

PINHEIRO NETO ADVOGADOS

IT News

HIGHLIGHTS:

New General Interconnection Regulation

Taxation – Internet Access Providers

Determination of Groups with Significant Market Power in EILD's Offer Opened for Public Consultation

ANATEL's proposal of a Rule for Certification and Homologation of Mobile Access Terminals for Satellite Telecommunications Services opened for public consultation.

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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

We are glad to offer you the 16th issue of Pinheiro Neto Advogados' IT News.

In addition to highlights on Internet access providers taxation, as well as on interconnection, special attention is devoted to the opening of several Public Consultations by the National Telecommunications Agency – ANATEL, especially in connection with industrial exploration of dedicated line and satellite telecommunications services.

We also attach an article by Esther Donio Bellegarde Nunes and Camila Martino Parise offering a view on Voice Over the Internet (VOIP) technology.

Thanks for joining us!

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REGULATION*New General
Interconnection
Regulation*

Pursuant to Resolution No. 410 of July 11, 2005, the National Telecommunications Agency – ANATEL approved the new General Interconnection Regulation - RGI, aiming at the improvement of the basic principles and rules governing network interconnection between telecommunications service providers of collective interest in Brazil.

The new Regulation changed important points of the former RGI and addressed new aspects of network interconnection, such as the “Public Offer of Interconnection”, in which operators will elaborate and widely publicize documents describing the conditions and other information related to interconnection. The new Regulation also establishes, among other changes, that the interconnection offered must ensure attainment of service quality standards, which will be described in the relevant interconnection agreements.

Setting targets for pay TV

On July 19, 2005, the General Plan for Quality Targets of Pay TV Services issued by ANATEL by means of Resolution No. 411/05, was published in the Official Gazette of the Federal Executive. The Plan sets forth quality targets to be observed by service providers of Pay TV, Multipoint Multichannel Distribution Service (MMDS), Direct-to-Home Services (DTH) and Special Pay TV (TVA), and it envisages to enable ANATEL to manage the quality on the provision of such services.

According to the Plan, the service providers must certify their methods for collecting, consolidating and sending all quality indicators to ANATEL before an Authorized Certification Agency (OCC) which will prove the reliability, integrity and inviolability of the data presented. The service providers shall send the information to the Agency through the Pay TV Service Providers Obligations Monitoring System (SATVA) up to the 15th day of the subsequent month in which the data was collected.

On general terms targets established in the Plan are related to the number of subscribers complaints, accomplishment of installations, charging interruption after canceling of services, how long should it take for the telephone calls to be answered, errors on charging and interruptions on the signal, among others. ANATEL shall start verifying the indicators this year, however penalties shall only be applied to the companies that do not accomplish the quality goals after July 2006.

TAXATION*Taxation – Internet Access Providers*

On May 11, 2005, the 1st Section of Superior Court of Justice has unanimously ruled that Internet access providers are not subject to payment of Tax on Distribution of Goods and Services (ICMS) since they do not provide communication services. Pursuant to Justice Francisco Falcão's vote, these providers render value-added services as stipulated in the General Telecommunications Law (LGT) and should pay municipal Tax on Services (ISS) if and when an specific item is included in the tax list of services stipulated in Supplementary Law 116/2003.

PUBLIC CONSULTATIONS*Determination of Groups with Significant Market Power in EILD's Offer Opened for Public Consultation*

On July 13, 2005, ANATEL approved Public Consultation 626, aiming at determining the groups with Significant Market Power ("SMP Groups") in the Industrial Exploration of Dedicated Line – EILD offer. The basic criteria for determining the SMP Groups has already been stipulated in the EILD Regulation, approved under ANATEL Resolution No. 402 of April 27, 2005.

Public Consultation 626 gives sequence to a set of ANATEL's acts intended for improvement of the regulatory framework of the telecommunications sector in Brazil, through the implementation of a compensation model based on SMP operators, as adopted worldwide.

Calculation of the "X Transference Factor" also Opened for Public Consultation

On July 13, 2005, ANATEL also approved Public Consultation 627, establishing the criteria and simplified methodology for calculation of the "X transference factor", which will be adopted in the adjustment of Public Switched Telephone Network - STFC tariffs between 2006 and 2007.

The "X transference factor" is a reduction mechanism for tariff adjustment with the objective of sharing productivity gains with the service users and stimulating efficiency on the part of the concessionaires.

ANATEL's proposal of a Rule for Certification and Homologation of Mobile Access Terminals for Satellite Telecommunications Services opened for public consultation.

On July 14, 2005, ANATEL opened for public consultation the proposal of a Rule for Certification and Homologation of Mobile Access Terminals for Satellite Telecommunications Services, which sets forth the minimum characteristics required for the certification and homologation of mobile terminals that enable access to telecommunications services provided by means of satellites.

The proposal envisages the harmonization of certification procedures for category II telecommunications products, as defined in ANATEL's Resolution No. 242/00. Also, such public consultation wishes to determine technical requirements and harmonized analysis procedures in accordance with those used in the evaluation of conformity for certification purposes.

The rule has been structured so as to list the frequencies bands and the respective services allocated to the mobile terminals, and it suggests the establishment of three categories of mobile terminals, i.e., terrestrial, maritime and aeronautical.

ANATEL releases Public Consultation No. 628 providing for the Modification of the Basic Plans for VHF and UHF Television Channels Distribution (PBTv) and for VHF and UHF Television Retransmission (PBRTv)

On July 18, 2005, ANATEL submitted for public comments and contributions Public Consultation No. 628/2005, which deals with the Proposal for the modification of the Basic Plans for VHF and UHF Television Channels Distribution (PBTv) and for VHF and UHF Television Retransmission (PBRTv) ("Public Consultation").

The Public Consultation aims at the redistribution of the 82 through 88 MHz frequencies band (channel 6), so as to enable the usage of channels 198, 199 and 200 in the rendering of the Communitarian Radio Broadcasting Service (RadCom) in the States of Acre, Amazonas, Amapá, Maranhão, Mato Grosso, Pará, Piauí, Rondônia, Roraima and Tocantins.

ANATEL expects to receive comments and suggestions about feasibility studies aspects, specially as to possible inaccuracies in the installation places, about financial and commercial issues for the implementation of the PBTv and PBRTv modifications, as well as about the necessary terms, among other relevant aspects.

The full text of the Public Consultation was formulated by the Center of Research and Development in Telecommunication Foundation (CPqD) according to ANATEL's parameters.

VOIP

*VoIP is discussed at
ANATEL's advisory
Council Meeting*

Anatel's council member Mr. José Pereira Leite Filho made a presentation on Voice over IP - VoIP at the 65th meeting of Anatel's Advisory Council held on January 18, 2005. Minutes of the meeting were published in the Official Gazette of the Federal Executive on April 13, 2005.

Mr. Leite provided an overview on the use and regulation of VoIP in Brazil and in other countries, mentioning that, under the Brazilian regulatory system, telephone services using VoIP can be provided under the existing concessions and rules for STFC or Multimedia Communications Services - SMC.

Mr. Leite also stressed that studies for adjustments in the existing Brazilian regulatory system are required in order to assess the impact of VoIP on the STFC long-distance model, as well as to ensure efficient use of SCM as a service platform to provide VoIP services.

In this regard, see the attached article on "VOIP in Brazil".

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THE TELECOM AND IT PRACTICE GROUP

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