

DECISION

DTT - Renewal of temporary network license

1. Decision to grant a temporary network license

By determination of ICP - ANACOM, of 11 September 2014¹, the then PT Comunicações, S.A., now MEO – Serviços de Comunicações e Multimédia S.A. (hereinafter MEO) was granted a temporary network license², for a period of 180 days, consisting of 4 stations, to be implemented as follows:

- a) Mendro transmitter: channel 40 (622-630 MHz);
- b) Palmela transmitter: channel 45 (662-670 MHz);
- c) São Mamede transmitter: channel 47 (678-686 MHz);
- d) Marofa transmitter: channel 48 (686-694 MHz).

In the identified determination, reference being hereby made to the respective content, this Authority imposed on MEO the following conditions:

- *«The implementation (...) of appropriate procedures intended to reimburse the costs incurred by users due to the adjustment to the network now licensed (...), and the subsequent report to ICP - ANACOM of steps taken»;*
- *«The implementation (...) of the plan for communication to DTT users covered by new transmitters, disclosing the information required by the entry into operation of the network now licensed, including the responsibility for adjustment costs which may be incurred, which shall be notified to ICP - ANACOM».*

This temporary network license was issued, under the law, for a period of validity up to 14 March 2015.

¹ Available at [Temporary network licensing - DTT](#).

² Under article 13 of Decree-Law No. 151-A/2000, of 20 July, as amended by Decree-Law No. 264/2009, of 28 September.

2. Developments occurred

Further to ICP - ANACOM's decision of 11 September 2014, MEO installed the four stations concerned, having observed the technical characteristics defined therein.

Moreover, in compliance with the same decision, MEO, by letter dated 22 September 2014, informed ICP - ANACOM of the communication plan and reimbursement procedure of costs incurred by users that had been adopted, which were adapted in accordance with ANACOM's instructions in the scope of various correspondence exchanged³, and subsequently concluded to be in line with this Authority's determination, except as regards the procedure concerning communications to final users.

In fact, on 4.11.2014⁴, ICP - ANACOM requested, among other documents, *"minutes of letters addressed (...) to residents covered by new transmitters, on the basis of the extraction of seven-digit postal codes, with details of persons and addresses to whom such minutes were sent"*.

In its reply⁵, specifically as regards the disclosure to residents covered by new transmitters, MEO informed that the disclosure would be carried out *"in a non-addressed manner, that is, it would not be addressed to each specific person/address, the distribution covering all residences on the basis of the CP7 list (...)"*.

Having this Authority found that letters would be sent to postal codes with no DTT coverage, it informed MEO⁶ that it deemed (...) *imperative that letters (were) sent only to postal codes with terrestrial coverage"*.

MEO provided some clarifications in its reply, dated 19 December 2014⁷, having referred that it had *"opted for sending the communication to users of all CP7 registered in those parishes"*. It further informed that *"due account was taken of all this situation in the text of communications that were sent, which explicitly refers: "Start by checking whether your residence is in a terrestrial DTT coverage area", that is, users in a DTT-coverage area will understand that the communication will not bring about any changes in its DTT reception."*

³ Letters from MEO dated 22.09.2014 (reference 20444948), 11.11.2014 (reference 20453881) and 19.12.2014 (reference 20460909) and letters from ICP-ANACOM dated 15.09.2014 (reference S060562/2014), 4.11.2014 (reference S070023/2014) and 9.12.2014 (reference S088580/2014).

⁴ Letter from ICP-ANACOM dated 4.11.2014 (reference ANACOM-S070023/2014).

⁵ Letter from MEO of 11.11.2014 (reference 20453881).

⁶ Letter from ICP-ANACOM of 9.12.2014 (reference ANACOM-S088580/2014).

⁷ Letter with the reference 20460909.

Later, and further to ICP - ANACOM's request, it was verified that communications were sent before MEO received ICP - ANACOM's letter of 9 December.

In parallel, and as a result of the commitment undertaken by MEO in the context of the temporary network license, the company, by letter of 30 October 2014, requested ICP - ANACOM to initiate procedures required to include radio channels concerned in the right of use for frequencies ICP - ANACOM No. 6/2008 (RUF).

This Authority subsequently determined, by letter of 18 December 2014, that MEO provided up-to-date coverage-related information, as set out in point 3.A of determination of 16 May 2013, informing that when this information was received it would be assessed and become an integral part of the RUF, including any amendments that could be imposed, binding MEO to values concerned as from that date, as laid down in decision of 16 May 2013.

By letter of 25 January 2015, MEO provided this Authority with the requested up-to-date information, namely estimates of the population covered via DTT and via DTH at parish level, as well as the electronic file with the identification of the DTT and DTH geographical coverage as currently provided.

By letter of 13 February 2015⁸, and taking into consideration that the temporary license was valid only up to 14 March 2015, MEO requested information from ICP - ANACOM on the state of the process of integration in the RUF of its 4 radio channels and reinforced its request for the final inclusion of the referred channels in the RUF.

3. Analysis

The temporary network license was granted to MEO under point 4. of ICP - ANACOM's decision of 16 May 2013, providing for the possibility of anticipating the installation of the MFN network's (MFN or SFN's) main transmitters - the implementation of which must proceed in accordance with any further harmonisation at international or Community level, or where an increased degree of security is required by the need for implementation of the digital dividend 2 - in case it is forecasted, or is actually found, that the network in operation does not present the stability required for the service provision with the quality levels established in Recommendation ITU-R BT.1735-1 and future reviews thereof.

⁸ Letter with the reference S0126 SG.

In fact, it was in a context of network instability that, in order to protect user interests and seeking an immediate alternative for the access to a quality DTT service, ICP - ANACOM took the view that it was appropriate and sufficient to decide on the use of the 4 radio channels concerned under the regime of temporary licensing, bearing also in mind that MEO had undertaken the commitment to apply to this Authority, by the end of October 2014, for the final integration of radio channels in its DTT RUF associated to the Mux A held by the company, which MEO fulfilled.

However, this process of final integration of the referred radio channels in the RUF, which involves the amendment of this right under article 20 of the Electronic Communications Law (ECL)⁹ must not be dissociated from the process of definition of terrestrial coverage obligations, the draft decision (DD) of which was approved on 4 July 2014, that is, before this use started, which in fact led ICP - ANACOM to request from MEO up-to-date information related to radio coverage, as defined in point 3.A of the determination of 16 May 2013.

In these circumstances, bearing in mind that a final decision will not be taken on terrestrial coverage obligations before the expiry of the allocated temporary license and that the assumptions on which its granting was based remain pertinent, this Authority believes that there are grounds to renew it.

As regards the conditions associated to the temporary license, under determination of 11 September 2014, ICP - ANACOM ordered MEO that the communication plan should be addressed to DTT users covered by new transmitters, disclosing information required by the entry in operation of the licensed network, including information on responsibility for the adjustment costs users could incur, which should be communicated to ICP - ANACOM.

In specific, as far as information to users is concerned, ICP - ANACOM considered, in the referred determination that *“communication has a critical role where measures that affect populations and involve an adjustment effort are taken. The installation of these new transmitters determines that populations in an area with terrestrial coverage who may not receive the service appropriately, due to problems such as those occurred in the week from 14 to 20 July, are likely to undergo a new adjustment process, to ensure that they will continue to watch TV in a stable and free-of-charge way. As such, it is fundamental that populations*

⁹ Law No. 5/2004, of 10 February, as amended and republished by Law No. 51/2011, of 13 September, and subject to subsequent amendments.

concerned, who may be required to adjust their installations so that they are able to watch TV properly, are informed of the alternatives now made available as well as of procedures required for the purpose, as well as of conditions and means of reimbursement of adjustment costs that may be incurred in. For this reason, PTC must implement a communication plan targeted at the population living in areas concerned by the radio coverage of new transmitters, the use of means proposed by PTC in the communication plan presented further to determination of 18 May 2012, communicated to ICP - ANACOM by the referred letter of 25 May 2012, being deemed appropriate, that is (...) iii) letters to be sent to residents of those areas on the basis of the extraction of postal code 7 (CP7) (...)."

As such, by explicitly referring to "DTT users covered by new transmitters", "populations in an area with terrestrial coverage" and that the plan was "targeted at the population living in areas concerned by the radio coverage of new transmitters", ICP - ANACOM determined that the communication plan was addressed to the group of affected users, who would be required to undergo an "adjustment effort" on account of the installation of new transmitters, which would clearly not be the case with users with DTH coverage.

Notwithstanding, MEO opted for sending the communication to users of all CP7 registered for all parishes concerned, giving no justification for this, thus leading some users with DTH coverage and experiencing reception problems to request services from installers, further to the letter sent by that company, and to bear the travel expense. End users should not lose out as a consequence of MEO's option regarding the way to implement ICP - ANACOM's determination, and as such it makes sense that users under these conditions are compensated by the company for any costs incurred.

The legal regime applicable to the licensing of radio networks and stations¹⁰ lays down that "temporary radiocommunications station or network licences may be granted for a period not exceeding 180 days and may be renewed once and for an equal or shorter period".

In such situations, the licensing application must be submitted to ICP-ANACOM at least 10 days ahead of the date on which the licence is intended to come into force.

MEO sent on 13 February 2015 a letter to this Authority questioning the state of the process of integration of the 4 radio channels in the RUF, restating the request for their final inclusion in

¹⁰ Article 13 of Decree-Law No. 151-A/2000, of 20 July, as amended and republished by Decree-Law No. 264/2009, of 28 September.

the RUF; as such, ICP - ANACOM considers that the conditions legally required for renewing the license are fulfilled.

4. Decision

Therefore, in the light of the above, ICP - ANACOM's Management Board, in the scope of powers provided for in article 6, paragraph 1 c) and h), and taking article 16, paragraph 3, into account, both of its Statutes, published in annex to Decree-Law No. 309/2001, of 7 December, in pursuit of the regulatory objectives provided for in article 5, paragraph 1 c) and paragraph 4 d) of the Electronic Communications Law, under articles 15 and 16 of the same Law, and pursuant to article 13 of Decree-Law No. 151-A/2000, of 20 July, as amended and republished by Decree-Law No. 264/2009, of 28 September, and article 26 l) of the Statutes, and bearing in mind article 103, paragraph 2 b) of the Administrative Procedure Code, hereby determines:

- 1. To renew the temporary network license granted to MEO, in compliance with and under the conditions laid down in ICP - ANACOM's determination of 11 September 2014, for a period of 180 days, to take effect as from 15 March 2015.**
- 2. To order MEO to provide for the reimbursement of costs borne by end users with DTH coverage that have requested or will request the services of an installer, further to the reception of the letter sent in the scope of MEO's communication plan.**
- 3. To submit determination in point 2 to the prior hearing of MEO, under articles 100 *et seq.* of the Administrative Procedure Code, so that the company assesses the matter in writing, within 10 working days from the date of notification hereof.**