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# MIGRATION OF THE FIXED TELEPHONY SERVICE FROM CONCESSIONS TO AUTHORIZATIONS

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With the advancement of time, the demands of the Brazilian telecommunication sector for greater investments, notably with regard to broadband services, faced obstacles under the national General Telecommunication Law. In response to the needs for universalization and continuity of services, within a context of innovation and technological evolution, and in the face of the proximity of the deadline for termination of the current concession agreements in 2025, the adaptation of the regime for the exploitation of the Fixed Switched Telephone Service (STFC) emerged as an incentive for investments and development of the strategic objectives of ANATEL and Brazilian society.

The definition of the concepts of “concession” and “authorization” are contained in the [Resolution No. 65, of October 29, 1998 of the National Telecommunications Agency \(ANATEL\)](#). In its text, the “concession” of telecommunication service, dependent on ANATEL’s prior granting, is understood as

the delegation of its provision by contract for a specified period, in the public system, subjecting the concessionaire to business risks, remunerating itself by charging service fees to users or other alternative revenues and responding directly for its obligations and for the losses it causes.

The “authorization” of a telecommunication service, on the other hand, is a simpler procedure with fewer requirements, defined as the bound administrative act that allows the exploitation, in the private system, of a telecommunication service modality, when the necessary objective and subjective conditions are fulfilled.

Under the justification of the need for a change in the granting regime provided for in the telecommunication legislation to stimulate the expansion of infrastructure and investment in the telecommunication system, the [Bill No. 3,453/2015](#) (“PL 3,453/15”) was proposed in the House of Representatives by Daniel Vilela, in October 2015, aiming to change the

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General Telecommunication Law (Law No. 9,472/1997 - "LGT") to allow ANATEL to change the licensing modality of telecommunication service from concession to authorization.

PL 3,453/2015 was transformed into House of Representatives' Bill No. 79/2016 and the latter was converted into Law No. 13,879/19, which allows ANATEL to authorize, upon request from the concessionaire of public system, the adaptation of the instrument from concession to authorization, subject to the observance of some legal requirements, such as the maintenance of the service provision and the assumption of investment commitments by the applicant, the presentation of guarantees of faithful fulfillment of obligations and the adaptation of the grants for the provision of telecommunication services and the respective authorizations for the use of radio frequencies held by the business group of the concessionaire, in a single agreement of services.

The aforementioned rule also includes references to the economic value associated with the adaptation of the instrument from concession to authorization, which will be determined by ANATEL, with indication of methodology criteria. For the purpose of calculating the economic value, the assets, if any, that are essential and effectively employed in the provision of the service granted will be considered as reversible assets. In addition, this economic value shall be reverted in investment commitments, which shall prioritize the implementation

of network infrastructure with high capacity for data communication in areas without adequate competition and the reduction of inequalities.

In addition, according to Law No. 13,879/20, other measures to stimulate the telecommunication sector can be mentioned, such as the possibility of extending more than once the right to use radio frequencies for authorized services; measures aimed at reducing bureaucracy and speeding up the process of granting and transferring authorizations, in accordance with the dynamism of the sector; and the possibility of a spectrum market among authorized companies (secondary market), in which frequency trading will take place directly.

At an extraordinary meeting held in January 2020, ANATEL's board members discussed the Strategic Project on the reassessment of the regime and scope of telecommunication services, in order to review the fixed telephony concession model to adapt it to the authorization regime and direct investments to the provision of broadband, as well as promote public hearings and dialogues with the society on the topic.

As a result of the conclusions of the aforementioned extraordinary meeting, ANATEL's Public Consultation No. 5/2020 was opened, ending on April 30, which aimed to submit to criticism and suggestions from the general public: i) the Regulatory Impact Analysis Report on the proposed Regulation for the Adaptation from STFC Concessions to Authorizations

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for the same service; ii) the draft of the Regulation for the Adaptation from STFC Concessions to Authorizations for the same service; iii) the Single Service Authorization Instrument (attached thereto); and iv) the Methodology for calculating the balance of the Adaptation (attached thereto).

Regarding the proposal for the General Granting Plan (PGO), which was also part of the analyzed strategic Project, ANATEL understood that a better evaluation of the proposal was necessary, mainly due to the imminence of a Decree to regulate the changes established in Law No. 13,879/20, forwarding it to the Ministry of Science, Technology, Innovations and Communications (MCTIC). Although the aforementioned decree has not been enacted yet, mainly due to the lack of specificity on the application of spectrum renewal for existing contracts, Resolution No. 720/20 of the MCTIC approved the General Granting Regulation, which is attached to its text.

The migration of the telecommunication service concession modality from concession to authorization will imply duties and rights to the telecommunication operators, which will be able to enjoy most flexible conditions in the exploitation of services with the authorization of ANATEL, but they will have to fulfill minimum requirements to guarantee this malleability. In addition, the adaptation of the SFTC granting regime will also comply with one of the goals of the Finalistic Operational Performance present in ANATEL's (Tactical) Management Plan of 2019-2020, ensuring the achievement of strategic objectives by the Agency.

Finally, it is expected the enactment of the Decree, accompanied (or not) by a bill of law, for the regulation of Law No. 13,879/2019, ensuring greater legal certainty for its application and limiting the legal interpretation in the renewal of spectrum of the fixed telephony concession contracts in force.

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