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BRAZILIAN 5G BIDDING CALL – VI
PROVISION AREAS –
GEOGRAPHICAL REGIONS

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Brazilian 5G Bidding Call - VI

Provision Areas -

Geographical Regions

By Ricardo Barretto Ferreira and Sylvia Werdmüller von Elgg Roberto

In order to conduct the bidding that will result in the issuance of Authorizations for the Use of Radio Frequencies in the 700 MHz, 2.3 GHz, 3.5 GHz and 26 GHz bands in Brazil, the National Telecommunications Agency (ANATEL), by means of its Board of Directors, approved in February of the current year the public notice draft proposed for this procedure.

In addition to intending to implement 5G technology in the country, the auction will also be extremely relevant to reduce the difficulties in accessing connectivity currently noticed in several locations in Brazil, or even absence thereof.

This is important because, according to data presented by the ANATEL Board of Directors' Chairman in the scope of the administrative proceeding, due to the lack of connectivity options, in Brazil, the exclusion of the digital society affects more than 6 million people, inhabitants of approximately 14,000 locations, such as

towns and villages. Even in municipalities, the offer of services is often insufficient and mobile coverage is deficient. Furthermore, approximately 20% of the country's municipalities do not have interconnection by high-capacity transport networks (*backhaul*), impacting the services provided with regard to transmission speed and connection quality.

In line with these statements, a recent survey conducted in the country by an institute specialized in studies on the low-income population showed that, in fact, in 13% of households located in slums based in Brazilian cities, there is no 3G and 4G Internet signal; and, for 30% of these same homes, the availability of the service is inefficient, bringing immeasurable negative impacts, affecting education and income generation, for example.

The General Telecommunications Law (Law No. 9,472/1997, LGT) expressly addresses the issue by providing that, in the discipline

LEGAL – REGULATORY

of economic relations in the telecommunications sector, among others, the constitutional principle of decrease of regional and social inequalities will be observed.

In turn, Decree No. 9,612/2018 also deals with the subject matter and sets forth that public telecommunications policies have as one of their objectives to promote *“digital inclusion, to ensure to the population access to telecommunications networks, systems and services based on information and communication technologies - ICT, observing social and regional inequalities”*. Still on the subject matter of digital inclusion, this same Decree sets forth that the aforementioned policies should foster and implement the necessary infrastructure, services, systems, and applications based on ICT required to allow access to telecommunications networks by populations of remote locations, with inadequate or nonexistent provision of such services, or in a social vulnerability condition.

Also in accordance with the aforementioned Decree No. 9,612/2018, the service expansion commitments established by ANATEL resulting, among others, from the onerous grant of an authorization for the use radio frequency should be directed to **(I)** the expansion of high capacity telecommunications transport networks, prioritizing cities, towns, isolated urban areas and rural areas without such infrastructure, as well as locations with

approved projects for the implementation of smart cities; **(II)** the increase in the coverage of mobile broadband access networks, with priority to serve cities, towns, isolated urban areas, rural areas and federal highways which do not have this kind of infrastructure; and **(III)** the expansion of fixed broadband access networks coverage, with priority for census sectors, according to the classification of the Brazilian Institute of Geography and Statistics (IBGE), with no offer of Internet access by means of this kind of infrastructure.

In line with such principles and objectives, the approved public notice proposal contains provisions intending to provide and/or expand the access to telecommunications services throughout Brazil. In fact, the expectation is that most of the country's deficiencies in this area will be solved with the intended bidding process, since more than 60% of the municipalities which do not have optical fiber networks and more than 90% of those with deficient coverage of 4G technology networks might start to be served by the bidding winners.

However, it should be noted that the definitive lists of locations that will benefit from the coverage commitments to be undertaken by the winning companies, and which will compose the annexes to the public notice, have not yet been released and will be known at a later time. The same occurs in relation to segments of federal

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highways that might come to count on personal mobile service (SMP) coverage. And this lack of definition, until this moment, of the locations and segments of highways to be served by the winning bidders, it is worth mentioning, has been the object of concern on the part of potential parties interested in the bidding procedure, as stated by Vivo.

On the subject matter, however, Ordinance No. 1,924/SEI-MCOM of 2021 of the Ministry of Communications, which established guidelines applicable to the bidding procedure, provides that the coverage with mobile broadband should include all paved federal highways, and should initially serve the segments of highways BR-163, BR-364, BR-242, BR-135, BR-101 and BR-116 which are not serviced. However, after the approval of the public notice draft, the Ministry of Communications expressed a desire to include other highways in the bidding coverage obligations. The same regulation, it is worth mentioning, also specifies the municipalities in the North and Northeast regions of Brazil which do not have an optical fiber transport network, among others.

As briefly mentioned in a previous article regarding the general aspects of the bidding process, the wording approved by ANATEL sets forth that the lots to be auctioned will be divided into 9 Provision Areas, which are composed of Regions, States and Municipalities, as follows:

- **Provision Area I** - National, covering the entire Brazilian territory;
- **Provision Area II** - National, excluding sectors 3, 22, 25 and 33 of the General Granting Plan (PGO, approved by Decree No. 6,654/2008), as specified below;
- **Provision Area III** - North Region;
- **Provision Area IV** - Northeast Region;
- **Provision Area V** - Midwest Region, excluding sectors 22 and 25 of the PGO;
- **Provision Area VI** - South Region;
- **Provision Area VII** - States of Espírito Santo, Minas Gerais, and Rio de Janeiro, excluding sector 3 of the PGO;
- **Provision Area VIII** - State of São Paulo, excluding sector 33 of the PGO; and
- **Provision Area IX** - Sectors 3, 22, 25 and 33 of the PGO.

Brazil, to wit, is divided into the North, Northeast, Midwest, Southeast and South Regions and, according to IBGE's data regarding the year 2020, there are more than 211,750,000 inhabitants in the Brazilian national territory. Given this number, it is easy to understand the country as an extremely attractive market for companies in the telecommunications sector, with operations in the most diverse niches.

The North Region of Brazil comprises the States of Acre (AC), Amapá (AP), Amazonas (AM), Pará (PA), Rondônia (RO), Roraima (RR) and Tocantins (TO), with its total population estimated in more than 18,670,000 inhabitants.

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In the Northeast Region, the aforementioned IBGE estimates that a population in excess of 57,300,000 lives in the States comprising it, i.e., Alagoas (AL), Bahia (BA), Ceará (CE), Maranhão (MA), Paraíba (PB), Piauí (PI), Pernambuco (PE), Rio Grande do Norte (RN) and Sergipe (SE).

The Midwest Region, which includes the States of Goiás (GO), Mato Grosso (MT), Mato Grosso do Sul (MS) and also the Federal District (DF), in turn, has an estimated population of 16,500,000 inhabitants, according to the same Institute.

In the States of Paraná (PR), Santa Catarina (SC) and Rio Grande do Sul (RS), which form the South Region of Brazil, according to the IBGE, there are more than 30,150,000 inhabitants.

The Southeast Region, the final one, is the most populous in the country. It has more than 89 million inhabitants, distributed among the States of Espírito Santo (ES), Minas Gerais (MG), Rio de Janeiro (RJ) and São Paulo (SP), according to the estimates of the aforementioned Institute. ES has a population in excess of 4 million; in MG, the population exceeds 21 million; in Rio de Janeiro, there are more than 17 million residents. The State of SP is the most populous in Brazil, in which live more than 46 million people.

However, as previously specified, although in general terms the Provision Areas are

divided into Regions and States, the approved public notice draft provides for the exclusion of certain sectors of the PGO from the locations included in the Provision Areas II, V, VII and VIII, which might compose the Provision Area IX. See below.

Sector 3 of the PGO is the geographical area corresponding to the territories of the Municipalities of Araporã, Araújo, Campina Verde, Campo Florido, Campos Altos, Canápolis, Capinópolis, Carmo do Paranaíba, Carneirinhos, Centralina, Comendador Gomes, Conceição das Alagoas, Córrego Danta, Cruzeiro da Fortaleza, Delta, Frutal, Gurinhatã, Ibiraci, Igaratinga, Iguatama, Indianópolis, Ipiacú, Itapagipe, Ituiutaba, Iturama, Lagamar, Lagoa Formosa, Lagoa Grande, Limeira D'Oeste, Luz, Maravilhas, Moema, Monte Alegre de Minas, Monte Santo de Minas, Nova Ponte, Nova Serrana, Papagaios, Pará de Minas, Patos de Minas, Pedrinópolis, Pequi, Perdigão, Pirajuba, Pitangui, Planura, Prata, Presidente Olegário, Rio Paranaíba, Santa Juliana, Santa Vitória, São Francisco de Sales, São José de Varginha, Tupaciguara, Uberaba, Uberlândia, União de Minas and Vazante, all located in the state of MG.

Sector 22 of the PGO, however, is composed only of the Municipality of Paranaíba, located in the State of MS.

Sector 25 of the PGO, in turn, comprises the Municipalities of Buriti Alegre, Cachoeira Dourada, Inaciolândia, Itumbiara, Paranai-

LEGAL – REGULATORY

guara and São Simão, all of them located in the State of GO.

Finally, Sector 33 of the PGO corresponds to the geographic area of the State of SP composed of the Municipalities of Altinópolis, Aramina, Batatais, Brodosqui, Buritizal, Cajuru, Cássia dos Coqueiros, Colômbia, Franca, Guaíra, Guará, Ipuã, Ituverava, Jardinópolis, Miguelópolis, Morro Agudo, Nuporanga, Orlandia, Ribeirão Corrente, Sales de Oliveira, Santa Cruz da Esperança, Santo Antônio da Alegria and São Joaquim da Barra.

It is important to note that the public notice proposal provides for specific deadlines for serving the different locations, which will vary according to the type of lot acquired and the respective commitments undertaken. Thus, for example, according to the approved wording draft, the winning bidder of certain lots in the sub-bands of radio frequencies from 708 MHz to 718 MHz and from 763 MHz to 773 MHz should offer voice and data connections to serve, up to December 31, 2023, at least 40% of certain locations which currently do not have a SMP offer by means of 4G technology, implementing at least 1 Radio Base Station (ERB) enabling the offer of SMP by means of a technological standard equal or superior to the Long Term Evolution - LTE Advanced release 10 of 3GPP, with capacity installed on the S1 interface equal or superior to 50 Mbps.

Even though there are uncertainties regarding the final terms of the public notice, ANATEL understands that, with the bidding, the Agency “will not only be reinforcing its commitment with the expansion of 4G coverage to cities and locations not served, but also stimulating and accelerating the effective implementation of 5G in the country, not restricting the benefits thereof to large centers only”, according to the opinion of Director Carlos Baigorri contained in the Analysis No. 13/2021/CB, available within the scope of the administrative bidding procedure.

Companies operating in the sector, such as telecommunications service providers, have been showing great interest in the bidding, often considering the new business models that may arise with 5G technology.

However, since the public notice draft approved by ANATEL is under analysis within the scope of the Federal Accounting Court (TCU), until publication of the definitive terms thereof, changes in the conditions of the bidding process might take place.

We also emphasize that this material contains only a brief summary of some relevant points of the bidding public notice and, therefore, should not be understood as legal advice regarding any specific aspects within the scope of the bidding.

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