendonça Pereira

Daniel Gama e Colombo

Julia Peixoto de Azevedo Arruda

anabialer@pinheironeto.com.br

rachelbejla@pinheironeto.com.br

camila@pinheironeto.com.br

jmendonca@pinheironeto.com.br

dcolombo@pinheironeto.com.br

juliapeixoto@pinheironeto.com.br

RIO DE JANEIRO

Partners

Leila R. Vianna Gonçalves

Marcelo Viveiros de Moura

leilavianna@pinheironeto.com.br

mvmoura@pinheironeto.com.br

Associate Lawyers

Ana Gabriela Gouvêa D. M. Kurtz

Francisco Werneck Maranhão

anagabriela@pinheironeto.com.br

fmaranhao@pinheironeto.com.br

BRASÍLIA

Partner

Marta Mitico Valente

martamitico@pinheironeto.com.br

Associate Lawyers

Marcos Colares

mcolares@pinheironeto.com.br