

DECISION

RENEWAL OF THE RIGHT OF USE FOR FREQUENCIES GRANTED TO PT COMUNICAÇÕES, S.A., FOR THE OPERATION OF THE FIXED WIRELESS SYSTEM (FWA)

1. Framework

By determination of ICP-ANACOM's Management Board of 12 December 2013, a draft decision was approved concerning the renewal of the right of use for frequencies granted to PT Comunicações, S.A. (PTC), for the operation of fixed wireless system (FWA).

According to that decision, ICP-ANACOM decided to submit to PTC's prior hearing, as provided for in article 100 et seq. of the Administrative Procedure Code, as well as to the general consultation procedure, under article 8 and paragraph 3 of article 33 of the Electronic Communications Law (ECL)¹, the following:

- 1. To renew the right of use for frequencies ICP-ANACOM No. 7/2006, granted to PT Comunicações, S.A., for the operation of the fixed wireless system (FWA) for a 10-year period, with effect from 10 December 2014, according to the draft document set out in Annex I hereto, which is deemed to be an integral part hereof, and in which legal references have been updated.*
- 2. The qualifying document ICP-ANACOM No. 7/2006, as set out in Annex I, only takes effect on 10 December 2014, and until that date the document as currently worded, issued on 23 November 2006, shall remain in force.*
- 3. To determine, following the determination in the preceding paragraph and for the purpose of the amendment of radio license No. 506370, that PT Comunicações, S.A., must notify ICP-ANACOM of central stations planned to be deactivated.*

Having interested parties been granted a 20-day time-limit to assess the subject, for both consultation procedures, only PTC's response was received by the expiry of that period - 15 January 2014.

The report of this consultation procedure was drawn and integrates this decision, which includes a summary of PTC's position, as well as ICP-ANACOM's views thereon.

2. PTC's request

By communication received on 31 July 2013, PT Comunicações, S.A., «*in compliance with paragraph 2 of article 33 of Law No. 5/2004, of 10 February as reviewed and republished by Law No. 51/2011, of 13 September, and in order to ensure the continuity of the service provided by PT Comunicações to its clients*», requested of ICP-ANACOM as follows:

«*1. To renew for a 10-year period the right of use for frequencies granted by means of the qualifying document No. 07/2006, until 10 December 2024;*

¹ Law No. 5/2004, of 10.02, as amended and republished by Law No. 51/2011, of 13.09, subsequently amended by Laws No. 10/2013, of 28 January and 42/2013, of 3 February.

2. To amend the table in paragraph 4 of clause 4 as follows:

| Zone 1 | Zone 5 | Zone 6 | Zone 7 | Total No. of Stations |
|--------|--------|--------|--------|-----------------------|
| 8 | 9 | 21 | 6 | 44 |

Obs. 1: Figures indicated are valid for the period from 31 December 2014 to 31 December 2018.

Obs. 2: PT Comunicações undertakes to migrate clients in zone 3 to alternative solutions by 10 December 2014.»

The company highlighted that the awarded document covers the operation of FWA systems which provide FTS access to around 400 clients.

3. PTC's qualifying documents for operation of FWA systems

PTC holds **Right of Use for Frequencies (RUF) ICP-ANACOM No. 07/2006**, which qualifies the company, until 10 December 2014, to use 2 x 28 MHz, corresponding to frequencies 3410 – 3438 MHz and 3510 – 3538 MHz, for FWA systems, in geographic zones 1, 3, 5, 6 and 7, as defined in Administrative Rule No. 1062/2004, of 24 August.²

According to clause 4, paragraph 2, of the referred RUF, PTC undertakes to maintain a minimum number of installed central stations, in compliance with the following specific evolution and quantification:

| YEARS | Zone 1 | Zone 3 | Zone 5 | Zone 6 | Zone 7 | Total No. of Stations |
|-------|--------|--------|--------|--------|--------|-----------------------|
| 2006 | 11 | 2 | 11 | 31 | 9 | 64 |
| 2007 | 11 | 2 | 11 | 31 | 9 | 64 |
| 2008 | 11 | 2 | 11 | 31 | 9 | 64 |
| 2009 | 11 | 2 | 11 | 31 | 9 | 64 |
| 2010 | 11 | 2 | 11 | 31 | 9 | 64 |

It should be recalled that in the context of the operation of FWA systems under RUF ICP-ANACOM No. 07/2006, PTC holds **radio license No. 506370**, for use of a public fixed radio service - point-to-multipoint links.

4. Framework

4.1. Renewal of the rights of use for frequencies

The Electronic Communications Law (ECL) establishes in its article 33 (Duration and renewal of rights of use for frequencies) that rights of use are renewable, for the periods of time set out when they were awarded, and taking into account the criteria established for their determination, upon a request submitted by the right holder to ICP-ANACOM at the least one year ahead of the respective expiry date.

² Which approved the change of the FWA system operation model, introduced a new coverage model according to geographic areas, the permission to use frequencies in the transmission network and the overhaul of the radio fee system.

ICP-ANACOM must provide a response to the right holder within six months at the most, promoting for this purpose the general consultation procedure provided for in article 8 of ECL, being entitled to:

- a) Oppose the renewal of the right of use through a duly substantiated decision;
- b) Grant the renewal under the same conditions specified in the initial allocation of the right of use, including the respective term;
- c) Grant the renewal imposing different conditions than those specified in the right.

ICP-ANACOM's silence, after the elapse of six months, should be interpreted as a tacit approval of the application for renewal (article 33, paragraph 4 of ECL).

4.2. Prior analysis of the application

PTC's request, now under analysis, thus takes the shape of a request for renewal of the act granting the right of use for frequencies ICP-ANACOM No. 07/2006, and including the change of conditions applicable to the minimum number of central stations (reduced from 64 to 44 stations), the deactivation of stations installed in geographic zone 3 (and migrating clients served by the latter to alternative solutions) and the amendment of the period of validity of the RUF (a renewal for merely 10 years).

Considering that the referred RUF expires on 10 December 2014, and taking into account that, under ECL, the request must be submitted at the least one year ahead of the expiry date, PTC's application was found to have been made in good time.

As far as the assessment of the request is concerned, and bearing in mind that RUFs are renewable for a 15-year period, and that in duly substantiated situations, according to the service concerned and taking due account of the objective pursued, they may be granted for a minimum period of 10 years (article 33, paragraphs 1 and 2 of ECL) and furthermore that ICP-ANACOM is entitled to grant the renewal imposing different conditions than those specified initially [article 33, paragraph 3 c) of ECL], it was deemed that additional clarifications were required from PTC.

4.3. Clarifications provided by PTC

By letter sent on 13 September 2013, ICP-ANACOM requested of PTC additional clarifications on the grounds for the application for renewal of the right of use for frequencies for merely 10 years, as well as on the request for reduction of the minimum number of installed central stations in zones 1, 5, 6 and 7, further requesting the company to explain how it intended to safeguard the rights of users and subscribers of services affected by this reduction of stations.

In its response, received on 9 October 2013, PTC provided the following information:

1. Grounds for the request for a renewal for merely 10 years
 - i) *PT Comunicações considers that the common 15-year period would prove to be excessive, given the possibility of other technologies being used in the network;*

- ii) *10 years is the minimum period allowed by law for rights of use for frequencies to be in force;*
 - iii) *PT Comunicações considers that it must use and manage efficiently frequencies allocated to it.*
2. *Grounds for the request for reduction of the minimum number of installed central stations in zones 1, 5, 6 and 7*

PT Comunicações intends to decrease the minimum number of installed base stations in zones 1, 5, 6 and 7, as from 31 December 2014, given that, even today, the number of clients in some stations of those zones is so low that it seems to be more efficient to provide those clients with an alternative technical solution and to deactivate those stations.

For zone 3, the low number of clients is already a fact as regards all installed base stations, and for this reason the deactivation of them all is proposed.

However, except for zone 3, PT Comunicações intends to maintain the number of central stations (CTS's).

The reduction in the number of clients associated to stations has taken place due to several reasons, namely the population abandonment of specific regions in the interior part of the country, clients' preference for mobile services to the detriment of FTS or for other services/packages not supported on the FWA technology.

3. *Ways to safeguard the rights of users and subscribers of services affected by the reduction of the minimum number of stations.*

As referred above, PT Comunicações wishes to safeguard the rights of users and subscribers of services affected by the reduction of the minimum number of stations by adopting alternative technical solutions.

5. Assessment of the request

As the request was timely, and taking into account the grounds and additional clarifications provided by PTC, ICP-ANACOM takes the view that its assessment requires weighing whether the conditions associated to the right of use for frequencies are suitable and proportionate.

As ICP-ANACOM stressed previously³, at international level, investments in point-to-multipoint links have not developed in the proportion as point-to-point links, and a clear disinvestment at the level of technologies and services provided by this type of application may be observed.

It should also be pointed out that operators face difficulties at the level of technology (which is obsolete), the limited offer of services and the investment required to maintain networks in operation, given the growing decrease of clients who increasingly show a preference for other technologies and services not supported by FWA systems.

³ Vd. ICP-ANACOM Decisions of 13 December 2012 and 22 August 2013, available at [Repeal of Optimus's right of use for frequencies for operation of FWA systems](#) and at [Repeal of Vodafone's right of use for frequencies for operation of FWA systems](#)

Moreover, the company refers that the number of clients in each of the geographic zones has reduced significantly, especially when compared to the number of clients in the initial stage.

As such, it is considered that, in terms of spectrum management and in the light of the principle of effective and efficient use of spectrum, there is nothing standing in the way of the company's intentions.

The assessment of the request takes also into account the fact that PTC informs that it «*wishes to safeguard the rights of users and subscribers of services affected by the reduction of the minimum number of stations by adopting alternative technical solutions*».

In this scope, it follows from ECL that users of PTC's services are entitled to be informed at least fifteen days in advance of the termination of the offer [article 39, paragraph 1c)]; this fact must also be notified to ICP-ANACOM (article 39, paragraph 4). In case the company decides to amend any of the contractual conditions, it must give subscribers a written prior notice of not less than one month, in appropriate form, and at the same time inform subscribers of their right to withdraw from the contract, without penalty, where the new conditions fail to be accepted, within the time limit set out in the contract (article 48, paragraph 6).

According to the situations, PTC is bound to comply with the applicable legal regime.

In the light of the above, and all things considered, ICP-ANACOM decides to grant PTC's request to renew the right of use for frequencies ICP-ANACOM No. 07/2006 of which it is the holder, under different conditions than those initially specified, as follows:

- Deactivation by 10 December 2014 of the two central stations installed in geographical zone 3, bearing in mind the migration to alternative solutions of clients served in that area;
- Alteration by 31 December 2014 of the minimum number of installed central stations, further to the deactivation of 3 stations in zone 1, 2 stations in zone 5, 10 stations in zone 6 and 3 stations in zone 7, making a total of 44 central stations to maintain installed as from 1 January 2015;
- Amendment of the period of validity of the RUF, for 10 years, thus expiring on 10 December 2024.

6. Decision

ICP-ANACOM's Management Board, pursuant to articles 32 and 33, paragraph 3 c) of the Electronic Communications Law, and under article 26 l) of its Statutes, approved in annex to Decree-Law No. 309/2001, of 7 December, **hereby determines as follows:**

1. To renew right of use of frequencies ICP-ANACOM No. 07/2006, allocated to PT Comunicações (PTC) for the operation of the fixed wireless access system (FWA), for a period of 10 years as from 10 December 2014, under the terms of the qualifying document in annex hereto, which forms an integral part hereof.
2. The document ICP-ANACOM No. 07/2006, as amended by the annex only takes effect on 10 December 2014, remaining in force until that date the document as currently worded, issued on 23 November 2006.

3. To determine, following the determination in the preceding paragraph and for the purpose of the amendment to radio license No. 506370, that PT Comunicações, S.A., must notify ICP-ANACOM of central stations planned to be deactivated.

Lisbon, 6 February 2014

ANNEX

RIGHT OF USE FOR FREQUENCIES

ICP-ANACOM NO. 07/2006

Through Order of the Minister for Social Infrastructure No. 24237/99, of 10 December, PT Comunicações, S.A. (PTC) was authorized to use, throughout the national territory, point-to-multipoint systems for the 3410-3438 MHz and 3510-3538 MHz sub-bands access network.

Administrative Rule No. 1062/2004, of 25 August, approved the change of the Fixed Wireless Access (FWA) system operation model, which involved the change in how frequencies were used, introducing a new coverage model according to zones, the permission to use frequencies in the transmission network and the overhaul of the radio fee system.

In order to guarantee the effective and efficient use of frequencies, the established regime ensured that operators who wished to continue using the allocated frequency bands, were able to do so, being incumbent on ICP - Autoridade Nacional das Comunicações (ICP-ANACOM) to define a model for the use according to zones of allocated FWA frequency bands as well as to adapt the respective qualifying documents, namely by adjusting obligations of coverage and installation of infrastructures comprised therein to frequencies that remain in the respective ownerships.

In this context, PTC was consulted and requested to show interest in zones wherein it intended to continue operating the FWA system, in the scope of frequency bands for which it was qualified. The respective right of use for frequencies was amended, and conditions attached to its exercise were set out, under article 32 of Law No. 5/2004, of 10 February.

Accordingly, ICP-ANACOM's Management Board determined, on 23 November 2006, to recast the document which set out the right of use for frequencies for FWA operation allocated to PT Comunicações, S.A.

By determination of 6 February 2014, and further to the corresponding request from the company, ICP-ANACOM determined, pursuant to articles 32 and 33, paragraph 3 c) of the Electronic Communications Law, and under article 26 l) of its Statutes, approved in annex to Decree-Law No. 309/2001, of 7 December, to renew the right of use of frequencies under consideration for a period of 10 years, as follows:

- 1^o 1. PT Comunicações, S.A. (PTC), legal person No. 504.615.947, with registered office situated at Rua Andrade Corvo, n.º 6, 1050-009 Lisbon, maintains the right of use of a bloc of 2 x 28 MHz, corresponding to the frequencies 3410 - 3438 MHz and 3510 - 3538 MHz, for geographic zones 1, 5, 6 and 7.
2. The geographic zones mentioned in the preceding paragraph are defined in annex to Administrative Rule No. 1062/2004, of 25 August.
3. For systems using frequency division duplex (FDD), frequencies in the 3510-3538 MHz band are intended for central station transmission and frequencies in the 3410-3438 MHz band are intended for terminal station transmission.

2^o 1. The frequency band mentioned in the preceding paragraph is intended to be used for FWA operation.

2. FWA is understood as the system that ensures, in full or in part, the connection of the final user (or group of final users gathered in the same radio termination) to an access or distribution point of a public communication network, as defined in article 3 dd) of the Electronic Communications Law⁴ and may also be used as a support system for the transmission network.

3^o The right of use for frequencies is governed by the Electronic Communications Law, by Administrative Rule No. 1062/2004, of 25 August, by Decree-Law No. 151-A/2000, of 20 July⁵, and by the following clauses.

4^o 1. PTC must use allocated frequencies in an effective and efficient way.

2. PTC undertakes to maintain a minimum number of installed central stations respecting the accumulated evolution and quantification which follows:

| Years | Zone 1 | Zone 5 | Zone 6 | Zone 7 | Total No. of stations |
|--------------------|--------|--------|--------|--------|-----------------------|
| Until 31.12.2014 | 11 | 11 | 31 | 9 | 62 |
| As from 01.01.2015 | 8 | 9 | 21 | 6 | 44 |

5^o PTC must guarantee a minimum value for the degree of service availability, understood as the percentage of time over the year in which the FWA network is available, according to coverage zones: 99.5%.

6^o In the exercise of the right of use for frequencies identified in clause 1, PTC is also subject to the following conditions:

- a) To comply with technical and operational conditions required to avoid harmful interference and to limit the exposure of the general public to electromagnetic fields, pursuant to Decree-Law No. 11/2003, of 18 January, and Administrative Rule No 1421/2004, of 23 November;
- b) To inform ICP-ANACOM in advance of the intention to transfer or to lease the right of use for frequencies, as well as the conditions to do so, under article 34 of the Electronic Communications Law and specifications in force in the National Frequency Allocation Plan at any given time;
- c) To pay ICP-ANACOM the fee provided for in paragraph 1 b) of article 105 of the Electronic Communications Law, in the amount and according to the determination issued by order of the member of the Government responsible for the electronic communications area, as well as fees due for the use of frequencies for FWA, set out pursuant to Decree-Law No. 151-A/2000, of 20 July, provided for in paragraph 1 f) of the referred article 105 of the Electronic Communications Law;

⁴ Law No. 5/2004, of 10 February, as amended and republished by Law No. 51/2011, of 13 September, and subsequently amended by Laws No. 10/2013, of 28 January and No 42/2013, of 3 July, hereinafter referred to as Electronic Communications Law.

⁵ As amended and republished by Decree-Law No. 264/2009, of 28 September, subsequently amended by Law No. 20/2012 of 14 May, hereinafter referred to as Decree-Law No. 151-A/2000, of 20 July.

- d) To comply with obligations that arise from applicable international agreements on the use of frequencies, including those that derive from border agreements.
- 7º
1. PTC must submit to ICP-ANACOM, by the 20th day of the month following the end of the civil year concerned, the elements that make it possible to measure effectively the quality of service indicator referred to in clause 5, describing for the purpose the methods and technical means used to determine it.
 2. For the purpose of the preceding paragraph, the information must specifically refer the number of minutes according to central station during which the system was not available in each month.
 3. Without prejudice to other statistical data required by ICP-ANACOM under article 108 of the Electronic Communications Law, PTC must also submit to ICP-ANACOM, by the 20th day of the month following the end of the quarter concerned, information on the number of subscribers by the end of each month according to the service provided using FWA and to geographic zones indicated in paragraph 2 of clause 4.
- 8º The use of technological systems based on the IEEE 802.16 standard (WiMAX) depend on decisions to be taken by ICP-ANACOM in the scope of the introduction of BWA (broadband wireless access), namely taking into account the promotion of competition in the offer of electronic communication networks and services and the effective and efficient use of frequencies.
- 9º This document shall only take effect as from 10 December 2014, remaining valid until 10 December 2024.