

ICP - Autoridade Nacional de Comunicações, I.P.

Regulation no. 95-A/2008

REGULATION OF THE PUBLIC TENDER

FOR THE ALLOCATION OF A RIGHT TO USE FREQUENCIES ON A NATIONAL BASIS FOR THE DIGITAL TERRESTRIAL TELEVISION BROADCASTING SERVICE

In view of the fact that the European Commission has proposed 2012 as the deadline for switching off analogue transmissions in all Member States, the setting of a definitive timetable for cessation of analogue terrestrial broadcasting in Portugal requires, on the one hand, that alternatives be previously available to continue to ensure that the national population has access to television services and, on the other, that all users who currently access television services are equipped with the means necessary to continue to have access to such services, particularly in digital format, following the cessation of terrestrial analogue television transmissions.

Considering the current regulatory framework and given resource to the radio spectrum, ICP-ANACOM is charged with creating conditions that enable the analogue-digital switchover of the terrestrial platform, by way of the allocation of frequency usage rights, thereby providing for the continuity of the offer, by the respective television operators of the television programme services provided today through terrestrial analogue, in comparable conditions, for end users, to those who currently enjoy them.

In this context, ICP-ANACOM, by determination of 30 January 2008, approved the decision on the limitation of the number of rights to use frequencies of the

digital terrestrial broadcasting service and the definition of the respective allocation procedure, under the terms of which it considers it appropriate to allocate, by public tender, a right to use frequencies reserved for the digital terrestrial broadcasting service in the *Quadro Nacional de Atribuição de Frequências* (QNAF – National Frequency Allocation Plan), corresponding to a coverage of national territory, which shall be associated with *Multiplexer A*, for the transmission of television programme services with free, unrestricted access.

Subsequent to this determination, it is important to commence the tender procedure for the allocation of the cited right to use frequencies.

Taking into consideration that on this same date the Government is launching the public tender for the allocation of five rights to use frequencies, reserved for the digital terrestrial television broadcasting service, corresponding to two coverages of national territory, which shall be associated with *Multiplexers B* and *C*, and three coverages of mainland territory on a partial basis, which shall be associated with *Multiplexers D*, *E* and *F*, as well as for the licensing of the distribution operator responsible for the activity of television which consists of the selection and aggregation of programming services with unrestricted access subject to subscription or restricted access, it is the position of ICP-ANACOM that conditions should be created so that, especially due to economic rationalisation, the market itself comes to set out that the offers complement each other or even integrate, further allowing the allocation of the rights to use of the frequencies concerned be to a single body.

Furthermore, it is further admitted that the tenderers may present a variant scenario, describing the most significant alterations which might occur in the respective proposals, in the event of having also applied to the tender associated with *Multiplexers B* to *F* and winning both tenders. This variant scenario must be presented jointly with a proposal to the present tender and it will only be analysed and be the object of assessment in this respect in the event that the tenderer concerned emerges as winner of the tender associated with *Multiplexers B* to *F*.

Considering the primary objective of switching over from analogue broadcasting to digital, it is stated that value will be given in the tender to the strategies which contribute to the rapid spread of digital terrestrial television and the development of the Information Society.

Pursuant to the regime of the Television Law (Law no 27/2007 of 30 July), it is set out that capacity be reserved for the transmission of television programme services broadcast in analogue mode by terrestrial hertzian wave held by the licensed or concessionaire operators, and, as a result of Resolution of the Council of Ministers no 12/2008 of 22 January, it is further set out that capacity be reserved for the transmission of a new television programmes service with unconditional free access, the public tender for which shall be opened by the Government within a period of 180 days following the public act of the present tender, as well as for the broadcast, in non-simultaneous mode until the closure of analogue television broadcasting, of high definition transmissions of programme services distributed in Multiplexer A. The holder of the right to use frequencies is bound to corresponding transport and broadcasting obligations and in this respect will remain subject to the regulation of ICP-ANACOM.

In accordance with the provisions of article 11 of the Statutes of ICP-ANACOM, approved by Decree-Law no 309/2001 of 7 December, and article 8 of Law no 5/2004 of 10 February, the regulation, while in draft, was submitted to the respective regulatory and general consultation procedures, whereby interested parties are given a period of 30 working days to respond.

The final report, which analyses the responses received in respect of these procedures and gives basis to the options of ICP-ANACOM, is published on the website of this Authority.

Accordingly, pursuant to the provisions of point a) of article 9 of the Statutes of ICP - Autoridade Nacional de Comunicações (ICP-ANACOM), approved by Decree-law no 309/2001 of 7 December, as well as of paragraph 5 of article

35 and of paragraph 1 of article 43, both of Law no 5/2004, the Board of Directors of ICP-ANACOM approves the following regulation:

Article 1

Opening and object

1. The public tender set out in the present regulation is opened, which tender has as its object the allocation of a right to use frequencies reserved for the digital terrestrial television broadcasting service in the *Quadro Nacional de Atribuição de Frequências* (National Frequency Allocation Plan), corresponding to a coverage of national territory, which shall be associated with *Multiplexer A* (MUX A), in the frequency bands identified in the Annex, and to be used for television programme services of free, unconditional access.
2. The right to use frequencies which is the object of the tender in the present regulation may be allocated to the tenderer to whom allocation is also made of the title of the rights to use frequencies placed in public tender by the Regulation approved by Administrative Rule no 207- A/2008 of 25 February.

Article 2

Applicable legislation

1. The public tender is governed by the provisions of Law no 5/2004 of 10 February, of the present Regulation and the tender specifications approved by ICP – Autoridade Nacional de Comunicações (ICP-ANACOM).
2. The allocated right to use frequencies is governed by the provisions of Law no 5/2004 of 10 February, of the present Regulation and the tender specifications approved by ICP-ANACOM by determination of 30 January,

as well as by other legislation applicable to the communications sector and by Law no 27/2007 of 30 July, where applicable.

3. The allocated right to use frequencies is transferable under the terms set forth in the National Frequency Allocation Plan.
4. The holder of the allocated right to use frequencies is bound to comply with standards which may be published in the future, even where these prescribe provisions not foreseen at the date of the allocation of the right of use, but result from the needs or demands of public use of the service which they provide, under the terms of the regime set out in article 20 of Law no 5/2004 of 10 February.

Article 3

Tenderers

1. Tenders for the allocation of a right to user frequencies in respect of the present tender may be entered by commercial societies, incorporated or to be incorporated, which fulfil the requisites set forth in the present regulation.
2. Entities which are to be incorporated may tender provided that they possess a provisional card of identification, whereas, the respective right of use, in case of allocation, may be issued only following presentation of original written proof that the necessary registrations have been performed.

Article 4

Preparation of tenders

The tender specifications are available for consultation by interested parties on the website of ICP-ANACOM at www.anacom.pt, as well as in the office of

public attendance at its registered office, on all working days between 9am and 4pm until the date upon which the period for the delivery of tenders expires.

Article 5

Provisional bond

1. To guarantee compliance with the commitments assumed through the presentation of the tenders and with the obligations inherent to the tender, tenderers shall provide a bond to a value of € 750,000 (seven hundred and fifty thousand euros).
2. Said bond shall be provided by bank guarantee or insurance bond made out to ICP-ANACOM, in any of the duly documented cases.
3. The bond may be withdrawn by the tenderers upon the expiry of the deadline for the submission of proposals, in the event that a proposal has not been submitted or where such has not been admitted, or further in the event that the right to use frequencies is not allocated upon completion of the tender.
4. In the event of the exclusion of tenders under paragraph 4 of article 12, the provisional bond shall be forfeit in favour of ICP-ANACOM.
5. For the purposes of paragraph 3, ICP-ANACOM shall perform, in the subsequent 10 working days, the necessary diligence.

Article 6

Requests for clarification

1. Interested parties may seek, during the continuance of the period for submitting tenders and up to 15 working days prior to the expiry of such

period, the clarification of any query that they might have in the interpretation of any document of the tender process.

2. Requests for clarification must be presented in the public attendance service in the registered office of ICP-ANACOM, in writing and in exchange for proof or receipt, or sent by registered letter with notice of reception, addressed to the Chairman of the Board of Directors of ICP-ANACOM.
3. Clarifications are provided by ICP-ANACOM by registered letter with notice of reception, sent no later than 10 working days following the date of reception referred to in the previous paragraph.
4. The requests for clarification are included in a book which is kept at the disposal of the interested parties who intend to consult it, at the registered office of ICP-ANACOM, on all working days between 9am and 4pm, which information shall also be available on the website of ICP-ANACOM at www.anacom.pt.
5. The information contained in the consultation book prevails, for all purposes, over that provided on the website of ICP-ANACOM.
6. The consultation book is closed and archived in ICP-ANACOM on the date on which the public act of the tender is performed.
7. The companies which offer publically available electronic communications networks and services, as well as companies which use electronic communications networks and services, specifically the operators of television programming services, are bound, by the present Regulation and for the purposes of this tender, to provide all such clarification that ICP-ANACOM requests of them, within the period set for such, particularly in order to allow compliance with the provisions of the above paragraph 3.

Article 7

Delays

In the situation set out in the previous article, where use is made of the postal services, the tenderers shall be solely responsible for any delays and may not present any complaint in the event that the delivery of the request for clarification to ICP-ANACOM occurs after the expiry of the applicable deadline.

Article 8

Form and deadline for the presentation of tenders

1. Tenders must be formalised by means of written application, in the Portuguese language, addressed to the Chairman of the Board of Directors of ICP-ANACOM, which application shall include the identification of the tenderer, reference to the present tender regulation, as well as the date and the signature of the tenderer.
2. The tender applications must be delivered in the public attendance service in the registered office of ICP-ANACOM, in exchange for proof or receipt, on working days between 9am and 4pm.
3. The deadline for the delivery of tenders expires 40 working days following the date upon which the present regulation of the tender enters into force, whereas no tender may be accepted where this deadline is exceeded.

Article 9

Application examination

1. The tenderers shall present, with the respective application for tender set out in the previous article, the following documents and items:
 - a) Declaration by the entity with powers to legally bind the tenderer, recognised in this quality under legally admissible terms, where there

shall be express acceptance of the conditions of the tender and submission to the obligations arising from the act of tender and respective proposals, in the event of allocation of right of use;

- b) Certificate of registration and prevailing inscriptions issued by the competent Companies Registry or access code to the permanent certificate of the tendering entity under terms that allow verification of said items;
- c) Photocopy of the respective articles of association;
- d) Document proof that a provisional bond has been provided under the terms of article 5;
- e) Document setting out the direct and indirect share capital;
- f) Document providing proof of compliant status with regard to social security and to payment of taxes, under legally defined terms, in order for ICP-ANACOM to consult the tax and contribution payment status of the tenderer;
- g) Proof of an organised accounting system under the terms of the Official Chart of Accounts;
- h) Document which outlines the organisational structure of the tendering entity, identifying the persons in main positions of responsibility;
- i) A technical plan drawn up in accordance with the structure of the tender specifications;
- j) An economic and financial plan drawn up in accordance with the structure of the tender specifications;

- k) Declaration by the entity with powers to legally bind the tenderer that all copies presented, irrespective of their format, conform to the originals and that it is accepted that such prevail for all purposes;
 - l) Any other items which the tenderer considers relevant to the assessment of the tender
2. For the purposes of point e) of paragraph 1, the tenders shall, in particular, identify the holders, natural or legal persons, of the share capital of the tendering entity, the amount of their participation, as well as, where one or more of the shareholders is a legal person, provide, with respect to these, the same specified indication.
 3. The tenderers who have also tendered for title of rights to use frequencies placed in public tender by the Regulation approved by Administrative Rule no 207-A/2008 of 25 February may, in addition to the items set out in the preceding paragraphs, present a variant scenario, in respect of the technical and economic-financial plans cited in points i) and j) of paragraph 1, in which an explanation should be made of which aspects and in what way the cited plans presented in respect of the present tender may be affected in the event that the tenderer is also allocated the rights to use frequencies that are object of the other tender.
 4. The technical and economic-financial plans of the variant scenario set out in the previous paragraph shall be annexed, respectively to the base proposals of the tenderer for the technical and economic-financial plans, which variant plans shall be analysed and subjected to assessment in the event that the tenderer concerned wins the other tender, in which event they shall be considered as an integral part of the base proposal presented.
 5. The entities referred to in paragraph 2 of article 3 are not required to deliver the documents set out in points a), b), c), f) and g) of paragraph 1 and shall present:

- a) A binding protocol made between the incorporating persons, providing express declaration of acceptance of the conditions of the tender and submission to the obligations arising from the act of tender and respective proposals, in the event of allocation of the usage right;
 - b) Draft articles of association to which the constituents are bound;
 - c) Provisional identification card.
6. The entities referred to in paragraph 2 of article 3 shall provide express indication of the address to which they wish all correspondence in respect of the tender to be sent.
7. The companies whose incorporation occurred in the 90 days preceding the date of tender application are exempted from the requirement referred to in points f) and g) of paragraph 1.
8. Documents submitted by tenderers whose registered office is outside the national territory must be issued and authenticated by the competent authorities of the country of origin, and should no document identical to those requested be available, such can be substituted by a declaration made under oath by the tenderer before a legal or administrative authority, notary or other competent authority of the country of origin.
9. All documents accompanying the application must be written in Portuguese or, if not, be accompanied by a duly legalised translation regarding which the tenderer states that for all purposes, it is agreed that, the latter shall prevail over the original.
10. All documents comprising the application submitted by tenderers shall not be returned but will remain in the possession of ICP- ANACOM.

Article 10

Distribution of tender documents

1. The tender application shall be submitted in a sealed envelope that is separate from the other elements of the tender, on the face of which envelope the name of tenderer shall be identified, as well as the frequency usage right to which the tender relates.
2. Documents accompanying the tender application shall be submitted in sealed volumes, in order that the non-violation of the contents is guaranteed, which volumes shall be numbered by reference to their total number and duly identified in accordance with the structure demanded in the bid specifications, thereby giving distinction to the identification of the tenderer, the technical plan and the economic-financial plan.
3. The original documents in respect of the chapter of identification of the tenderer shall be sequentially numbered on all pages, which shall be initialled by one of the legal representatives of the tenderer and contain the indication that it the document is an original copy.
4. A copy of all documents referred to in the previous paragraph shall be submitted and shall be duly identified as such.
5. The items in respect of the chapter of the technical plan and the chapter of the economic-financial plan shall be contained in plain folders, with sequential numbering of pages per chapter, which shall be initialled on the first page of each folder by one of the representatives of the tenderer and contain the indication that the document is an original copy.
6. Five copies of the items referred to in the previous paragraph shall be presented on non re-recordable CD-ROM, with the respective files in PDF format (*Adobe Acrobat*), which shall maintain the same sequential numbering of pages by chapter.

7. Geographical maps referring to radio coverage are exempt from the provisions of paragraphs 5 and 6, which maps shall respect the requisites of submission set out in the tender specifications, including an original, initialled by one of the representatives of the tenderer, as well as a duly identified copy.
8. The parameterisation of access to the files referred to in paragraph 6 shall ensure that such may only be made by means of permission through the use of a password, which, in this case, shall be indicated to the Committee alluded to in paragraph 3 of article 11, by way of a declaration in a sealed envelope,
9. The content of said files may further be encrypted, in which case the tenderers shall supply the keys or certificates necessary for their consultation under the terms set out in the previous paragraph.
10. The envelopes with the declarations referred to in paragraphs 8 and 9, duly identified, shall be enclosed in the envelope which contains the tender application.
11. The parameterisation inherent to the registry of the files in the format set out in paragraph 6 shall guarantee that their content may not be altered and that no other record be made, by any means.

Article 11

Public Act of Tender

1. The public act of tender to open tender applications shall take place at 10 am on the 1st working day following the expiry of the deadline for the delivery of tenders stated in paragraph 3 of article 8, in conformity with an announcement to be published in the press by ICP-ANACOM and made available on their website, which will also identify the location where the public act of tender will take place.

2. Only representatives of the tenderers, up to a maximum of three persons per tenderer, may be present at the public act of the tender, provided that such persons are duly empowered to represent the tenderers in said act.
3. The public act of the tender is conducted by a committee appointed by determination of the Board of Directors of ICP-ANACOM within a period of 5 working days following the date on which the present tender regulation enters into force, and shall consist of three suitable individuals with recognised technical competence, of which one shall be indicated by the Regulatory Board of the ERC, which committee in this respect is charged with:
 - a) Confirming reception of the envelope containing the tender applications, as well as the packages containing their accompanying documents and items;
 - b) Opening the envelopes containing the tender applications, including the envelopes cited in paragraph 10 of the previous article, where such exist, as well as the packages containing the documents and items pertaining to identification of the tenderer, the technical plan and the economic and financial plan;
 - c) Initialling the tender applications and declarations referred to in paragraphs 8 and 9 of the previous article, where such exist, simultaneously ensuring the seal of the original documents in respect of the chapter of identification of the tenderer, of the first pages of the folders in respect of the technical plan and of the economic-financial plan and of the geographical maps, as well as fixing a limit of time for consultation of the processes tender application by the tenderers;
 - d) Whenever so required, checking the capacity of the persons intervening in the act;

- e) Providing tenderers with a maximum time limit of fifteen working days in order to rectify any omissions or errors verified in the bid application, when such rectification is considered feasible;
 - f) Drawing up a proposed and reasoned list of admissible or rejected tenders for submission to Board of Directors of ICP-ANACOM;
 - g) Accepting and deciding on all complaints submitted during the public act by the representatives of the tenderers, suspending the said act where necessary.
4. An appeal, which does not suspend the effects of the appeal decision, may be lodged against the decisions referred to in point g) of the previous paragraph with the Board of Directors of ICP-ANACOM.

Article 12

Admission and exclusion of tenderers

1. The Board of Directors of ICP-ANACOM is charged with admitting or excluding the tenders according to a reasoned proposal from the Committee on the admission and exclusion of tenderers.
2. Conditional proposals shall not be admitted, such being considered as proposals in which the tenderer makes its validity dependent on the occurrence of a future or uncertain event.
3. Bids shall be rejected at any stage of the tender proceedings in the event of any of the following situations:
 - a) Non compliance with the provisions of articles 8, 9, 10 and 14;
 - b) Non compliance with the requisites and conditions of the tender.

4. Tenders which do not fulfil one of the following minimum requisites are excluded, particularly under the terms set out in the tender specifications:

- a) Use of the DVB-T (*Digital Video Broadcasting for Terrestrial Television*) system;
- b) Fulfilment of the transport obligations, as well as the obligations of coverage, under the terms set out in articles 19 and 20 and in paragraphs 2 and 3 of article 21 of the present regulation.

Article 13

Assessment of Applications

1. The Committee is charged with assessing the tenders according to the following selection criteria and respective weightings:

Criteria a) (38%) - Contribution to the rapid massive spread of digital terrestrial television and the development of the Information Society;

- Sub-criteria a1 (33%) - Contribution to the rapid massive spread of digital terrestrial television and the development of the Information Society, at an infrastructure level
- Sub-criteria a2 (50%) - Contribution to the rapid massive spread of DTT in terms of its promotion
- Sub-criteria a3 (17%) – Average annual price for the provision of the service per Mbit/s in the first ten years

Criteria b) (15%) - Adoption of technologically innovative solutions and promotion of interoperability;

- Sub-criteria b1 (9%) - Adoption of compression formats
- Sub-criteria b2 (41%) - Availability EPG and other interactive services
- Sub-criteria b3 (21%) - Flexibility of techniques for updating reception equipment software

- Sub-criteria b4 (29%) - Interoperability in terms of reception equipment

Criteria c) (33%) - Quality of the technical plan;

- Sub-criteria c1 (13%) – Project and topology of the presented network, as well as of the network equipment
- Sub-criteria c2 (30%) - Digital broadcast centre to be implemented
- Sub-criteria c3 (9%) - solution to be implemented for the transport network and its suitability in respect of the characteristics of the broadcast network
- Sub-criteria c4 (48%) - Broadcast network to be implemented and the respective infrastructure

Criteria d) (14%) - Quality of the economic-financial plan

- Sub-criteria d1 (75%) – Characterisation of the offer and quality of feasibility and risk assessment
- Sub-criteria d2 (25%) – Impact of the project in terms of the economic activity of the country

2. The services of ICP-ANACOM will perform the technical analysis of the tenders, as well as other activities as requested by the Committee.
3. In the event of a draw between the tender applications, the winning application shall be that with the highest score for the criteria of contribution to the rapid massive spread of digital terrestrial television and the development of the Information Society.

Article 14

Clarification to be provided by Tenderers

The tenderers, through a representative qualified for such purpose, undertake to provide the Committee with all clarifications that are sought of them, within

a period and in a way set by the Committee, in order to complete the assessment of the applications.

Article 15

Hearings of interested parties

The Committee is charged with conducting the prior hearing of tenderers under the terms of articles 100 et seq. of the Code of Administrative Procedure.

Article 16

Final Decision

1. The committee shall draw up a final report, containing a list classifying the tenderers, with due basis, proposing to the Board of Directors of ICP-ANACOM within a time limit of 60 working days following the closure of the public act of the tender, or from the period of rectifying possible insufficiencies, the allocation of the right to use frequencies to the tenderer which, satisfying the conditions of the tender and the selection criteria, has earned the best classification.
2. The period set in the previous paragraph may exceptionally be extended, on the reasoned proposal of the Committee, by decision of the Board of Directors of ICP-ANACOM.
3. The Board of Directors of ICP-ANACOM is charged with the ratification, with a period of 10 working days, of the proposed allocation of the right to use frequencies, as submitted to the Board by the Chair of the Committee.
4. The decision on the allocation of the right to use frequencies shall be communicated by ICP-ANACOM to all tenderers by registered letter with notice of reception.

5. In the case of the entity to which the right to use frequencies is allocated, the communication cited in the previous paragraph shall make express reference to the obligation to raise the bond set out in the following article.

Article 17
Definitive bond

1. The entity to which the right to use frequencies is allocated shall be obliged, within a period of 10 working days following the reception of the communication cited in paragraph 4 of article 16, to raise the bond to the value of €2,000,000 (two million euros).
2. The bond referred to in the previous paragraph shall have continuance for a maximum period of three years, being released upon verification of compliance with the staging of obligations of coverage contained in the tender specifications or arising from the commitment assumed in this respect in the winning proposal.

Article 18
Issue of the title

1. The title of allocation of the right to use frequencies shall be issued by ICP-ANACOM, within a period of 15 working days following compliance with the provisions of paragraph 1 of the previous article, which title shall contain the conditions associated with the respective exercise under the terms of articles 27 and 32 of Law 5/2004 of 10 February
2. For the purposes of the provisions of the previous paragraphs ICP-ANACOM shall conduct, the prior hearing of the title holder of the usage rights under the terms of articles 100 et seq. of the Code of Administrative Procedure.
3. Whenever, without grounds, the tenderer to whom the right to use frequencies is allocated fails to comply with the provisions of paragraph 1

of the previous article, the proposal classified in subsequent place according to the classification list of tenderers, presented under the terms of paragraph 1 of article 16, shall be ratified by the competent entities, provided that said tender fulfils the conditions of the tender and selection criteria.

4. The ratification of the new proposal determines the revocation of the previous acts of allocation of the right to use frequencies.

Article 19

Obligation to reserve capacity and transport

1. The holder of the right of use is bound, under the terms of the law, to reserve capacity, in accordance with the tender specifications, for the transmission of television programme services broadcast in analogue mode via hertzian wave held by the licensed or concessionaire operators on the date on which Law no 27/2007 of 30 July entered into force, namely, RTP1, RTP2, SIC and TVI, as well as RTP Açores and RTP Madeira in the respective Autonomous Regions.
2. The holder of the right of use is further bound, under the terms of Resolution of the Council of Ministers no 12/2008 of 22 January to reserve capacity, in accordance with the tender specifications, for the transmission of a television programme service with unconditional free access to be licensed under the terms of Law no 27/2007 of 30 July.
3. For the purpose of paragraph 1, when the interested television operators exercise the right to be transported under the terms set out in article 94 of Law no 27/2007 of 30 July and in paragraph 2, when the cited television programme service is operational, the holder of the right to use frequencies shall be bound to transmit the respective programme services without demanding compensation from end users and, in the case of programme services provided in analogue mode, in an integral and simultaneous manner and maintaining its current order, without prejudice

to the other obligations of access arising from the application of the regime set out by Law no 5/2004 of 10 February.

4. In the event that the holder of the usage right and the television operators do not reach agreement on the compensation due in respect of the transport obligations set out under the terms of the previous paragraph, ICP-ANACOM may determine a suitable remuneration in accordance with the regime set forth by paragraph 3 of article 43 of Law no 5/2004 of 10 February.

Article 20

Obligations to reserve capacity and transmission in high definition

1. The holder of the right of use is further bound, under the terms of the Resolution of the Council of Ministers no 12/2008 of 22 January, to reserve capacity, as specified in the tender specifications, for the broadcast, in non-simultaneous mode until the closure of analogue television broadcasting, of high definition transmissions of programme services cited in paragraphs 1 and 2 of article 19, except in the Autonomous Regions.
2. For purposes of the previous paragraph, the holder of the right of use is bound, for determined periods of time, to broadcast the cited programming components in high definition without demanding any compensation from end users, implying the discontinuation of the standard definition or wide-screen broadcast of these programming components for these same periods.
3. The planning of high definition broadcasting, referred to in the previous paragraphs, shall be agreed previously between the various television operators and subsequently communicated to the holder of the usage right, thereby allowing compliance with the obligation of transmission set out in the previous paragraph.

4. In the event of failure to reach agreement as set out in the previous paragraph, *Entidade Reguladora para a Comunicação Social* (ERC – the Media Regulator) shall intervene on its own initiative or upon the request of any of the parties, issuing a binding decision, subsequent to the opinion of ICP-ANACOM

Article 21

Obligation of the holder of the usage right

1. The obligations resulting from the terms of the tender and the commitments assumed in the winning proposal shall form an integral part of the title of allocation of the right to use frequencies, constituting, for all purposes, one of the conditions associated with the allocated rights, under the terms of article 32, paragraph 1, point g) of Law no 5/2004 of 10 February.
2. Except where the commitments assumed in the winning proposal result in more demanding values, the holder of the right to use frequencies shall, within a maximum period of 3 years, guarantee a coverage in all districts of the mainland territory and the Autonomous Regions, covering in total not less than 99% of the national population, under the terms of the tender specifications, specifically in respect of its staging, which shall constitute a condition of effective and efficient use of frequencies, under the terms of article 32, paragraph 1, point b) of Law no 5/2004 of 10 February.
3. Without prejudice to a balanced distribution of the terrestrial broadcasting component in all districts of mainland territory and the Autonomous Regions, compliance with the obligations set forth in the previous paragraph may be ensured through the use of complementary means of coverage, as a substitute to terrestrial broadcasting, provided that the same television programme services are provided, that the level of service and conditions of access for end users in the zones concerned are comparable to those in zones covered terrestrially and that the population

covered exclusively by such means does not exceed 14% of the national population.

4. The allocation of the rights to use the frequencies does not confer on its holder any other rights which do not result from the exact terms contained in the allocation title, whereas no facts arising from the allocation, in any way, of new services or rights of use or modification incidentally of circumstances may be cited.
5. Without prejudice to other applicable sanctioning mechanisms, failure to comply with the conditions associated with the exercise of the activity may determine the total or partial revocation by ICP-ANACOM of the respective right to use frequencies under the terms of article 110 of Law no 5/2004 of 10 February.

Article 22

Continuance of the authorisation titles

The allocated right to use the frequencies has a validity of 15 years and may be renewed under the terms of Law no 5/2004 of 10 February.

Article 23

Counting the Time Limits

The method for counting the time limits set out in the present Regulations shall be governed by the rules of article 72 of the Code of Administrative Procedure.

Article 24

Entry into force

The present regulation shall enter into force on the day following that of its publication.

20 February 2008. – *The Chairman, José Manuel Amado da Silva.*

Annex

The frequencies to be used on the Mainland and in the Autonomous Regions for providing coverage in respect of *Multiplexer A* (MUX A) are the following:

MAINLAND TERRITORY

Channel 67 - 838-846 MHz

AUTONOMOUS REGION OF THE AZORES

Channel 47 - 678-686 MHz (Ilha de São Jorge)

Channel 56 - 750-758 MHz (Ilha do Pico)

Channel 61 - 790-798 MHz (Ilhas de S. Miguel e Graciosa)

Channel 64 - 814-822 MHz (Ilha do Faial)

Channel 67 - 838-846 MHz (Ilhas da Terceira, S. Maria, Flores and Corvo)

AUTONOMOUS REGION OF MADEIRA

Channel 67 - 838-846 MHz