

Azevedo Sette
ADVOGADOS

TELECOMS SERIES

JANUARY 2021

BRASIL

Telecom Stations Licensing

By Ricardo Barretto Ferreira and Sylvia Werdmüller von Elgg Roberto

In order to simplify and harmonize the procedures related to the registration and licensing of telecommunications stations, the National Telecommunications Agency (“ANATEL”), the telecommunications regulatory body in Brazil, approved, by means of [Resolution No. 719](#), dated February 10, 2020, the General Licensing Regulation (“RGL”). This rule consolidated several provisions on the subject matter that were contained in sparse regulations.

Despite the date of its publication, February 12, 2020, not all the provisions of Resolution No. 719/2020 are in force. In fact, according to the wording of article 44, (i) article 11 of the Resolution (which deals with the licensing of Radio Base Stations covered by ANATEL’s Resolution No. 395, dated February 28, 2005) came into force on the date of its publication; (ii) articles 14 and 15 of the RGL will come into force within 360 days from the date of publication, i.e., in February 2021; and (iii) other articles of the aforementioned Resolution came into force on November 03, 2020, as determined by [ANATEL’s Resolution No. 730](#), dated July 28, 2020.

RGL provides several concepts in its article 4. Thus, among others, we have that: (i) [Nodal or Base Station](#) is the fixed station

which transmits and/or receives signals to/from terminal stations of access to a system; (ii) [Fixed Station](#) is the station which operates at fixed and specified points in relation to the Earth’s surface, by means of defined geodesic coordinates; (iii) [Mobile Station](#), in turn, is the station which can operate when in motion or while it is stationary in an unspecified place; (iv) [Radio Link Station](#) is the Radiocommunication Transmitting Station used in point-to-point applications, to support the provision of Telecommunications Service; (v) [Telecommunications Station](#) is the set of equipment or apparatus, devices and other means necessary for the telecommunication, its accessories and peripherals, and, when applicable, the facilities which host and complement them, including portable terminals; (vi) [Terminal Access Station](#) or [Telecommunications Terminal](#) corresponds to the equipment or apparatus which allows the user or subscriber to access the telecommunications service; (vii) [Very Small Aperture Terminal](#) or [VSAT](#) is the land station which uses an antenna with opening dimensions considered small when standardized in relation to the wavelengths corresponding to the operational radio frequencies, operating as a remote terminal of a network, which might be controlled by a

LEGAL – REGULATORY

network central land station, not including small-sized mobile land stations; and (viii) [Radiocommunication Transmitting Station](#) is the set of equipment or apparatus, devices and other means necessary for the communication, its accessories and peripherals emitting radio frequencies and, when applicable, the facilities which host and complement them. Also important, [sharing](#) was described as the joint use of a support infrastructure and/or active elements of a Telecommunications Station.

Furthermore, the RGL approved by Resolution No. 719/2020 defined that the [License for Station Operation](#), or [License](#), corresponds to the administrative act which authorizes the beginning of the operation of a station on behalf of the concessionaire, permissionaire and authorized entity of telecommunications services and, when applicable, the use of radio frequencies. Similarly, the [Block License for Operation of Stations](#), in turn, is the administrative act issuing a license for a set of stations on behalf of the concessionaire, permissionaire or authorized entity of telecommunications services and, when applicable, the use of radio frequencies.

The data of stations intended for the exploitation of telecommunications services, being such stations subject to licensing or not, must be registered and kept updated in the BDTA, the technical and administrative database, through the electronic means made available by ANATEL, with such conditions being indispensable for the exploitation of the aforementioned services

(art. 5, §§ 1 and 4). However, there are situations in which registration is exempted, such as the case of (i) exclusively receiver Stations (except in duly regulated hypothesis or when requested by ANATEL), (ii) Telecommunications Terminals using radiocommunication equipment of restricted radiation or confined means, or (iii) other stations exempted from registration under the terms of specific regulations (art. 5, § 5).

Regarding the exclusively receiver stations mentioned above, even if being exempted from registration, should the provider or owner aim to obtain protection against harmful interference, the same might proceed with their registration within the scope of the BDTA, upon submission of a justification and acceptance thereof by ANATEL (art. 6).

According to the RGL, the licensing of Radiocommunication Transmitting Stations is mandatory. The rule also establishes that "the set of equipment, devices and other means, their accessories and peripherals, installed in the same location, intended for the provision of a telecommunications service, are deemed components of the same station" (art. 7, head provision and § 1).

However, on the contrary, there is the exemption of licensing for (i) Telecommunications Stations which do not use radio frequencies; (ii) exclusively receiver stations; and (iii) Radiocommunication Transmitting Stations

LEGAL – REGULATORY

which exclusively use radiocommunication equipment of restricted radiation, as long as there is compliance with art. 5 of the RGL and other applicable regulations (art. 7, § 2).

For the licensing of a Telecommunications Station, the interested party is required to hold the grant for the exploitation of telecommunications services, or the right for satellite exploitation, in the case of licensing of a satellite control station (art. 8).

It is interesting to note that, according to article 11 of the RGL, the use of stations on an experimental basis is permitted, provided that such use occurs in accordance with the terms of the regulation of their respective telecommunications service, as well as of the Regulation of Use of the Radio Frequency Spectrum (see [Resolution No. 671/2016](#)).

The License for Station Operation should be requested by the electronic means made available by ANATEL and should be subsequent to the registration of its respective data in the BDTA. In addition, a document proving technical responsibility regarding its installation is required, the submission of which might be requested by the aforementioned Agency; however, this document is not necessary in certain circumstances, as in the licensing of Mobile Stations (art. 12).

Upon compliance with the RGL terms and subsequently to the payment of prices and fees as applicable, ANATEL makes available

the aforementioned License for Station Operation, and the relevant station may operate permanently (art. 13).

According to article 14 of the RGL, in the case of sharing of the active infrastructure of Telecommunications Stations, licensing may be carried out jointly by only one of the respective providers, which will be responsible for proceeding with the payment of the relevant Facility Inspection Fee (“TFI”) and Operation Inspection Fee (“TFF”), but the License for Station Operation will be issued in the name of all operators, which are jointly and severally liable for the obligations resulting from the licensing, with the specification of the radio frequency bands granted to each of them.

In addition to the above, with regard to the payment of TFI, it is interesting to note that, as specified by the RGL, if the sharing of a previously licensed Telecommunications Station does not cause changes of a technical nature, the inclusion of the other providers in the respective License for Station Operation will not imply in a new TFI (art. 14, § 5). However, if the providers opt for the individualized licensing of a shared Telecommunications Station, all obligations resulting therefrom will also be individualized, including the payment of TFI and TFF (art. 14, § 6).

Article 15, head provision, of the RGL is also important and provides that, if more than one telecommunications service is associated with a station, a single License

LEGAL – REGULATORY

for Station Operation will be issued, with the payment of the TFI corresponding to the highest amount applicable to each of the telecommunications services involved.

If the association of another telecommunications service occurs after the licensing of the respective station, a new License for Station Operation will be issued. In this case, the amount due as TFI will correspond to the difference between the highest applicable amount and the amount previously paid (art. 15, § 1). Similarly, when one of the station's services is decoupled, a new License for Station Operation will be issued, however without payment of the TFI; in addition, in this case, the amount of the TFF to be paid annually by the provider will be adjusted as of the following year.

The RGL also enables the block licensing of telecommunications stations with similar technical characteristics, and such characteristics and the parameters of the stations which might be so licensed are defined by an act of the Superintendent in charge of the granting process (art. 16).

According to the terms of article 17 of the RGL, for the block licensing, the provider must provide some information and proceed with the timely payment of the TFI, according to the number of activated/enabled stations, with the deduction of the number of deactivated/disabled stations and with the deduction of the credit of station blocks. The concept of credit of station blocks is

conferred by § 1 of the same article, and “corresponds to the number of stations with similar technical characteristics accumulated by the provider, as a result of the decrease in the number of stations in operation in a month compared to the previous month, plus credit of station blocks accumulated from previous months”.

It is important to note that the block credits accumulated by a provider might be used in any telecommunications service it offers, provided that the amount referring to the TFI of the stations is identical (art. 17, § 2). In addition, it should also be noted that, under the terms of the RGL, the extinction of the respective grant will not result in the return of the amount of the credit of station blocks accumulated by such provider (art. 17, § 3).

As previously mentioned, any changes in the registered data of a station must be updated within the scope of the BDTA, but not all changes will imply the need to proceed with a new licensing (art. 27). The cases in which a new licensing is required are listed in the RGL (arts. 24 to 26), among which we can mention, for example, the replacement of an antenna used by a licensed Land Station (which is understood as the “station located on the Earth's surface or within the Earth's atmosphere which communicates with one or more space stations or, in addition, with one or more stations of the same type by means of one or more reflecting satellites or other objects in the space”, according to art. 4, XIV), without maintaining the same technical

LEGAL – REGULATORY

characteristics of operation (art. 24, I).

Licenses for Telecommunications Stations are issued for an undetermined period (art. 28), including in the case of renewal of licenses issued before the entry into force of the RGL (art. 35). Extinction thereof occurs (i) in case of extinction of the grant of the respective telecommunications service (art. 29), and (ii) in the event of extinction of all authorizations for the use of radio frequencies related to the applicable station (art. 30).

In addition, the RGL also allows the transfer of ownership of the licensed station, without incurring the TFI, as long as the legal requirements for this purpose are met (art. 31).

The licensing of Radio Link Stations was specifically mentioned within the scope of the RGL, in the sense that, at the discretion of the responsible provider, those licensed until the entry into force of the RGL may (i) remain in activity until the expiry date of their respective license, without the need to change it, or (ii) request the issuance of a new license, which will be associated with the Private Limited Service (“SLP”) station (art. 38). Furthermore, the RGL determines that Radio Link Stations not installed in the same location as the stations used for the provision of telecommunications services will be licensed as stations of SLP or a service that supersedes it (art. 39).

It should be noted, however, that despite the brief summary contained in the previous paragraphs, other requirements may apply to specific cases and, therefore, should be the subject of an in-depth and individualized analysis.

The entry into force of the most part of Resolution No. 719/2020 was reported in the specialized press, which, like ANATEL itself, also highlighted some of its provisions.

In addition, it was also reported that, in order to comply with the new licensing rules, which imply in procedures conducted within the scope of ANATEL's Mosaico system, the same is undergoing updates coordinated by the Superintendencies of Grants and Resources to the Provision and Internal Management of Information.

To receive the main legislative news and positioning on this and other topics related to telecommunications, follow the Technology, Media and Telecommunication (TMT) team of Azevedo Sette Advogados.

LEGAL – REGULATORY



Ricardo Barretto Ferreira da Silva - Senior Partner
barretto@azevedosette.com.br



Sylvia Werdmüller von Elgg Roberto - Associate
selgg@azevedosette.com.br