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PUBLIC EMERGENCY SERVICES

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The Public Emergency Service (“SPE”) made available in Brazil has its legal basis in Resolution No. 357, dated March 15, 2004, of the National Telecommunications Agency (“ANATEL”). This Resolution, which approved the so-called Regulation on the Conditions of Access and Enjoyment of Public Utility Services and Support for the STFC - Fixed Switched Telephone Service (“Regulation”), was partially amended by Resolution No. 709, dated March 27, 2019 of the same Agency and which, in turn, approved the General Numbering Regulation (“RGN”).

According to the Regulation’s wording of Art. 4, IV, as conferred by Resolution No. 709, the SPE is defined as the “modality of Public Utility Service that allows immediate assistance to the person at imminent risk of life or risk of having his/her personal security violated”. The Public Utility Service, in turn, is defined as the “service recognized by public authorities, which makes available to the general public the provision of services of interest to the citizen, by means of, among other ways, the use of a telephone access code of easy memorization” (Regulation’s Art. 4, III).

As provided for in Regulation’s Art. 6, providers of telecommunications services

of collective interest must allow to their users access to Public Utility Services, and this obligation must be included in the interconnection agreements entered into with STFC providers. In its turn, Article 17 of the Telecommunications Services Regulation, as approved by ANATEL’s Resolution No. 73, dated November 25, 1998, specifies that the telecommunication service of collective interest is that service “which provision must be rendered by the provider to anyone interested in its enjoyment, under non-discriminatory conditions, in compliance with the regulation’s requirements” and, according to the sole paragraph of this same article, the same are “subject to the necessary conditions for their exploitation to meet the interests of the community”.

In line with this premise, the Regulation stipulates that calls made to SPEs must be free to users, with no remuneration being due to the providers for the use of networks or any other resource necessary for their routing and provision of information (Art. 12; Art. 9, I and sole paragraph).

The Brazilian codes of access to the SPE, as well as to Public Utility Services, are specified in the publication dated August

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03, 2020 on ANATEL's website. Among those codes intended for the SPE, we can mention codes 190 (Military Police), 191 (Federal Highway Police), 192 (Emergency Medical Service - SAMU), 193 (Fire Department), 194 (Federal Police), 197 (Civil Police) and 199 (Civil Defense).

Non-compliance with the provisions contained in the Regulation subjects provider to sanctions provided for in regulations, under the terms of the legislation and the Regulation for the Application of Administrative Sanctions, as approved by Resolution No. 344, dated July 18, 2003 and Resolution No. 589, dated May 7, 2012, both from ANATEL, and under the applicable terms of Law No. 9472, dated July 16, 1997 (General Telecommunications Law, "LGT").

It is interesting to note that, with regard to VoIP (Voice over Internet Protocol) services, the provision of access to the SPE is mandatory only if the service is provided through interconnection to a STFC network, a hypothesis in which users can make calls to landlines and mobile phones, based on a number assigned according to the RGN.

Nevertheless, between May and August 2020, ANATEL held the Public Consultation No. 37, which addressed the proposal of the so-called "Telecommunications Services Numbering Regulation", with the objective of (i) updating the regulation, aiming at adapting it to the new demands of the society and to the technological

developments in the telecommunications sector; and (ii) regulatory simplification, seeking to unify all Numbering Plans of Telecommunications Services of Collective Interest in a single norm, according to the referred Agency, "aiming at providing greater clarity and transparency of the numbering rules".

Within the scope of this proposal, it is relevant to mention that (i) Numbering Resources of Telecommunications Services intended for use by the general public and their organization, as governed by the LGT, the RGN, and occasionally by the proposed regulation, consider the recommendations of the International Telecommunication Union ("ITU") and other international bodies to which Brazil is a signatory (art. 1); (ii) according to the suggested wording of art. 2, the proposed regulation "disciplines conditions of access and enjoyment of telecommunications services, establishing the Numbering Plans used to provide these services, and applies to all telecommunications service of collective interest providers"; (iii) according to the wording given to art. 5, the numbering plans include telecommunications services provided in their various modalities; and (iv) said proposal specifically provides for the revocation of Resolution No. 357/2004.

However, the proposed wording of § 1 of art. 5 specifically stipulates that "terminals used for machine-to-machine (M2M) communication, Internet of Things (IoT), among others, that do not offer voice

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communication or text messages, are exempted from the use of public numbering of ITU Recommendation E.164, allowing the service provider to use identification resources that best suit its business model”.

Issues related to Public Utility Services and SPE were addressed in the draft regulation, the access codes of which will be assigned by ANATEL. The gratuity of calls to SPE and Public Utility Services offered by providers of telecommunications services of collective interest for use by the general public, as well as the non-discriminatory treatment regarding conditions of access and enjoyment, continue to be ensured to the user.

Furthermore, according to the drafted terms of the regulation, “In accessing Public Emergency Services and Support for Telecommunications Services, providers are not entitled to any remuneration for the use of the networks involved or any other resource necessary for the correct routing thereof” (art. 12), as well as “the Public Emergency Service provider is not responsible for any cost for the routing of calls to the specialized service center” (art. 13, § 1).

In addition, the proposal provides for the numbering plan’s structure, as well as the allocation of the numbering resources themselves, with provision for the allocation of numbering to the Multimedia

Communication Service (“SCM”), which, if occasionally reversed in a norm to be issued by ANATEL, is relevant, since, according to Resolution No. 614, dated May 28, 2013, which approved the SCM Regulation, as stipulated in its Art. 60, it is “the duty of the SCM Providers, after the entry into service and assignment of numbering, to ensure free access to emergency services to their Subscribers, in accordance with the regulation”.

This is a controversial point in the proposal, there being, on the part of those who contributed to the Public Consultation, allegations that this numbering availability could occasionally cause a convergence between SCM and STFC, with variable impacts on such modalities, such as, for example, new requirements to be met by SCM providers, or even the extinction of the STFC, as discussed by some representatives of the telecommunications sector.

In fact, the hypothesis of confusion between the SCM and the STFC, and the fulfillment of requirements in addition to those currently established by the applicable regulations, was also considered by ANATEL itself, contained in the Regulatory Impact Analysis attached to Consultation No. 37 (“AIR”), also specifically mentioning the issue of access to emergency services, as follows: “SCM providers argue that the establishment of a numbering plan for the service can bring business opportunities, especially to

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regional providers. However, the issue of numbering for the SCM goes far beyond the simple allocation of resources in the Numbering Plan for the service. Possible impacts on other services (in particular, on the STFC in the public regime), with which the SCM would become confused if it has public numbering resources, as well as important issues that permeate the topic, should be taken into consideration, such as: interconnection with voice services (STFC and SMP); the associated costs; charging criteria (if any); access to emergency services, among others". Furthermore, according to ANATEL, "in addition to technical engineering aspects, there are aspects related to the sector's competition and also to the rights of users. All of these issues can result in the creation of obligations to be fulfilled by holders of the occasional numbering, which may reflect an additional burden to SCM providers, should they have a specific numbering plan".

Public Consultation No. 37 counted with more than 100 contributions, there being manifestations in the sense that the numbering assignment, including to SCM, should be optional, i.e., it should be applicable only to operators interested in providing services that require said resource, so that requirements arising from such assignment do not negatively impact providers that do not effectively use such resource in their operations, avoiding, for example, the imposition of unnecessary additional costs, or the requirement, for VoIP service providers using SCM, to ensure access to SPE and other Public Utility Services.

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