

Determination of 14.12.2005

DETERMINATION OF ICP-ANACOM ON THE PROCEDURE FOR CONTRACT TERMINATION WITHIN THE SCOPE OF THE LOCAL LOOP UNBUNDLING

The procedure for termination of contracts concerning the publicly available telephone service at a fixed location maintained by the user with PT Comunicações, and concluded in the scope of the local loop unbundling offer (LLU), has been the subject of several complaints on the part of operators interested therein, and has represented a constraining factor that leads to delays in the local loop unbundling process. Operators mention in particular that PT Comunicações refuses valid unbundling requests, on grounds such as the illegibility of the identification card.

In fact, this aspect is referred as one of the factors which most has contributed towards slowing down the LLU success, its review being thus fundamental in order to ensure effective competition within the market.

The simplification of procedures involving contract termination or alteration has already been the subject of ICP-ANACOM's determinations in the scope of other offers, namely concerning portability, pre-selection and subscriber line resale offer (SLRO), a situation which is an argument for bringing the contract termination procedure (full access) or subscriber authorization (shared access), as far as the LLU is concerned, in line with determinations of this Authority regarding the referred offers.

By determination of 28 July 2005, the Board of Directors of ICP-ANACOM decided to seek the opinion of interested parties on the draft decision to be adopted; comments received, the respective assessment and grounds for the decision being comprised in the "Report of the prior hearing of the draft decision of ICP-ANACOM on the procedure for contract termination within the scope of the local loop unbundling", which is an integral part hereof.

Having regard to grounds contained in the Prior Hearing Report, the Board of Directors of ICP-ANACOM, within the scope of assignments provided for in points b), e) and f) of article 6 of its Statutes, approved by Decree-Law no. 309/2001 of 7 December, taking into account regulation objectives stipulated in article 5 of Law no. 5/2004 of 10 February, namely to promote competition in the provision of electronic communication networks and services, to ensure that users derive maximum benefit with respect to choice, price and quality, to encourage efficient investment in infrastructure, and to promote innovation, and

under point a) of paragraph 3 of article 68 of Law no. 5/2004, hereby determines the following:

I. PTC shall alter the RUO within a 10-day time limit, in order to introduce the following conditions:

1. The local loop unbundling, in the full access modality, implies the termination of the existing contract between the subscriber who requests the unbundling and PT Comunicações, and the conclusion of a new contract with another company where the loop is unbundled to.

2. Contract termination, or client authorization in the case of shared access, duly identified as being for local loop unbundling purposes, is submitted by the subscriber to the operator where the line is unbundled to (loop receiver operator). This operator must submit to PT Comunicações, on a monthly basis, by any means that enable the correct identification of the subscriber, all termination or authorisation documents related to unbundling requests made during the previous 30 days, save where agreements between companies establish otherwise.

3. Without prejudice to the general right to compensation, the loop receiver operator is responsible to the subscribers and PT Comunicações in respect of any unbundling process carried out which does not correspond to the will of subscribers, as follows:

(a) the loop receiver operator may not demand payment from the subscriber for services provided after undue unbundling is performed, and shall also bear any direct and indirect costs related to a return to PT Comunicações, if the subscriber so desires;

(b) the loop receiver operator shall compensate PT Comunicações and any other company for all direct and indirect costs they may have incurred as a result of undue unbundling.

4. Contract termination for local loop unbundling purposes shall be made in writing and in compliance with the requirements and/or documents defined by PT Comunicações for contract alteration or termination.

5. Immediately after receiving the pre-order request from the loop receiver operator, PT Comunicações shall instigate the procedure to supply the local loop, and thus shall not verify whether or not contract termination or authorisations are valid at the moment the order is placed.

6. Contract termination shall take effect as soon as the unbundling of the local loop actually takes place.

7. Procedures established for the termination of contracts concerning publicly available telephone service at a fixed location of PT Comunicações, in the scope of the local loop unbundling offer, shall be similarly adopted for other RUO procedures where the subscriber authorization/declaration is requested.

II. Where loops are transferred between operators, ICP-ANACOM recommends that operators follow the aforementioned procedure between themselves, and it is not necessary that the loop receiver operator sends to PT Comunicações any documents

pertaining to the subscriber's contract termination. PT Comunicações shall instigate the transfer process as soon as it receives the request from the loop receiver operator.

III. The offer conditions enter into force on the day the offer is altered and notified.

ICP-ANACOM recommends that PTC and OSP reach an agreement on a procedure that enables the final user to use all services supported on the loop to be unbundled until the unbundling actually occurs, the billing being established by reference to the date the unbundling takes place.