

## CHANGES IN TELECOM LAW SHOULD UNLOCK INVESTMENTS

After protracted discussions in Congress, Law 13,879/19 was enacted on 4 October 2019. The new Law brings major, and welcome, changes to the 1997 Brazilian General Telecommunications Law (“LGT”), under which the state-owned companies were privatized, and the market opened to competition. The new law authorizes companies to opt for a regime that allows them to operate for an undefined period of time and without the risk of having their assets reverted to the Federal Government, two important improvements in the business environment that should bring new investments in high-speed data networks.

Under the LGT, the major fixed-line telephone companies still operated under a public regime with universal services obligations. The companies signed a concession contract with the Federal Government that granted them the right to operate the service for a predefined period. These rules were originally conceived to ensure universal access to the relevant services to the entire population, but in time became outdated and a hurdle to investments in networks for various reasons, all of them important.

EnviarFirst, universal services obligations were focused on plain fixed-line telephone services, including public telephone in the streets, which today have very limited impact in a country with wide coverage of mobile services. Investments required from the companies were not focused on the type of infrastructure that really matters in the present – i.e., high-speed data networks and internet access.

Second, the previous rules considered that the main assets used by the companies should be treated as “reversible assets” – i.e., assets that shall return to the Federal Government after the end of the concession period. There is a still unsettled debate regarding what should fall within this category – if it should be limited to the old fixed-line network or would include all networks of the companies, including new high-speed data networks. This lack of clear definition under complex legal rules affected the incentives of companies to make investments in network without knowing if they would be able to recoup the corresponding capital expenditure.

The new law has authorized the companies that currently operate under this outdated public regime to migrate to a private regime in which they can remain operating for an undefined period of time and their assets shall not be reverted to the Federal Government. This should eliminate the legal uncertainty regarding the “reversible assets” debate and unlock much needed investments in high-speed data networks. The change of rules will be subject to investment commitments from the

companies and other commitments to assure that services will be available in areas in which they are not yet commercially viable.

Additional changes brought by Law 13,879/19 should have positive impacts for mobile operators in a moment in which high investments will be necessary to develop a 5G network in the country. Under the LGT, frequency licenses were auctioned for a period of up to 20 years, which could be renewed only once. After this period, a new auction would take place. Now the operator can request the renewal of the license for an undetermined number of times, subject to investment commitments. Further, the law has authorized the holder of a license to transfer it to another company, subject to prior authorization of national authority ANATEL. This may create a market for frequency and trigger consolidation in the sector.

These changes are a positive move towards creating incentives for private investments in 5G and high-speed data networks that can benefit the entire Brazilian economy. However, the statute brought only broad parameters and does not detail the actual investment commitments that will be required from companies requesting to move from the public to the private regime. There is still significant work to be done by ANATEL in the coming months in order to put in place all necessary supplementary regulation.

**Author:**

[Alexandre Ditzel Faraco](#)  
[afaraco@levysalomao.com.br](mailto:afaraco@levysalomao.com.br)