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# SATELLITES REGULATIONS

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Communication satellites are artificial bodies that relay signals between distant points on Earth, being an important mean for the provision of several communications services. In Brazil, its primary function is currently related to the expansion of broadband in the national territory. The use of satellites in Brazil involves national rules, established both in the LGT and in the Resolutions of the National Telecommunications Agency - ANATEL, and international rules, established by the International Telecommunications Union (ITU).

The Brazilian General Telecommunications Law (Law No. 9,472/1997) - LGT establishes the general rules for the use of satellites and for the provision of telecommunications services supported by the satellite infrastructure. In addition, the regulation provides that ANATEL will provide for specific requirements and criteria for the execution of telecommunications services that uses satellite, geostationary or not, regardless of the access to it occurs from the national territory or abroad.

In Brazil, the execution of telecommunications services via satellite

can involve both the use of Brazilian satellites - those that use orbit and radioelectric spectrum resources notified by Brazil, or distributed or consigned to it, whose control and monitoring station is installed in the Brazilian territory - and also the use of foreign satellites, which use orbit and radioelectric spectrum resources notified by other countries.

Preference should be given to the use of Brazilian satellite when it provides conditions equivalent to those of third parties and the use of foreign satellite will only be admitted when it is contracted with a company organized under Brazilian law and with head office and administration in the Country, as a legal representative of the foreign operator.

In addition, within ANATEL's scope, the Plan of Frequency Assignment, Destination and Distribution in Brazil (ANATEL's Resolution No. 716/2019) is the basic regulatory instrument for the use of radiofrequencies in Brazilian territory. Said instrument determines that the exploitation of satellites should be carried out only in the frequency bands assigned to satellite services and destined to compatible services.

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In addition, the use of satellites in Brazil, in general, requires authorization from ANATEL, which must be requested through electronic petition and addressed to the Station Granting and Licensing Management (ORLE). The list of Brazilian and foreign satellites authorized to operate in Brazil is updated from time to time by the Agency. The use of satellites varies depending on the radiocommunication services associated with the use of the satellite, as follows:

I) A **satellite exploitation right** is required for fixed, mobile or broadcasting radiocommunication services via satellite;

II) A **Private Limited Service grant and a radio frequency authorization** are required for the radiocommunication services of space research, space operation, satellite meteorology and earth exploration by satellite;

III) The **amateur radio station certificate and license** are required for satellite radiocommunication amateur radio services; and

IV) **There is no need of authorization** for radiocommunication services of link between satellites, satellite radiodetermination and standard signals of frequency and time.

Following these possibilities, other important regulatory instruments applicable to the exploitation of satellites in Brazil are: (I) ANATEL's Resolution No.

220/2000, which approves the Regulation on the Right to Exploit Satellite for Telecommunications Signal Transportation; ANATEL's Resolution No. 617/2013, which approves the Regulation of the Private Limited Service (SLP); ANATEL's Resolution No. 671/2016, which approves the Regulation for the Use of Radio Frequency Spectrum; ANATEL's Resolution No. 449/2006, which approves the Amateur Radio Service Regulation; among others.

In addition, ANATEL's Ordinance No. 560/1997 approves the Standard No. 16/1997 of the Ministry of Communications, which includes the figure of the Global Mobile Service for Non-Geostationary Satellites (SGMS) - defined as the satellite public-restricted mobile service, of interior and international scope, which uses as a support the Telecommunications Signals Transport Service by Non-Geostationary Satellites whose access stations are interconnected to terrestrial, fixed or mobile networks -, which uses satellite systems covering all or a large part of the terrestrial globe, offering several telecommunications applications.

It should be noted that, while ANATEL's regulation on the Global Mobile Satellite Service has not been published, the aforementioned standard applies, as appropriate, when requesting the exploration of this service using space capacity from geostationary satellites.

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Specifically with respect to the right of satellite exploitation, in accordance with ANATEL's Resolution No. 220/2000, the explorer has authorization for the use of orbit and radio frequency spectrum resources, satellite telecommunication and provision of space capacity (and the latter does not constitute a telecommunications service and can only be offered to the entity that holds a concession, permission or authorization to provide telecommunications services or to the Armed Forces). Such right is subject to technical-regulatory analysis of the explorer's request by ANATEL, to the Agency's regulation and to the national and international operating conditions.

Also, due to the proximity of the deadline of the right for orbital exploitation of four Brazilian satellites in December 2020, ANATEL's Public Consultation No. 45/2019 sought to collect market and public information regarding the existence of satellite explorers with the technical capacity to initiate space segment operations in these orbital positions and to verify any interests for the continuous provision of satellite capacity for at least five (5) years, as of January 1, 2021.

Such movement was intended to avoid the discontinuity of the provision of satellite capacity and to guarantee the coverage available to the Brazilian population and the maintenance, on Brazil's behalf, of the right to use orbit and spectrum resources before the ITU.

Following this finding, ANATEL's Public Consultation No. 64/2019 submitted a proposal to comments and suggestions from the general public regarding the Bidding Notice for the Conference on Brazilian Satellite Exploitation Rights, with respect to 15 satellite positions, to serve the national territory. The bidding proposal defined that the 15 lots offered would be divided into two models: the first, with orbital positions and frequency bands established by the Agency; and the second, having the positions indicated by the respective winners.

However, the auction model for orbital positions in the aforementioned Consultation was not well received by some telecommunications operators, who claimed that the proposed public notice would not be adequate to the new regulatory framework of the telecommunications sector, which replaced the rigid bidding model (collection nature) with an auction of commitments, aimed at making market agents more attractive and capturing investments to the sector.

This is because Law No. 13,879/2019 changed several LGT provisions, among them, some concerning the matter of satellite exploitation. In this regard, the need for bidding to obtain the right for satellite exploitation has been eliminated, which is now granted through an administrative process organized by ANATEL. Although the bidding procedure

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has not been forbidden, it is certain that the legislative option was to “open the door” to other mechanisms, which are more agile and efficient.

Other changes brought by the legal document were the granting of the right to exploit Brazilian satellite, which had a 15-year term, which could be extended only once, previously. With the new law, the provision started to allow that period to be extended successively, as long as the obligations already assumed are fulfilled.

For this purpose, immediately after a request for satellite exploitation that implies the use of new orbit or spectrum resources, ANATEL will assess the information and, considering it in accordance with the regulations, will forward the corresponding notification to ITU - without this characterizing a grant commitment to the applicant.

Also, the right to exploit continues to be conferred against payment, but there is a new legal provision allowing the payment to be converted into investment commitments, as provided by ANATEL and the guidelines of the Executive Branch, further strengthening the idea of commitments instead of collection.

It should be mentioned that the right of satellite exploitation still stumbles upon several points related to the issue of the 5G auction. Firstly, there are concerns about the “guarantees” of a commitment auction instead of a collection auction, since the frequencies must be allocated in a way that does not keep spectrum stopped or unused, which would represent great losses to society and customers.

In addition, the use of the 3.5 GHz band by 5G networks may cause harmful interference in the reception of the free and open television receive-only signal - TVRO (as analyzed in a previously published article), transmitted in the extended C band. In response, the proposal for a Bidding Notice for the 5G Auction submitted to ANATEL's Public Consultation No. 9/2020 and MCTIC Ordinance No. 418/2020 provided for the reimbursement of the holders of rights for satellite exploitation directly by the winners of all lots at 3.5 GHz.

The calculation for the solution of the interference problem, which shall be estimated by ANATEL, however, should take into account both the possibility of mitigating the interference through the use of selective filters in the currently existing receivers, keeping TVRO in Band C; and the eventuality of migration from TVRO to higher frequencies in the Ku Band, in which the interference of 5G signals would not be perceived, however, it could involve higher financial costs.

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The importance of a well-structured satellite capacity is reflected not only in a quantitative trend, in the increase of satellites in operation in the Brazilian territory, but also in a qualitative aspect, fundamental for the development of technologies such as 5G and the connected devices of Internet of Things (IoT). The harmonization of interests and the regulatory organization of satellite availability are essential for the efficient management of a scarce and strategic resource such as the radio frequency spectrum for the use of satellites.

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