

Possibilities of Institutional Collaboration Capacity Building between the Brazilian Court of Audit and the United States Government Accountability Office focused on Telecom Regulation Performance Oversight Framework

This strategy paper reviews performance auditing practices conducted by the US Government Accountability Office in the oversight of utility regulators. The objective of the review is to identify areas, issues and practices of possible collaborations between GAO and the Brazilian Tribunal de Contas da União (TCU) in works of performance auditing of the utility regulators. It identifies exemplar works of both SAI's in the oversight of the regulation of utilities. It describes how the US public administration is in many important respects like its Brazilian counterpart. In this perspective, it is argued that on the one hand, the Brazilian SAI could very well benefit from insights of audit practices as well as of some issues that GAO has been developing in the area of performance auditing of utilities regulations. On the other hand, The Brazilian Supreme Audit Institution is trying to build a more systematic and systemic approach to oversee the regulation of utilities by identifying the main problems and the actions necessary to overcome them.

STRATEGY PAPER FOR THE BRAZILIAN TRIBUNAL DE CONTAS DA UNIAO

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August 2007
Government Accountability Office
Washington, D.C.

To my girlfriend Alderleia

Table of Contents

<u>1. INTRODUCTION</u>	4
<u>2. OVERVIEW OF THE BRAZILIAN COURT OF AUDIT AND THE GOVERNMENT ACCOUNTABILITY OFFICE</u>	6
<u>3. OVERSIGHT OF UTILITIES REGULATION</u>	8
<u>3.2. THE ROLE OF TRIBUNAL DE CONTAS DA UNIÃO IN THE REGULATORY OVERSIGHT PROCESS</u>	12
<u>4. TELECOM RELATED ISSUES</u>	15
<u>4.1. BRAZIL TELECOM BACKGROUND</u>	15
<u>4.2. TELECOM ISSUES ADDRESSED BY TCU</u>	16
<u>4.3. US TELECOM BACKGROUND</u>	20
<u>4.3.1. THE ADVENT OF THE 1996 TELECOMMUNICATION ACT</u>	20
<u>4.4. TELECOM ISSUES ADDRESSED BY GAO</u>	22
<u>5. POSSIBLE AREAS OF WORK INTERCHANGE</u>	23
<u>Consumer Protection</u>	24
<u>Competition</u>	24
<u>Universal Service</u>	25
<u>Digital TV Transition</u>	27
<u>Internet management and broadband deployment</u>	27
<u>Other Telecom Issues</u>	27
<u>6. OTHER ASPECTS OF INFRASTRUCTURE OVERSIGHT</u>	27
<u>7. ISSUES FACED BY THE BRAZILIAN SUPREME AUDITING INSTITUTION IN THE OVERSIGHT OF THE UTILITY REGULATION</u>	30
<u>8. STRATEGY FOR IMPLEMENTATION OF THIS PAPER</u>	34
<u>9. FINAL REMARKS</u>	37
<u>10. ACKNOWLEDGMENT</u>	39
<u>11. REFERENCES</u>	40
<u>ANNEX I - EAGLE PROCESS</u>	43
<u>ANNEX II - GAO's Physical Infrastructure Team</u>	45
<u>Telecommunications Products & Ongoing Work by Topic 1998 to Present</u>	45

1. INTRODUCTION

This strategy paper is the final outcome of my participation in the International Fellowship Program of the Government Accountability Office, representing the Brazilian Supreme Audit Institution, The Brazilian Court of Audit - *Tribunal de Contas da União*, in 2007 among SAIs from other 13 countries.

Before the course started in April 2007, the President of the Brazilian SAI agreed that TCU in the 2007 version of the program would like to benefit from my participation by learning “Performance Auditing (financial-economical monitoring and quality enforcement in public utilities service providing – focus on telecommunications)”.

Although the focus of this paper was in the quality and financial oversight of telecom public services in the US, it turned out to be more feasibly to identify areas and contact liaisons that could provide deep insights about the work that has been conducted by GAO telecom areas of expertise, and also, to a minor extent, in other specific infrastructure issues, for further cooperation and exchange of techniques and experiences.

My expectation from the course was then to learn about practices of performance auditing conducted by the US GAO, especially on how the SAI plans its studies, implements the field work, reports the audit findings and monitors the recommendations. The functions performed by TCU (Brazilian SAI) include the external control of regulatory agencies in the utilities sector. As an auditor who has been working at the Denationalization Inspection Secretariat of TCU for more than 4 years and involved in one project aimed at developing and consolidating the operational capacity of TCU to undertake external control work in this area, my goal is to implement lessons – in a policy learning transfer context - from GAO to TCU in the area of performance auditing, using some GAO reports in the utilities sector more specifically as cases of study.

This paper is an attempt to build upon a previous effort conducted by the 2004 Brazil’s fellow participant, Marcelo Barros Gomes, on implementing some aspects of a framework to assess performance audit issues in the utilities sector by the Brazilian SAI – TCU, based in the GAO approach, outlined in its reports as cases of study.

In that paper, that is currently online on the TCU web's page¹, the author provided a comprehensive background assessment that one could refer to better understand the theoretical model that underline the matter, including the roles of the Brazilian and US SAIs within specific national institutional arrangements, GAO utility regulation oversight benchmarks that could contribute to develop the Brazilian Tribunal de Contas da União utilities performance oversight framework and other issues related to implementation of performance auditing methods and techniques among Supreme Auditing Institutions.

This strategy paper provided an argumentation about recent public management policies of audit and evaluation conducted by Supreme Audit Institutions (SAI) in utility regulatory agencies.

It is important to state that the author achieved substantive accomplishments based on the paper and on the experience in the GAO program. First the paper was published in the Latin American Centre for Development Administration (CLAD) Congress in Spain, 2004.

A version of the paper has been published in the "Revista do TCU" (TCU Magazine), volume 36, special issue no. 104, released april/june 2005. The publication theme was "The Control of Regulation in Brazil" and was issued during the International Denationalization Conference, promoted by TCU in 2005. He also had the opportunity to include the translation of the paper into the official document of the INTOSAI privatization meeting group that took place in the same venue.

Also, based on the Highlights section of GAO reports Sefid now is using a synthesis page to communicate the results of its performance audit reports.

And the paper also could subsidize TCU's organization model restructuring group and the "Project for Modernisation of Regulation External Control" ongoing in Sefid.

However, despite some advances have been made in building a more consistent partnership between the Brazil and the US SAI as a result of direct or indirect outcomes of the efforts of previous Brazilian participants in the program, there is still opportunity to enhance the interchange of professional standards, best practices, techniques and methodologies and so far, between them.

¹http://www2.tcu.gov.br/pls/portal/docs/PAGE/TCU/PUBLICACOES/PUBLICACAO_LINGUA_ESTRANGEIRA/INGLES/REVISTA%20104%20EM%20INGL%C3%8AS%20-%20MIOLO.PDF

Therefore my objective in this paper is to focus on a strategy to transfer some of that expertise into the Brazilian SAI, that will be better explained in the following sections of this study.

This essay also aims to fulfill three outcomes. A first outcome is to provide a review of some practices conducted by the Brazilian Tribunal de Contas da União (TCU) and US Government Accountability Office (GAO) in the utilities regulatory agencies – especially regarding the Telecom sector. The issue here is to inform to whom and to what extent are those agencies accountable for in both National Public Administrations.

Secondly, practices in this paper are narrated as a way to bring lessons about performance auditing as conducted by both SAI from one country to another in the area of oversight of regulatory agencies. The issue here is to assess the extent and the ways accountability of regulatory agencies as conducted by Supreme Audit Institutions might be learned from one country to another.

And there is also the willingness to elicit some overall best practices, methods and techniques GAOs apply to deliver its final audit products that could be adopted into TCU framework.

Finally, this strategy paper is based on the classes delivered during the program, interviews and meetings attended during my stay in the GAO, as well as on research on GAO and TCU reports and literature about public management in the US and Brazil and performance auditing among Intosai member countries. After attending this Program I am now able to prepare this strategic paper as a way to better understand how TCU practices could be improved by using some insights from GAO work.

2. OVERVIEW OF THE BRAZILIAN COURT OF AUDIT AND THE GOVERNMENT ACCOUNTABILITY OFFICE

There are external forces promoting the growth of performance audit, many of which are evident throughout Intosai member countries. These forces refer mainly to fiscal stress, expenditure cuts, changing environment, political and social pressure for a more openly accountable government, and increasing expectation on quality government services (Shand and Anand, 1996).

In such environment operates the Government Accountability Office (GAO). Its main function is to assist the Congress in its legislative oversight of the executive branch. The vast majority of

GAO's work is audit and evaluation but it also has other responsibilities, including prescribing accounting standards for the entire federal government in conjunction with the Office of Management and Budget and the treasury.

GAO is formally independent of the Congress. The Comptroller-General is appointed for a fixed term of 15 years. The work of GAO is unconstrained because the executive policy makers are not coordinated enough to oppose consistently to external evaluation of their programs. Moreover, the Government Accountability Office has built a strong client relationship with Congress that has permitted less questioning about performance audit and evaluation it might conduct. GAO has evolved into an effective policy analytical and advice organization for Congress (Rist, 1990).

In that sense, the US Government Accountability Office is more able to conduct performance audit questioning policy content issues on the regulatory area because it is embedded in a decentralized non-monolithic policy making environment and responds directly to a strong client – the US Congress - that allows GAO to assess effects of public policies in a more deep analysis than is usually the case among other SAI.

GAO, however, is very careful not to stray into policy decisions, but rather to focus on the use of analysis to assist the elected representatives in making those judgments. So for example, GAO doesn't make any recommendations in the area of trade negotiations since these involved tradeoffs between different industries and between consumers and producers. Those kinds of choices can be informed by analysis, but elected officials have to make those decisions.

On the other hand, the UK National Audit Office, for example, as the majority of Intosai members, faces more difficulties to question policy-content issues because it oversees a disciplined and integrated policy community of rulers in the UK.

Like the US, the Brazilian National Public Administration is extremely decentralized, in both the political and the bureaucratic levels. Although there is a strong emphasis in the executive branch in the policy making process, the powers are divided in an unclear way in the two branches. The executive itself is extremely fragmented. Moreover, the ministries have not yet created a strong community of policy advice, including the ministries related to infrastructure sectors.

In this fragmented environment operates the Tribunal de Contas da União. Its main function is to aid the National Congress in controlling the federal public administration and watching over the sound and regular use of public funds. It is responsible for the external audit of the country and its agencies in the three branches of government. There is a high level of independency of TCU from any other public administration entities, because it has a mandate to carry on his audits by his own initiative. After the new constitution in 1988 TCU has spread its control practices and included operational audits in his review portfolio. Since then, a lot of efforts have been put into practices to increase the institution capacity to perform works on program evaluation, operational audits in many areas.

In this concern, it would be a good choice for the Brazilian SAI to broaden its technical partnership with the GAO. This choice should not expose its capacity building projects with the UK, because this ongoing collaboration is positively influencing TCU's practices and creating good quality discussions among Intosai members. However, TCU should learn other techniques and methods of control in the utility regulation area as well as address other issues in future audits. This vicarious learning process should be based on exemplars reports delivered by GAO, contacts with GAO experts and continuous exchange of information between the two institutions in the many aspects of the utility sector, since the Brazilian National Public Administration, as its US counterpart, is more likely to accepted policy content analysis and recommendations from the SAI.

TCU should also build a stronger relationship to Congress as a way to increase the likelihood of effectiveness of its recommendations and not be questioned about its own legitimacy to conduct some performance auditing works². Nonetheless, a stronger relationship with Congress should not jeopardize TCU own independence and guarantee that it is still able to conduct the majority of the works by its own initiative, what is not apparently the case of the US Government Accounting Office.

3. OVERSIGHT OF UTILITIES REGULATION

² To exemplify the menace to TCU legitimacy to undertake control due to a lack of better relationship with the Legislative, the Congress is going through the process of enacting a General Law of Regulatory Agencies that may overrule the extent of TCU oversight over the regulatory agencies.

Regulation activity is rooted in the power consigned to states to intervene in the relationship between suppliers and consumers. Regulation of the utility industry activities can be characterized as a form of control exercised by government “over prices, safety, and quality of services” (Baldwin and Cave, 1999:03). Systemic privatization (Feigenbaum & Henig, 1994:200) and attempts to liberalisation in different times brought to the scenario of the utility sectors a new regulatory regime broadly similar in both cases.

Supreme Audit Institutions have a key role for the sustainability and improvement of a sound regulatory regime. The US and Brazilian cases are exemplars in this area of oversight. The latter is trying to build a more systematic approach to the regulatory oversight; the former has created the conditions to advice Congress on sound policies in the regulatory arena.

3.1. THE ROLE OF THE GOVERNMENT ACCOUNTABILITY OFFICE IN THE OVERSIGHT OF UTILITIES REGULATION

The Government Accountability Office approach to utility regulatory policies is sharp and often deep. It has a specialized team that deals with infrastructure themes – Physical Infrastructure Team, also known as PI.

The Physical Infrastructure team helps Congress, federal agencies, and the public address challenges within the U.S. infrastructure. The transportation systems, telecommunications networks, oil and gas pipelines, and federal facilities US depend on are owned, funded, and operated by both the public and private sectors. These transportation and communications systems are vital to interstate commerce and are necessary for a vibrant, healthy economy. Policy decisions addressing infrastructure challenges directly affect the nation’s economic vitality and quality of life.

Its reports and testimonies help Congress oversee a variety of federal agencies and other entities. Helping Congress and the agencies and entities the team reviews ensure the continued efficiency, safety, and security of the nation’s infrastructure. Among the agencies and entities PI review are the following:

- Department of Transportation (DOT), including the Federal Aviation Administration (FAA).
- General Services Administration (GSA).

- Federal Communications Commission (FCC).
 - Amtrak.
 - U.S. Postal Service.
-

Recent Accomplishments

- Helping Congress prepare for reauthorization of transportation and aviation programs.
 - Assessing competition in the transportation and telecommunications sectors.
 - Identifying both the management of federal real property and the transformation of the Postal Service as high-risk areas.
 - Outlining actions needed to address long-standing problems.
-

Ongoing Projects

- Assessing the impact of global developments on the U.S. aviation industry.
- Assessing protection efforts for high-profile office buildings and national icons.
- Evaluating options for the transition to digital broadcast television.
- Identifying key practices in facility protection and assessing progress by the Interagency Security Committee.
- Assessing DOT's approach for selecting cities to receive federal assistance for new transit rail projects.
- Evaluating the impact of auctions to allocate radio spectrum and other factors affecting the deployment of broadband.
- Evaluating FCC's program for subsidizing Internet access in schools and libraries.
- Assessing major construction projects involving billions of federal dollars.
- Evaluating Amtrak's cost controls and financial management practices.

- Evaluating the Postal Service's realignment of its infrastructure and workforce, as well as the management of its real estate portfolio.
- Monitoring FAA's transformation into a performance-based, data-driven, and results-oriented organization.
- Evaluating the current modernization program for the nation's air traffic control system and the development of the Next Generation Air Transportation System.
- Examining the status of and alternatives available to finance the development and operation of the national airspace system.
- Evaluating FAA's safety and capacity challenges.
- Assessing DOT's ability to identify commercial truck and bus companies that are at high risk for crashes.
- Assessing the implementation of highway safety programs to ensure they effectively address the nation's rising highway fatality rate.
- Assessing the challenges of using public-private partnerships to deliver high-cost public infrastructure improvements and the extent to which these partnerships have promoted public benefits and protected the public interest.

Specialization and expertise in this area are also found in the Natural Resources and Environment Team, Applied Research Methods Team, Strategic Issue Team and International Affairs and Trade Team.

Performance audit carried out by the GAO out in the area of utility regulation is extensive. It include mergers of local telephone companies, promoting competition within the utilities markets, financial information audit in telecom companies, telecommunications technologies in rural area, the changing status of competition to cable television, many reports on critical infrastructure protection, development of information superhighway, benchmarks with other countries on DTV, wire base competition analysis, universal service, gas deregulation, competition and concentration of markets and other analysis, electricity restructuring, role of the Federal Energy Regulatory Commission, California electricity crisis in 2000-2001, experiences

of states in deregulating electricity, availability of service, assessment and cost-benefit analyses of public private partnership projects, and a lot of work on all modes of transport (de)regulation among much others works.

3.2. THE ROLE OF TRIBUNAL DE CONTAS DA UNIÃO IN THE REGULATORY OVERSIGHT PROCESS

Nowadays, TCU is a distinguished body of excellence of sound policy advice and has spread good practices in regulation and performance accountability, including in the control of regulatory agencies, as it is going to be exposed in this paper. The next section will try to clarify the concept of performance auditing as practiced by SAI. Once clarified this concept the paper addresses the question of performance auditing in regulatory agencies

In Brazil a specialized unit called Denationalization Inspection Secretariat (that now has a staff of 26 auditors) was established in 1998 to oversee regulation with a performance perspective. The control practices of this unit includes others concomitant control of new concessions (since 1995); performance audit in the agencies (since 1999); audit, evaluation and review of regulatory processes (since 2000); concomitant control of the periodic tariff review in electricity distribution sector (since 2002).

Some results from TCU work include the review of calculation method for telephone, cable TV and hydroelectric power station concessions; operational audits were conducted in each key sector, including telecommunication. Roads toll reduction as result of undue taxes inclusion, investments overestimated and additional revenue not taken under consideration by the regulator; better treatment of environment issues in the oil and gas sector; identification of unclear definition of the duties of ministries and regulatory agencies and ineffective social tariff policy in electricity, assessment of universal service effectiveness in telecom and transport. TCU has been playing a key role in the implementation of the new regulatory arrangement in Brazil and became a much respected policy analyst of the regulatory regime in Brazil. TCU has in many important respects helped to the stabilization of the system as well as the improvement of the performance of regulatory agencies in terms of good regulation. Much work has to be developed to reach a good regulatory system, but in the initial path of the reforms TCU works were essential to the regime continuity.

As an example of relevant actions by the TCU is the recent operational audit on the management of the tariff burden “Bill for Consumption of Fossil Fuels of Isolated Systems – CCC-ISOL” included in subsidies used in the North and Northeast Regions. The huge amount of resources involved resulted from the percentage of three to seven percent of the electricity bills paid by all the users of the system. TCU found a lack of control mechanisms of the regularity of the expenditures which contributed to the inadmissible lack of concern over efficiency on the part of the local electric power concessionaires.

When overseeing the bidding process for granting the public service concession for electric power transmission, the Court found irregularities related to the calculation of the Maximum Annual Revenue, contained in a bidding announcement. The flaws ranged from simple errors in filling out spread sheets to more serious errors with direct economic-financial impact, such as incorrect calculation of the price index variation and of the burden “Global Reversion Reserve”, projected until the year 2034, although a law had established its extinction at the end of 2010.

Another serious problem, related to the electric power transmission concession, referred to the absence of mechanisms for appropriation of business efficiency and competitiveness gains, as provided for in the Law 9.472/1997. At the time, the TCU expressly determined to the regulatory agency that it comply with the law and establish the mechanisms required for transfer of these gains to the users.

The crossing of the income and consumption data of a sample extracted from the Survey on Standards of Living carried out by the Brazilian Geography and Statistics Institute identified problems with the criterion established in law - consumption of electricity - to identify the beneficiaries of that very special tariff. The choice would only be appropriate if there was a strong correlation between electricity consumption and income, which in practice was not found. Thus, the enforcement of the legal criteria, besides excluding low income consumers, included among the beneficiaries a significant number of middle and high income households, producing results contrary to the objectives stated in the law.

So, by means of audits carried out on the regulatory agencies and the ministries, with the action focusing on the infrastructure area, the Brazilian Court of Audit identified the weakness of the macro-sectorial policies and guidelines.

The inspection action of the TCU largely results from the ordinary action of the Court in the oversight of privatizations, as disciplined in the laws that address the National Privatization Plan.

In this field, the action of the TCU was extremely fruitful. For example, among others, the corrections determined by the TCU in the evaluation of Banespa, nationalized and sold by the Central Bank, resulted in the rise of its minimum price, in values of the time, more than R\$ 1.17 billion reais.

The TCU's accumulated knowledge in the area of corporate finances, cash flow analysis, evaluation of investments and all the usual issues in the processes of tariff revision, was obtained gradually, since the overseeing of the first privatization processes, with the assessment of the minimum sale value of the privatized companies and with the problems identified in several highway concession contracts, allowing the understanding of terms and procedures that, for being highly technical, remain unfamiliar to the majority of the interested parties.

In face of the importance of these processes, in the particular context of economic regulation, it is natural for the Court to dedicate special attention to the tariff revisions under the responsibility of the new regulatory agencies, to verify their compliance with the law and the concession contracts.

Obviously, once the public service is granted, the TCU's action in the oversight of the execution of concession contracts is not aimed at - nor could it be - replacing the constitutional and legal role of the regulatory agencies, whose competences are completely different from the TCU's. It belongs to them to regulate the market, and it belongs to the TCU to act, not as a second tier or reviewer, but as a constitutional body of superposition and control.

By the way, since the first highway concession processes, the Court was called to inspect the calculation of the value of the basic toll tariff, which is, in fact, the reason decreed the cancellation of the tender. After several studies were carried out, the Court concluded that the collection of the Basic Toll Tariff at R\$ 1.20 was correct, although the value initially established was R\$0.7821.

This example demonstrates, in itself, the complete impartiality of the TCU's action, in seeking the enforcement of the legal parameters, whose results are not neutral, as sometimes they favor the users of the services, at others the concessionaires. The action of the TCU, therefore, is aimed

above all at compliance with the law and favors the security and the stability of the contractual relations, preventing undue profits on either side.

The errors, omissions, technical inconsistencies, indefinitions and irregularities, proven in dozens of processes related to the regulatory activity, only strengthen the need for timely and permanent external control action in the supervision of the performance of the regulatory entities.

4. TELECOM RELATED ISSUES

In Brazil regulatory agencies were created for each key utility industry. Regulatory agencies were created in the same period in each key infra structure sector: Agência Nacional de Energia Elétrica (ANEEL), for electricity and Agência Nacional do Petróleo (ANP) for oil and gas. After in 2000 other agencies were created for transport, namely, Agência Nacional de Transporte Terrestre (ANTT) and Agência Nacional de Transporte Aquaviário (ANTAQ).

4.1. BRAZIL TELECOM BACKGROUND

The Telecommunication sector is a remarkable example of such transformation. The facts of the reform in this sector happened as follows: In august 1995, the constitutional amendments took place. In July 97, Congress approved the general telecommunications law proposed by the executive branch. In November 97, the regulatory entity – Anatel was created. In April 98, the cellular telephone licenses – B Band was approved. Finally, In July 98 Telebras and its subsidiaries were privatised and in November 98 the Telebras “mirror” licenses (duopoly) were operating. Other

The rationale behind the decision of privatising public enterprises made Brazil a similar model of organisation of the US System with private companies delivering public services and regulation (through independent regulatory bodies) rooted in responses to similar problems these governments have faced. The claim that arises here is that governments have reformulated regulation in response to a common set of pressures (Vogel, 1996:12).

The telecom regulatory authority in Brazil has spread its responsibilities not only in technical issues regarding licenses and interconnections, but also in monitoring anticompetitive behaviors and unwelcome take-over. It shares powers at the same level of authority with the Ministerial

Council of Fair Trading In the telecommunications sector, it was found that the Ministry of Communications, whose role was to advise the President of the Republic in the formulation of the sector's policies, was negligent, with no provision in law for a collegiate body with such competence.

Due to this omission, the National Agency of Telecommunications was forced to act as it saw fit in assuring public interest. For example, even in the absence of policies related to the use of notified orbital positions by the Country, the agency sought to implement a program that assured the immediate use of the positions allocated to Brazil at the time.

Similar examples with different results were the choice of the digital television standard and the choice of the cellular telephony standard adopted in Band C, D and E calls. In this case, it fell to the Agency to make the policy choice, expressed in terms of choice of the frequency band used, but it meant, in fact, the choice between the European technology (GSM) and the American (CDMA). In the other case, even though the agency has initiated the procedure of selection of the digital standard for broadcasting, the government took on its role of formulator of public policies, which allowed the matter to be conducted in the appropriate sphere, integrated to the other national development guidelines, and with proper insertion in the world market.

4.2. TELECOM ISSUES ADRESSED BY TCU

In the area of telecommunications TCU has been playing an important role overseeing the very recent telecommunications regulatory framework within the boundaries of its competency.

For instance, an audit carried out on the fulfillment of the universal service goals, defined in the concession contracts, allowed the identification of serious inconsistencies, both in the agency's data management system and in the inspection procedures. The audit team concluded that the inspection procedures needed total reformulation, and a large number of recommendations were issued to Anatel.

This particular experience, obtained by the TCU along the years, in the monitoring and inspection of economic regulation in the sector of telecommunications, allowed the identification

of government policies and Anatel's weak control over the universal service goals, as well as the incipient activity of economic regulation developed by the Agency.

In spite of the express provision in the Law, and in regulations and contracts, Anatel did not have adequate information on the rendering of the services, being unable to verify the economic-financial balance of the concession contracts for Fixed Switched Telephone Service (FSTS), and did not have the necessary knowledge to carry out tariff revisions, the preferred instrument for the economic-financial re-equilibrium of the agreements, as explicitly contained in the concession contracts and the General Law of Telecommunications.

In an audit carried out in 2000, it was verified that the Agency limited itself to receiving and filing official balance sheets, forwarded by the operators, without any analysis or proper study to the latter concern. By constantly monitoring this very aspect TCU has been able to foster considerable advancements in how the agency gathers the economic and financial information needed to do a better assessment of the very complex aspects of telecom market in Brazil, but there is still need to do a lot of improvement that could rely on GAO work.

Also, corrections were required in the minimum price of the grants of the personal mobile service, in the "C", "D" and "E" bands, whose initial calculations contained errors that totaled R\$1.6 billion reais. Such data was, at the time, scarcely publicized.

By its own initiative, The Brazilian Court of Audit carried out one audit in 2005 to verify why the Brazilian Government had not applied resources of the Telecom Universal Service Fund (known as Fust) in Brazil, passed five years of the edition of the law that instituted the Fund, that was still being collected from all telecom service providers, totaling until June of 2005, according to information of the Agency, about 3,6 billion Reais (US\$ 1,9 billion in current rate).

The absence of application of the fund resources was compromising and still compromises telecommunications services policy making, consequently positioning Brazil in the world-wide rear in digital inclusion. The relevance of the work relied on identifying the causes that would be hindering the application of these resources.

TCU concluded that the main cause for the non-application of the Fust resources was the lack, throughout these years, of a more efficient performance of the Ministry of the Communications in defining politics, priorities and lines of direction for application of the resources.

The court evidenced that the resources of the Fust also were crucial to foster digital inclusion actions. In this direction, some ongoing programs were identified with this objective, coordinated by diverse agencies, but acting disarticulated, with very limited budgets, making it difficult to achieve a consistent governmental action.

TCU verified that the Telecom Agency did not approve a final regulation for the Service of Digital Communication that would have made possible application of Fust to deploy digital information networks (broadband internet access in schools). The audit concluded, also, that the barriers that hindered the application of the resources were related to the eventual impropriety in the legislation that created the funds.

So TCU fixed a maximum stated period of 180 days so that the Ministry of the Communications presented diagnosis of telecom universal service needs in Brazil, in accordance with the objectives foreseen by the Fust Law and pointed policies, lines of direction and priorities with respect to its application, indicating the governmental programs that would receive the resources. It determined to Anatel that, with the orientation of the Ministry, implemented the regulatory actions necessary to make possible the application of the Fust.

In up to 30 days, the Ministry would have to present to the Court the chronogram of execution of these actions. Also it pronounced recommendations to the Civil House of the Presidency of the Republic, so that it would play a more active role in this process, mainly in what it relates to the integration and coordination of governmental digital inclusion policies and in the evaluation and implementation of measures that could perfect the performance of the Ministry of the Communications.

The findings of this work and its notable public appeal, to a great extent, relied on the engagement of various stakeholders that played significant roles regarding the issue, and that were brought into the planning, designing and final development phases of the audit work.

This is a very common practice within GAO framework that proved to be very efficient and could be replicated with more enforcement in Sefid's engagements to gather even more support and credibility to TCU audit's outcomes.

In 2006 TCU has also carried out one very comprehensive audit to evaluate the performance of the National Agency of Telecommunications (Anatel) in the accompaniment of the quality of the installment of the services of fixed and mobile telephony. The audit had as main approach the subjective public right of the users to be taken care of with the due standards of quality, and to access actions of Anatel in this aspect.

It was, to some extent, a ground breaking task due to need to deal with a great popular demand concerning telecom quality issues, the service area with the majority number of complaints within most recent rankings published by consumer protection agencies in federal, state and local levels, but also the necessity to be unbiased and recognize the action that the telecom agency had been taking to address and to correctly target the problem without invading the telecom agency competency.

TCU forwarded a series of determinations and recommendations to the Anatel, with the purpose to tackle some of the problems observed in the audit in question, that included milestones do be achieved and informed periodically to the Brazilian Court of Audit.

Corrections also was required by the Court of Audit in a recent very competitive spectrum auctioning for new Wi-Fi services to be deployed, due to inconsistencies in the methodology to establish minimum prices for the airwaves reserved to wireless services, that ended up in cancelling the process, but there is still ongoing high expectations from the telecom market.

One Court decision is about to be announced upon one audit to analyze the performance of Postal Service outsourcing policies, that could result in the issuance of impactful determinations and recommendations.

In that matter TCU could also gather relevant inputs from GAO since the US Postal Service has been broadly and deeply analyzed in its reports, and has knowledgeable staff that has been compiling a comprehensive body of work about postal issues and its interested in develop postal international benchmarks with Brazil cooperation.

4.3. US TELECOM BACKGROUND

In the US the telecom regulatory agency the Federal Communications Commission (FCC) is an independent United States government agency, directly responsible to Congress. The FCC is directed by five Commissioners appointed by the President and confirmed by the Senate for 5-year terms, except when filling an unexpired term.

The President designates one of the Commissioners to serve as Chairperson. Only three Commissioners may be members of the same political party. None of them can have a financial interest in any Commission-related business. The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite and cable. The FCC's jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions. The long history of the FCC is also a positive aspect that could be studied by Brazil to bring lessons for Anatel and regulation of Telecom as a whole.

The Commission staff is organized by function. There are six operating bureaus and ten Staff Offices. The bureaus' responsibilities include: processing applications for licenses and other filings; analyzing complaints; conducting investigations; developing and implementing regulatory programs and taking part in hearings. Even though the bureaus and offices have their individual functions, they regularly join forces and share expertise in addressing Commission issues.

4.3.1. THE ADVENT OF THE 1996 TELECOMMUNICATION ACT

For more than fifty years the U.S. telecommunication sector was a regulated private monopoly, dominated by AT&T. During most of that period the Federal Communication Commission (FCC) and a variety of state authorities controlled the relative prices of telephone service and restrict entry. In the 1970s the first breath of liberalization swept over the sector as the FCC began to allow limited competition in the market for interstate dedicated business connection and won a battle with state regulators to open the market for terminal equipment, such as telephone handsets, answering machines, and modems, to competition. Competition in long-distance markets opened wider when MCI launched long-distance service for businesses without FCC permission.

AT&T's use of its local facilities to frustrate the burgeoning competition in long-distance services and terminal equipment led to a lengthy antitrust case, which resulted in a consent decree that broke up the company in 1984 and imposed a quarantine that prevented the divorced regional Bell operating companies from offering long-distance services. For twelve years the AT&T trial court wrestled with several difficult issues in implementing the consent decree. At the same time the regional Bell companies chafed at their continued exclusion from long distance services, while long-distance carriers were equally concerned about the slow progress toward competition in local markets, a problem beyond the reach of the AT&T decree. As a result, Congress was finally prodded to reform the entire telecommunications regulatory structure through passage of the 1996 Telecommunication Act.

This legislation:

1. Opens local telecommunication markets to competition.
2. Seeks to complete the earlier market-opening in long-distance services (including freeing the Bell operating companies from their quarantine).
3. Creates an economic environment intended to lead to the "deployment of advanced telecommunications and information technologies and services to all Americans".

The effectiveness of the 1996 Act is actively debatable. The more deregulation oriented authors argue that the law was a drawback in the US experience with deregulation in numerous other sectors, some experts argue that from the outset, the 1996 law represents a major step backward from the recent tendency of state regulators and the FCC to abandon cost-based regulation in favor of price caps. Wholesale rated and universal-service subsidies are to be determined by cost models, according to the act. Moreover, although the 1996 law opens all telecommunications markets to competition, even the once-protected local markets, it requires incumbents to cooperate in facilitating entry of potential competitors to a degree that has not been prescribed for any other recently regulated sector of the economy.

In fact, the 1996 Act provides much more than a prescription for regulated competition in telecommunication. It makes major changes in universal service policy; mandates new subsidies for schools, libraries, and rural health facilities; substantially deregulates cable television rates; liberalizes broadcast-ownership rules; and even regulates entry into the provision of alarm

services. The universal service policies are to be supported by fees levied on all telecommunications services and are to be portable so that new entrants can receive the same payments as incumbents for offering services in areas where rates are below cost.

The 1996 law requires local carriers to unbundled their network elements and, moreover, allow entrants to resell their service. Such resale simply transfers the marketing and billing function from existing local carrier to the new (reselling) entrant. The 1996 law is silent on retail telecommunication prices, except for mandating that explicit rural subsidies be sufficient to keep local rates in high-cost rural areas at levels comparable with urban rates. State commissions still regulate incumbent carriers' intrastate services and most of these commissions continue to administer a distorted rate structure (Crandall, 2000:84). Although the 1996 law prescribes cost-based wholesale rates, it does not require the state commissions to move retail rates toward cost. Indeed, the FCC has increased the distortions between retail rates and costs by assessing charges to fund the Internet subsidies to school and libraries (ibid.).

4.4. TELECOM ISSUES ADDRESSED BY GAO

Specifically, GAO Audits in the Telecommunications are many; some of these audits include: (In Annex II there is a complete list of products and ongoing works related to telecom issues since 1998)

1. Before the 1996 Act, in 1994 GAO disclosed financial information on 16 telephone and cable companies – in fact, GAO provided Congress with information on total operating revenues, cash flow from operations, and profitability, In addition, it provided more detailed financial information on the uses of cash flow from operations, including the extent to which capital expenditures are made inside and outside of the companies primarily line of business. This study certainly helped Congress to develop in depth analysis on the US Telecom Market.
2. Also in 1994 GAO made a report about information superhighway – addressing the key issues affecting its development.
3. GAO also made studies on Rural Development in 1996 – the report identified the steps towards realizing the potential of telecommunications technologies in rural area. This is a key regulatory issue addressed by the 1996 law

4. The GAO in 1998 studied about 27 federal programs that can be used to fund technology for schools and libraries.
5. The process by which mergers of local telephone companies are reviewed was studied by GAO in 1999 – This audit aimed to assess one of the primary purposes of the Telecommunications Act of 1996. GAO answered whether the application of the 1996 by FCC was promoting competition within the telecommunications markets.
6. Regarding to competition, GAO studied issued a report in 1999 about the changing status of competition to cable television such as that provided by cable and satellite.
7. GAO has produced many other reports on critical infrastructure protection, especially after the September 11th event.
8. Comprehensive review of U.S. spectrum management with broad stakeholder involvement is needed according to a GAO study.
9. GAO reported about federal and state universal service programs and challenges to funding (February 2002)
10. Another GAO report concluded that wire base competition benefited consumer in selected markets. This study was issued in February 2004.
11. Recently, GAO made a comparative study on German DTV and concluded that it differs from U.S. transition in many respects, but certain key challenges are similar. This report was issued in July 2004.
12. Concerning Local Wireline Telephony, in a very recent 2006 report GAO stated that FCC needs to improve its ability to monitor and determine the extent of competition in dedicated access services;

5. POSSIBLE AREAS OF WORK INTERCHANGE

The main objective of this section is to analyze the institutional factors that could contribute to the extent that the Brazilian Tribunal de Contas da União might adopt some performance auditing GAO reports in the utility regulation oversight as benchmarks for developing its own

work. This section also analyses the main issues related to the implementation of performance auditing methods and techniques among Supreme Auditing Institutions.

As can be seen, the majority of GAO audit reports in the area of telecom are concerned with: consumer protection, spectrum management, FCC management, universal service and competition issues. Areas that are also could be in a prospective work agenda of Sefid.

Consumer Protection

For instance, GAO has released a report recommending that FCC should include call quality in its reports on competition in mobile phone services and could give us feedback on how to access the achievements of quality control since it is going to be a fore coming task to our unit, when monitoring the implementations of a recent report on telecom service quality assurance by national regulatory agency.

Also, apart from other telecom consumer protection related jobs, there is an ongoing work to address FCC Complaints and Enforcement procedures that could inform TCU about US Telecom Federal Agency best practices in dealing with consumer complaints.

Competition

One of the three major core values established by the Brazilian General Law of Telecommunications universality and quality is competitiveness. The Telecom Agency is still drafting a General Plan of Competitiveness that major telecom ILECs will have to comply with.

Since US Telecom market relies to a very extent on the competition in order to achieve quality service providing GAO reports have been targeting competition issues in cross cutting telecom aspects and this line of work is currently being developed within Sefid “Project for Modernisation of Regulation External Control”. Therefore some new audits that Sefid are currently planning to engage in that area in that could take advantage of GAO’s experience in conducting such investigations.

Concerning Local Wireline Telephony, for example, in a very recent 2006 report GAO stated that FCC needs to improve its ability to monitor and determine the extent of competition in dedicated access services.

TCU yet has to build a body of knowledge within the area where GAO often engage as stakeholders economy and technology related ARM staff to provide a better understanding of the more-in-depth aspects of competition issues in such a complex and dynamic market.

Universal Service

Brazil Government, also as a result of TCU work as stated previously in this report, has just started to promote telecom service providing for hearing-and speech-impaired customers through the application of a still yet small amount of grants of The Telecom Universal Service Fund, established in 2000 by federal law.

In the US, Federal and state universal service programs have helped make of current federal and telephone service affordable to a wide range of beneficiaries: low-income and hearing-and speech-impaired customers; schools, libraries, and rural care providers; and rural localities where the costs of providing service are high. The funding mechanisms for these programs depend on the revenues of telecommunications carriers. The emergence of new Internet-based voice communications may pose challenges to how these programs are funded in the future.

Federal universal service programs are funded by mandatory telephone service for all contributions made by telecommunications carriers and certain other providers of telecommunications. The amount of the carriers' is a percentage, approved by FCC, of their interstate and international telecommunications revenues. Carriers can and often do pass these costs to their customers. State universal service programs, which supplement the federal programs, also can be funded with fees that are passed on to consumers. In addition, states promote universal service through various rate-setting strategies, such as setting business rates significantly higher than residential rates in order to subsidize schools residential customers.

Under current federal regulations, revenues from Internet services are not included in the calculations for universal service contributions. Although this new technology is not widespread yet, it may eventually become an attractive alternative and could affect the revenue base from which universal service programs are funded. Some industry analysts question the long-term viability of the current funding mechanisms for universal service and believe that these mechanisms should be reassessed in light of the changing telecommunications environment.

The US Telecommunications Act of 1996 expanded the traditional definition of universal service—affordable, nationwide telephone service—to include eligible schools and libraries.

Among other things, the act authorized the Federal Communications Commission (FCC) to implement a program to assist these institutions in acquiring advanced telecommunications services. Under FCC's program, (often referred to as the "e-rate" program), schools and libraries can receive discounts from vendors on the cost of eligible telecommunications services, Internet access, and internal connections (the equipment needed to deliver these services). The discounts range from 20 to 90 percent, with higher discounts going to applicants in low-income and rural areas.

FCC appointed the Universal Service Administrative Company (USAC) as the program's permanent administrator, although FCC retains responsibility for overseeing the program's operations and ensuring compliance with its rules. USAC's Schools and Libraries Division (SLD) is responsible for carrying out the program's day-to-day operations. To obtain e-rate support, eligible schools and libraries must submit an application to SLD specifying the services they wish to purchase, how much discount funding they would need, and the vendors they have selected to provide the services. SLD reviews each application and commits (i.e., sets aside) program funds for eligible requests. If the total amount of program funding requested by all applicants exceeds the program's funding cap (currently \$2.25 billion annually), priority is given to supporting requests for telecommunications services and Internet access. Any remaining funds are then used to support internal connection requests, starting with applicants with the highest discount level (90 percent) and moving downward through lower discount levels until the available funds are committed.

In a particular audit, among a series of other ones that are currently ongoing, GAO recommended that FCC (1) comprehensively determine which federal accountability requirements apply to E-rate; (2) establish meaningful E-rate performance goals and measures; and (3) take steps to reduce its backlog of appeals. In response, FCC stated that it does not concur with (1) because it maintains it has done this on a case-by-case basis. GAO continues to believe that major issues remain unresolved. FCC concurs with (2) and (3), noting that it is already taking steps on these issues

There are already also some new bills in the congress outlining projects that will rely on the application of Fust grants, so that, TCU must be ready to ascertain the correct and efficient usage of the resources and for that matter it could try to adopt at least, the overall GAO approach towards the issue, despite the funding mechanism being essentially different in each country.

Digital TV Transition

The ongoing process of implementing or transitioning to digital TV is also a common issue for both countries and there are some GAO reports regarding the topic that could provide useful background and technical information to Brazilian auditors.

Internet management and broadband deployment

TCU has investigated the current statue of internet and broadband deployment in Brazil issuing a very thorough report on the matter, but it was a one time initiative that needs follow up actions that could rely in GAO's body of work also in that area too, as seen in the Annex II.

Other Telecom Issues

GAO also did many works focusing on the Federal Communications Commission's spectrum allocation and assignment process finding that better coordination and enhanced accountability needed to improve spectrum management and also providing options and barriers to eventual spectrum reforms and the broaden stake holders involvement.

Provided the spectrum is a Federal resource with great materiality that aspect of the Brazilian telecom market could also be addressed also by TCU, although it could be very a sensitive issue considering the legal competencies of each agency, but could trigger discussions that would benefit the society as a hole in the long run.

On the other hand, GAO approach to telecom issues are in many ways unique to the kind of its government organization and its respective telecom policies, that could not be always a good benchmark to the kind of wok TCU performs in Brazil's telecom regulatory Arena, specially because they are more decentralized and not subjected to same legal frames as they are in Brazil.

6. OTHER ASPECTS OF INFRASTRUCTURE OVERSIGHT

Also, during the research it was difficult to find a cross cutting common approach to infrastructure issues as originally intended, particularly because GAO Physical Infrastructure Team framework is not concerned about a systematic overview of the area, yet addressing more specific problems according to parliament requests or high risk concerns.

It should be reported that GAO has also produced many works considering the costs of highway construction and highway and airline runaways' safety issues, that are definitely current major issues in Brazil's Government Agenda.

Considering that Brazil has recently changed its aviation regulatory framework, it would be much valid considering the interchange of audit approaches to the area, provided GAO has been doing a considerable effort on producing audit products addressing its main issues.

GAO has also been assessing the challenges of using public-private partnerships to deliver high-cost public infrastructure improvements and the extent to which these partnerships have promoted public benefits and protected the public interest, issues there also now under TCU jurisdiction and could benefit from the knowledge inventory.

Finally, although the focus of this paper was in the quality and financial oversight of telecom public services in the US federal government, it turned out to be more valid and feasibly to broadly identify areas and contact liaisons that could provide further deep insights about the work that has been conducted by GAO in specific infrastructure areas.

During the program I also was able to gather a considerable quantity of documental information that could be catalogued in the CECR for reference in future TCUs audit engagements.

Some other prospective areas of work interchange could be:

- Evaluation of demand studies
- Evaluation of transport sector demand studies
- Regulatory impacts (GAO produced a report about the impacts of energy market regulation)
- Railway technical and economical regulation
- Data for regulatory management: methods and techniques to audit the risk management in regulatory agencies

7. ISSUES FACED BY THE BRAZILIAN SUPREME AUDITING INSTITUTION IN THE OVERSIGHT OF THE UTILITY REGULATION

This section shows the main problems faced by the Brazilian Supreme Audit Institutions that might be imperiling the institution to achieve better results in the oversight of the utilities industries and the actions to overcome them are settled. The areas of major concerns are the Acquisition of knowledge in Regulation and Control; the development of novel methods and techniques of control that could be applied in the performance auditing of regulation; the best Organization, Administration, and Planning process to achieve better results; and finally the increase of Public Dialogue (Communication) of the SAI. In those five areas it is critical that TCU can find benchmarks of good practices to implement in the future. GAO might give the best contribution to a SAI development when we can see more closely the lessons the institutions has when carried out his duties in this area.

In the area of acquisition of knowledge TCU can see how GAO recruits, trains and manages its capital knowledge inside the institution. TCU could also benefit from the “stock” of knowledge already accumulated by the GAO to try to build relationships with key skillful staff within GAO. There should be also more exchange of contacts between TCU teams and GAO teams in common areas of expertise. Some staff were already identified and contacted during the program and certainly more information will be exchanged soon.

In the area of methods and techniques of audit TCU can find the best contribution GAO can give. The Brazilian SAI in two ways can learn GAO practices. A first one is related to the own methods of work. The other way is to learn for the own issues that GAO analyses in its reports in the many areas of the regulation of utilities.

Regarding the Organization, Administration, and Planning there are also lessons from one institution to another. GAO has a more comprehensive strategic planning than TCU and has found the key performance indicators. TCU has too many performance indicators that might be imperiling a better utilization of such system. TCU is also relying his work too strongly in the attestation and judgments of the accounts of public agents that might lead the institution to a less relevant role in the policy cycle in crucial area of improvements needed in the public sector in Brazil. GAO has not, however, developed a more balanced score card approach to his

performance indicators. And it is also difficult to say if the strategic vision of GAO can be accomplished fully because it depends very much in the Congress request to initiate engagements.

Lastly in the public dialogue side both GAO and TCU are given a very strong attention on the effectiveness and efficiency of their communication. This is the critical area of an SAI that has a strategic intention of increasing accountability, transparency and improvement of the public sector. TCU has implemented some good improvements in the way it format the reports. TCU has provided important stakeholders with very well designed reports and included graphics and more visual analysis to catch the audience's interest. GAO has developed a more scientific approach to writing. GAO writing principles is one of the keys learning process that could be transferred to the Brazilian SAI, specially the highlight issued in each GAO report. One of the key points this strategy paper intend to stress is that TCU, albeit having made much progress in the design of its report, should learn from the writing process of GAO when conducting performance auditing. GAO reports are mainly addressed to Congress. TCU project will try to build products to different stakeholders as well, including media, citizens, consumers, scholars and public managers.

Also there is also progress to be made when it comes to the relationship between TCU and the Congress³. The GAO managed to develop a Congressional Protocol that's not a merely formality but based on years of building a constant and effective support of congress activities, that includes the employment of GAO as detailees⁴ and being advisers in the process of enacting specific laws.

The matrix approach has proved to be very effective in GAO work engagements. It is based on the commitments, from the very beginning in sessions called engagement meetings, of various stake holders that can contribute with different aspects of an audit job. It would be a possible form of tackling a chronical deficiency within TCU environment the lack of coordination and integration between technical units, compromising the thorough usage of competencies.

The engagement of ARM, that is a unit that provides methodological and technical support to a very wide range of audit activities, and also a dedicated law team, are good examples of

³ The 2002 brazil's strategy paper focused on this issue

⁴ By law GAO staff can be assigned on detail only to congressional committees, not to leadership or personal offices. GAO staff may not engage in partisan activities or discussions. Committee requests for GAO detailees

interdisciplinary support that can be provided throughout the organization in all sort of engagements.

Furthermore, Sefid has been assessing the risk management in regulatory agencies, and it could adopt some of the risk selection criteria granted the experience of GAO in implementing a more risk oriented approach than TCU's.

The Brazilian SAI can learn at least the following procedures and principles adopted by the GAO as other contributions of GAO for the success of this program beyond the benchmarks of the performance audits conducted in regulatory issues:

1. Regarding auditing standards – the yellow book could be used as a benchmark because it is being demonstrating to be a workable tool in the US. Some concepts adopted by those standards should also be adapted for the Brazilian context.
2. The GAO eagle processes (see annex 1) as a process of planning the engagement
3. The use of the planning matrix has already been adopted by TCU, but new requirements can be incorporated, such as internal stakeholder analysis.
4. Documentation and referencing fundamentals as applied in GAO is a different method of working paper documentation and report review used by TCU but some comparative and cost-benefit analysis can be also done.
5. The way GAO communicates its messages is an effective way to get reports read by relevant stakeholders. In the project at least the highlight page will be introduced in Project pilots and see how it can be applied to the whole organization.
6. Also, as TCU is trying to accomplish with the SisDoc System, the Brazilian Court could benefit from a more integrated audit documentation system as GAO's, although there are still restrictions imposed by law to keep paper records within the processes.

In June 2006, GAO began its agency-wide rollout of the Electronic Records Management System (ERMS). ERMS is software that has been integrated with GAO's Document Management system (DM) to allow GAO to officially manage documents electronically.

should be in writing and be for specific purposes for a period not to exceed 1 year. All detailees must be approved by the Comptroller General in a manner consistent with the applicable rules and policies of the Senate or House.

Although GAO has used the electronic DM system for years, until now the official record was always paper.

- * Once GAO-wide implementation is completed, ERMS will replace GAO's manual recordkeeping processes

- * GAO's goal is to move to electronic recordkeeping by January 1, 2007

- * All GAO staff will be expected to use ERMS once their teams/units have participated in the rollout

ERMS offers you a number of benefits:

- * Minimizes your need to maintain paper files

- * Simplifies how you store documents

- * Enables you to electronically store engagement (audit), administrative, and policy documents automatically

- * Provides you with ready access to documents you need

- * Allows you to scan paper documents and integrate them with other electronic files

- * Minimizes or eliminates the need for you to print, file, box, ship or manually retrieve records

7. It could also be a matter of consideration to the TCU high management the fact that GAO also has a comprehensive body of work that only serve the purpose to inform the legislative process and to inform the parliament committees about particular programs or government structures, not necessarily pursuing the issuance of recommendations or blaming some particular instance of government for some bad performance, but essentially to give a background assessment due to its comprehensive legal competencies and privileged institutional position that TCU also has and could apply for this purpose.

Finally, the GAO Writing Principles has lessons to be learnt from TCU that the project will certainly try to incorporate in the Brazilian SAI practices.

8. STRATEGY FOR IMPLEMENTATION OF THIS PAPER

It is not always easy to adapt the lessons learned from other nations, whether it is in the methods used to analyze a problem or in the solutions implemented to address a problem. Successful efforts require a clear understanding of the nature of the policy problems and the institutional cultures, and this requires a significant investment of time and expertise, and learning institution must also have the ability to implement change. In some cases, it is not possible for organizations to make the necessary investments of their staff to perform quality analysis, and in others, they may not be in a position to create the change based on the new insights.

In that sense that should be a clear link between one new framework and its real possibilities of being implanted, considering that instructional factors play an important role in this process.

Therefore, as established in the current TCU's Strategic Map, that is part of the TCU Strategic Plan for the FYs 2006 to 2010, there are two core areas of work: **Public Management Improvement** and Fighting corruption, misuse and fraud.

Targeting the first area, the engagement in the training program could create conditions to develop and consolidate the operational capacity of our SAI to undertake external control work in the area of regulation of public utilities and regulatory reform. Firstly, because one of the topics of the International Fellowship Program was Programme Evaluation and Performance Auditing methods and techniques, and that was a comprehensive and thorough part of the program where I had the opportunity to be exposed to GAO.

Being part of the Denationalization Audit Secretariat staff, who is responsible for the oversight of the process privatisation and the acts of the regulatory agencies, especially in the utilities industries, is also a factor that could play an important role on a strategy to adopt new methodologies of work due to the commitment of its top management with new effective ways to approach and enhance the work methods.

The work developed by this unit is aimed at contributing to the improvement of the regulatory process and such aim is being satisfactorily achieved, as the external control of regulatory bodies adds transparency to the procedures and allows evaluation of the compliance of the regulators' action with the constitutional and legal frameworks and with the sectorial public policies.

Lately, a new line of action has been developed, focused on evaluation of the impacts of privatization and the regulatory reforms on the users of public infrastructure services. This line of work seeks to evaluate the extent to which these processes have contributed to expand access to public services and what their impacts are, from the point of view of reduction of social inequalities in Brazil.

According to this line of action, I have co-ordinated key performance audits related to the national telecommunications sector and the monitoring tasks of these audit's outcomes would most benefit from the experience of GAO in overseeing key processes of regulatory bodies.

Also, the performance auditing procedures to be accessed during the GAO's International Auditor Fellowship Program are expected to be related to the oversight of the monitoring of financial and economical performance of telecommunication concessionaires and other cost-based aspects of telecom service providing as well as the procedures related to evaluate enforcement procedures to guarantee quality of technical and commercial aspects of national telecommunications services.

Furthermore, despite being related to the telecommunication sector, some of those issues are shared by other public utilities frameworks such as public transportation, electricity, oil and gas distribution, that are also object of TCU oversight.

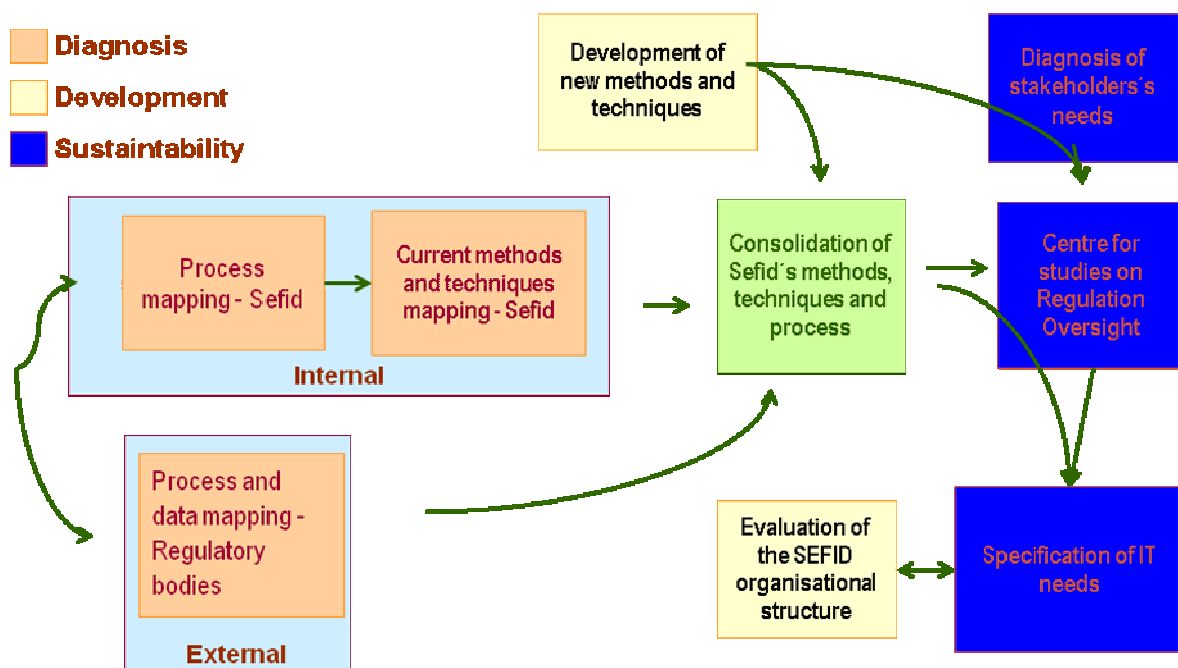
Considering what as mentioned, the most valid and practical way of using the experience gathered at GAO would be providing inputs to project that I am currently engaged in, as well as all the other colleagues of Denationalization Audit Secretariat, the "Project for Modernisation of Regulation External Control", financed by the Inter-American Development Bank – IDB, and technically supported by the Getúlio Vargas Foundation, who focus on the 1) Acquisition of knowledge in regulation and control; 2) Development of methods and techniques to control regulatory agencies, including impacts and results, 3) the revision of the organisation, administration, and planning processes of TCU in this area and 4) improvement of TCU's Public Dialogue which aims to enhance the SAI capacity to communicate effectively with its stakeholders.

The need for a specific project in the area of regulation control resulted from the identification of opportunities to improve the work that was already being performed, not only in areas already

under the control of TCU but also on new projects for external control of the federal regulatory activity in the segment of infrastructure.

The project, whose products are represented in Figure 1, was conceived to cover both the actions of diagnostics of TCU’s performance as well as of the performance of regulators, as well as to cover the actions of development and sustainability of work processes created or perfected after the implementation of the foreseen products:

Project to Improve the Regulation Oversight



The Project was scheduled to be developed in thirty months, but the impact of the products developed has already been having an effect on Sefid’s work. Considering that the information produced should be updated, communicated or processed by Sefid, the creation of one Centre for Studies and Regulation – CECR⁵ was provided for. This centre will have the objective of collecting, systematising, disseminating and supporting the generation of information and knowledge on infrastructure regulation and its control.

⁵ Recently, in 07/29/2007, the CECR initiated its operation in experimental basis within TCU’s Sefid.

Other products to be developed are a Plan for Corporate Education in Regulation Control and definition of the technical competencies for those who perform in the field of regulation control, to be developed with the support of the Serzedello Corrêa Institute.

By implementing the “Project for Modernisation of Regulation Control”, the proposal was to create within the scope of TCU the professional competencies and the technical infrastructure needed to adopt a comprehensive control systematic for the processes of delegation of public services, focused on external control of the regulator. In addition, contributions are expected to be received concerning direct and critical analysis of the performance of the delegated economic agents in aspects related to the quality of the services delivered, to the financial-economic balance of the contracts and to other factors that will allow for a more comprehensive understanding of the political, economic, and operational model adopted to provide the public services that are the object of federal delegation.

Therefore my main goal is the deliver a valid product to this project, granted that it now fully implemented and has visibility thought the SAI, what could be an important factor of dissemination of better practices that could be eventually consolidated with the constant refining of its application.

9. FINAL REMARKS

Supreme Audit Institutions increased in importance in many countries as organs of distinctive constitutional position endowed with the necessary independence, expertise, and professionalism to conduct performance audit.

It is argued that Supreme Audit Institutions have a key role for the sustainability and improvement of a sound regulatory regime. The US and Brazilian cases are exemplars in this area of oversight. The latter is trying to build a more systematic approach to the regulatory oversight; the former has created the conditions to advice Congress on sound policies in the regulatory arena.

It has been argued in this paper that performance audit applied to the utility regulation is an area of increasing interest for SAI. The discussion provided in this paper intended to confirm that institutional collaboration capacity building among SAI's is not only a feasible task to be reached but also desirable. However, contrasting patterns of style are likely in regulatory regimes of different countries. This claim implies that a country should look to other models as way to enhance their capacity to develop good practices but should not make mindless copies of policies from one country to another.

This paper represented token of a continuing effort to build a framework where a collaboration capacity building project might be advanced from the Brazilian Tribunal de Contas da União and the US Government Accountability Office in the area of utilities regulation. If the present analysis can be expanded to other areas of expertise or even to other SAI's is an interesting issue to be developed in the future.

10. ACKNOWLEDGMENT

My gratitude for the possibility of participation in this course is immense because it is a unique opportunity to be in contact with so skillful staff as those belonging to the Government Accountability Office. I would like to thank the Comptroller General Mr. David M. Walker for keeping and supporting this program that has been fundamental on encouraging the final goal of building more quality and technique relationship among Intosai members countries participants and also every GAO employee that I was in touch during this period, with a special mention to Mrs. Pamela Sands, the program manager, for providing all the support the fellows needed and also Mr. Loren Yager, for all the comprehensive and insightful orientation on writing this paper. The president of my SAI Minister Walton Alencar Rodrigues is acknowledged because he is making many incentives for TCU personnel to search for professional development. The managing director of the unit responsible for the oversight of regulation in Brazil, Mr. Adalberto dos Santos Vasconcelos, Managing Director of the Denationalization Inspection Secretariat and the General Managing Director of the External Control Secretariat of TCU Mr. Jorge Pereira de Macedo, for their entrepreneur spirit, which is helping to built a TCU image as an model agency in the Brazilian Public Sector. My colleagues Maurício de Albuquerque Wanderley, Marcelo Bemerguy, Marcelo Barros Gomes, Maridel Piloto de Noronha, Luciano dos Santos Danni, Milton Gomes da Silva Filho, Sylvia Regina Caldas and my other Sefid and TCU Colleagues for the constant incentives and supportive contacts while my stay in the United States.

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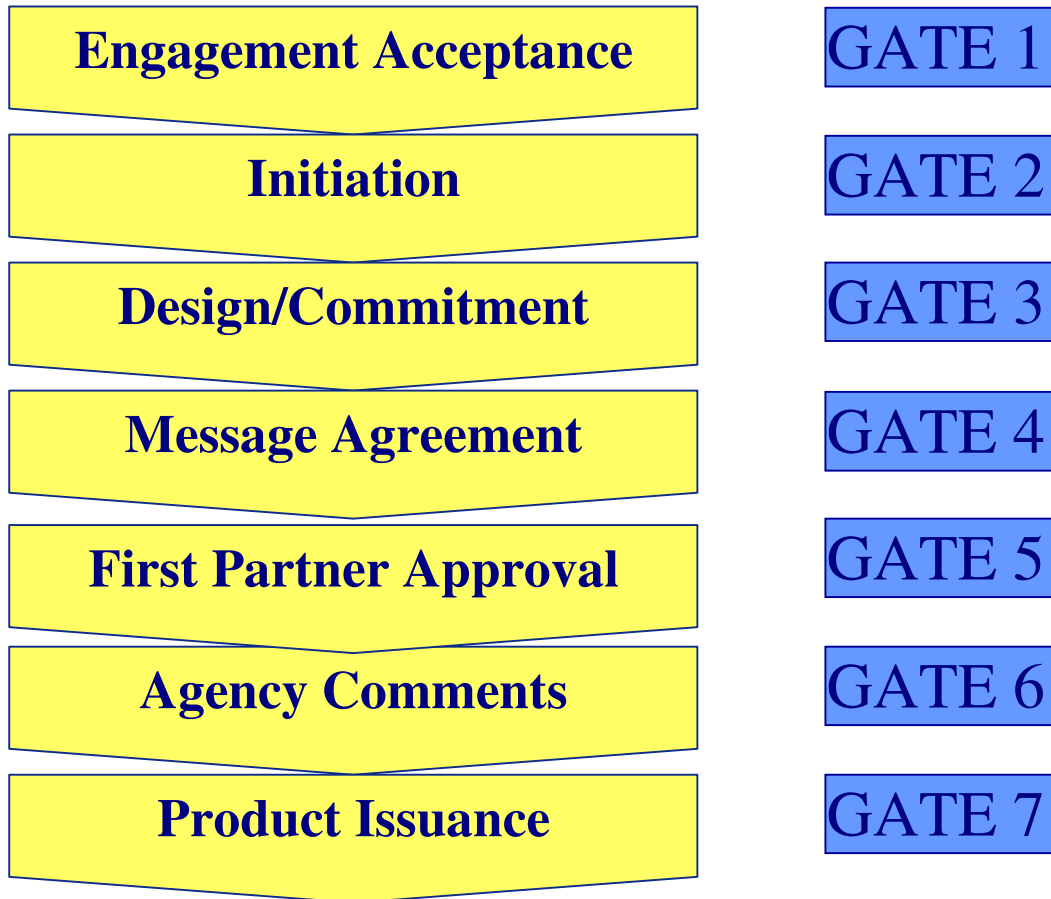
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ANNEX I - EAGLE PROCESS



Gate	Engagement Management Process Overview
Engagement Acceptance Gate 1	Senior executives meet weekly at the Engagement Acceptance Meeting (EAM) to screen proposed engagements to ensure that GAO undertakes work where it has professional competency and statutory authority, among other things. The engagement is assigned a risk level based on cost, complexity, and controversy. The risk level dictates the level of senior leadership involvement and product review as well as the extent of required expertise and appropriate stakeholder involvement.
Initiation Gate 2	During Initiation, the First Partner ensures that the engagement is properly staffed and is free from personal impairments that could affect independence, involves the right stakeholders, client needs are clear, and directly affected parties are notified.
Design Commitment Gate 3	During Design/Commitment, the engagement team prepares an audit plan, consisting of a design matrix or paper, and a project plan; obtains stakeholder buy-in on the design; prepares a commitment letter for congressional request/mandate work; and informs the requester on the audit approach and delivery. Medium and high risk engagements are discussed at an Engagement Review Meeting (ERM) before the commitment letter is sent.
Message Agreement Gate 4	The audit team gathers and analyzes data, develops the message, and obtains agreement on the message and stakeholder concurrence.
First Partner Approval Gate 5	The First Partner reviews the draft product for compliance with GAO's core values, policies, and professional standards; determines that the critical facts and key information used to formulate GAO's analyses and findings are referenced; that stakeholders' have concurred, an exit conference with the directly affected parties has been held; and sends the draft product to the Second Partner for concurrence.
Agency Comments Gate 6	After the Second Partner concurs, the First Partner provides the product to directly affected parties (the agencies) for comment.
Product Issuance Gate 7	The First Partner ensures directly affected parties' positions are presented fairly and completely and that the report is revised as appropriate, obtains Second Partner concurrence and notifies senior leadership at an ERM if any affected party disagrees with GAO's findings, conclusions, or recommendations, and approves the product for final processing and issuance.

ANNEX II - GAO's Physical Infrastructure Team
Telecommunications Products & Ongoing Work by Topic 1998 to Present

CABLE/SATELLITE

- Telecommunications: Direct Broadcast Satellite Subscribership Has Grown Rapidly, but Varies across Different Types of Markets (GAO-05-257; April 2005)
- Telecommunications: Market Developments in the Global Satellite Services Industry and the Implementation of the ORBIT Act. (GAO-05-550T April 2005)
- Telecommunications: Intelsat Privatization and the Implementation of the ORBIT Act. (GAO-04-891; September 2004)
- Telecommunications: Subscriber Rates and Competition in the Cable Television Industry (GAO-04-262T; March 2004)
- Telecommunications: Wire-Based Competition Benefited Consumers In Selected Markets (GAO-04-241; February 2004)
- Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry (GAO-04-8; October 2003)
- Telecommunications: Data Gathering Weaknesses In FCC's Survey of Information on Factors Underlying Cable Rate Changes (GAO-03-742T; May 2003)
- Telecommunications: Issues in Providing Cable and Satellite Television Services (GAO-03-130; October 2002)
- Telecommunications: The Effect of Competition From Satellite Providers on Cable Rates (RCED-00-164; July 2000)
- Telecommunications: The Changing Status of Competition to Cable Television (RCED-99-158; July 1999)
- Telecommunications: Impact of Sports Programming Costs on Cable Television Rates (RCED-99-136 June 1999) Hale

LOCAL WIRELINE TELEPHONE

- Telecommunications: FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services (GAO-07-80; December 2006)
- Telecommunications: Wire-Based Competition Benefited Consumers In Selected Markets (GAO-04-241; February 2004)

- Telecommunications: Issues Related to Local Telephone Service (RCED-00-237; August 2000)
- Telecommunications: Development of Competition in Local Telephone Markets (RCED-00-38; January 2000)
- Telecommunications: Process Which Mergers of Local Telephone Companies are Reviewed (RCED-99-223; August 1999)

CONSUMER PROTECTION

- Emergency Alert System (Ongoing)
- Telecommunications: Weaknesses in Procedures and Performance Management Hinder Junk Fax Enforcement. (GAO-06-425; April 5, 2006) Morrison
- Telecommunications: States' Collection and Use of Funds for Wireless Enhanced 911 Services. (GAO-06-338 March 10, 2006)
- Telecommunications: Uneven Implementation of Wireless Enhanced 911 Raises Prospect of Piecemeal Availability for Years to Come (GAO-04-55; November 2003)
- Telecommunications: FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services (GAO-03-501; April 2003)
- Telecommunications: Research and Regulatory Efforts on Mobile Phone Health Issues (GAO-01-545; May 2001)
- Telecommunications: Update on State-Level Cramming Complaints and Enforcement Actions (RCED-00-68; January 2000)
- Telecommunications: Overview of the Cramming Problem (T-RCED-00-28; October 1999)
- Telecommunications: State and Federal Actions to Curb Slamming and Cramming (RCED-99-193; July 1999)

SPECTRUM MANAGEMENT

- Telecommunications: Options for and Barriers to Spectrum Reform. GAO-06-526T March 14, 2006

- Telecommunications: Strong Support for Extending FCC's Auction Authority Exists, but Little Agreement on Other Options to Improve Efficient Use of Spectrum (GAO-06-236; December 2005)
- Telecommunications: Preliminary Information on the Federal Communications Commission's Spectrum Allocation and Assignment Process (GAO-06-212R; November 2005)
- Interdepartmental Radio Advisory Committee: IRAC Representatives Effectively Coordinate Federal Spectrum but Lack Seniority to Advise on Contentious Policy Issues (GAO-04-1028; September 2004)
- Telecommunications: Comprehensive Review of U.S. Spectrum Management with Broad Stakeholder Involvement Is Needed (GAO-03-277; January 2003)
- Telecommunications: Better Coordination and Enhanced Accountability Needed to Improve Spectrum Management (GAO-02-906; September 2002)
- Telecommunications: History and Current Issues Related to Radio Spectrum Management (GAO-02-814T; June 2002)

DIGITAL TV TRANSITION

- Progress in transition to digital television (ongoing)
- Digital Television Transition: Issues Related to an Information Campaign Regarding the Transition (GAO-05-940R; September 6, 2005)
- Digital Television Transition: Questions on Administrative Costs of an Equipment Subsidy Program (GAO-05-837R; June 2005)
- Digital Broadcast Television Transition: Several Challenges Could Arise in Administering a Subsidy Program for DTV Equipment (GAO-05-623T; May 26, 2005)
- Digital Broadcast Television Transition: Estimated Cost of Supporting Set-Top Boxes to Help Advance the DTV Transition (GAO-05-258T February 2005)
- Telecommunications: German DTV Transition Differs from U.S. Transition in Many Respects, but Certain Key Challenges Are Similar (GAO-04-926T; July 2004)
- Telecommunications: Additional Federal Efforts Could Help Advance Digital Television Transition (GAO-03-7; November 2002)

- Telecommunications: Many Broadcasters Will Not Meet May 2002 Digital Television Deadline (GAO-02-466; April 2002)

PUBLIC TELEVISION

- Telecommunications: Issues Related to the Structure and Funding of Public Television (GAO-07-150; January 2007)
- Telecommunications: Issues Related to Federal Funding for Public Television by the Corporation for Public Broadcasting (GAO-04-284; April 2004)

UNIVERSAL SERVICE

- Telecommunications: Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands. GAO-06-513T March 7, 2006
- Telecommunications: Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands (GAO-06-189; January 11, 2006)
- Telecommunications: Application of the Antideficiency Act and Other Fiscal Controls to FCC's E-Rate Program (GAO-05-546T; April 2005)
- Telecommunications: Concerns Regarding the Structure and FCC's Management of the E-Rate Program (GAO-05-439T; March 2005)
- Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program (GAO-05-151; February 2005)
- Telecommunications: Federal and State Universal Service Programs and Challenges to Funding (GAO-02-187; February 2002)
- Schools and Libraries Program: Update on State-Level Funding by Category of Service (GAO-01-673; May 2001)
- Schools and Libraries Program: Update on E-Rate Funding (GAO-01-672; May 2001)
- Schools and Libraries Program: Application and Invoice Review Procedures Need Strengthening (GAO-01-105; December 2000)
- Schools and Libraries Program: Actions Taken to Improve Operational Procedures Prior to Committing Funds (RCED-99-51, March 1999)
- Schools and Libraries Corporation: Actions Needed to Strengthen Program Integrity Operations Before Committing Funds (T-RCED-98-243; July 1998)

INTERNET MANAGEMENT AND BROADBAND DEPLOYMENT

- Telecommunications: Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas (GAO-06-426; May 5, 2006)
- Internet Management: Limited Progress on Privatization Project Makes Outcome Uncertain (GAO-02-805T; June 2002)
- Telecommunications: Characteristics and Competitiveness of the Internet Backbone Market (GAO-02-16; October 2001)
- Telecommunications: Characteristics and Choices of Internet Users (GAO-01-345; February 2001)
- Telecommunications: Technological and Regulatory Factors Affecting Consumer Choice of Internet Providers (GAO-01-93; October 2000)

FCC GENERAL MANAGEMENT

- FCC Complaints and Enforcement (ongoing)
- FCC Rulemaking Process (ongoing)
- Federal Communications Commission: Federal Advisory Committees Follow Requirements, but FCC Should Improve Its Process for Appointing Committee Members. (GAO-05-36; December 2004)
- Telecommunications: FCC Does Not Know If All Required Fees Are Collected (RCED-99-216; August 1999)

Media

- Media ownership (ongoing)