

Azevedo Sette
ADVOGADOS

TELECOMS SERIES

LICENSING OF TELECOMMUNICATIONS
ANTENNAS IN BRAZIL

BRAZIL

São Paulo | Belo Horizonte | Brasília | Rio de Janeiro | Goiânia | Recife
www.azedosette.com.br

Licensing of Telecommunications Antennas in Brazil

By Ricardo Barretto Ferreira and Sylvia Werdmüller von Elgg Roberto

In Brazil, Law No. 13,116/2015 (Antenna Law) stipulates the general rules relating to the process of licensing, installation, and sharing of telecommunications infrastructure, being the main legal provision dealing with the licensing of telecommunications antennas in the country, although laws of the States and the Federal District are also applicable to the matter, in a supplementary way. Said Law, in turn, is regulated by Decree No. 10,480/2020, which also contains measures to encourage the development of telecommunications network infrastructure.

The objective of the Antenna Law is to promote and foster investments in the infrastructure of the aforementioned networks and, for that purpose, it aimed at standardizing, simplifying, and speeding up the procedures and criteria for the granting of licenses by the competent authorities; the minimization of urban, landscape, and environmental impacts; the expansion of the installed capacity of telecommunications networks, considering the technological update, as well as the improvement of the coverage and the quality of the services provided; precaution against the effects of

emission of non-ionizing radiation; and promotion of sharing of the aforementioned infrastructures. Its provisions, however, do not apply to those infrastructures aimed at providing restricted interest services in offshore oil exploration platforms; to military and civil radars of air traffic control or defense; or to radionavigation and aeronautical telecommunication infrastructures ensuring the safety of air operations.

According to the Antenna Law, licensing for the installation of infrastructure and telecommunications networks in urban areas must be based on certain principles, such as, for example, reasonableness and proportionality; integration and complementarity between the activities of support infrastructure installation and urbanization; and the reduction of the landscape impact of said infrastructure. In addition, the Law determines that there can be no obstruction to the movement of vehicles, pedestrians, or cyclists, prejudice to the visibility of drivers traveling on public roads or traffic signs; setback to the urban and landscape parameters approved for the area; damage, impediment to access, or

LEGAL – REGULATORY

unfeasibility of maintenance, operation, and installation of other public services infrastructure; or risk to the safety of third parties and neighboring buildings, among other prohibitions.

The issuance of licenses required for the support infrastructure installation in urban areas, according to the aforementioned Law, takes place by means of a simplified procedure. Within the scope of this procedure, there might be the positioning of bodies having jurisdiction over the matter, although the respective request is to be addressed to a single body or entity. The licensing process may also involve an integrated environmental licensing process, governed by the National Council of the Environment – Conama, which has the participation of federal, state, and municipal bodies, environmental entities, and the business sector.

However, according to the text of the aforementioned Law, the “competent bodies may not impose conditions or prohibitions preventing the provision of collective interest telecommunications services”, and the “possible constraints imposed by the competent authorities on the support infrastructure installation cannot cause non-isonomic conditions of competition and provision of telecommunications services”.

The licenses, according to the Antenna Law provisions, must be issued within 60 days from the date of the respective application, even when the positioning of more than one body is necessary.

The body to which the application has been addressed may request clarifications, additional information, or even changes to the relevant projects, only once, and in this case, the term is suspended between the date of notification of the requirements and the date of submission, by the interested party, of whatever is applicable. Furthermore, such term may be postponed for up to 15 days in the case of consultations or public hearings.

Once issued, licenses are valid for a period of not less than 10 years, with the possibility of renewal for equal periods. Additionally, the requirement for a new license may be exempted in certain cases, such as, for example, when there are changes in the technical characteristics of an infrastructure supporting a radiocommunication transmitting station resulting from technological modernization.

It is important to note that the Antenna Law also specifies the exemption from the issuance of licenses for the installation of infrastructure for small telecommunications networks; however, the sharing rules of the National Telecommunications Agency (Anatel) must be complied with. The definition of such small infrastructure is given by Decree No. 10,480/2020, according to which it corresponds to the infrastructure that, cumulatively, is installed in an existing building or structure and does not increase its height by more than 3 meters or by more than 10% (whichever is less); has a radiating structure with a total volume of up to 30 cubic decimeters; and has other associated equipment with a total volume of up to 300

LEGAL – REGULATORY

cubic decimeters and a maximum height of 1 meter (dimension referring to the visible segment from the street, in case of partially buried or hidden equipment). The party carrying out the installation, it is worth mentioning, must communicate this fact to the appropriate authority within 60 days.

Despite this exemption, the infrastructure installation requires the obtainment of prior authorization or permission from the party responsible for the private property, listed or protected by special legislation (e.g., environmental legislation), or public property for special use or private property of the state, if applicable. Furthermore, there must be compliance with Anatel's rules regarding sharing.

Decree No. 10,480/2020, it is worth emphasizing, expressly determines that the planning of infrastructure works of public interest (considered as such the implementation, expansion, and adequacy of the capacity of federal, state, district, and municipal roads, in addition to the implementation or expansion of railways capacity; systems of public transport on rails or underground; electric power transmission lines; gas pipelines, oil pipelines or pipelines for the movement of fluid hydrocarbons and biofuels; and sewage and urban drainage networks) shall encompass the installation of telecommunications network infrastructure, except in situations of state of emergency, public calamity, or state of defense.

The aforementioned Decree is also extremely important for the licensing issue, as it stipulates that, after the expiration of

the 60-day period provided for in the Antenna Law without a decision by the competent body or entity, the requesting party will be authorized to proceed with the intended installation in accordance with the application conditions, but always in accordance with municipal, state, district, and federal laws. It is, therefore, the so-called “positive silence”.

However, the possibility of installation based on positive silence does not imply the exemption from obtaining other authorizations or prior authorization, as applicable. Furthermore, the holder must inform Anatel of the technical characteristics (e.g., type of technology used, physical characteristics, data traffic capacity) and geographic location coordinates of the infrastructures. The eventual failure to comply with the aforementioned conditions or the legislation, it is worth emphasizing, may result in revocation of the license by the public administration.

The Antenna Law additionally establishes the obligation of sharing the excess capacity of telecommunications infrastructure (except when there is a justified technical reason) by the largest possible number of providers, however, without harming the urban, historical, cultural, tourist, and landscape heritage. In addition, it also determines that infrastructure works of public interest must encompass the installation of infrastructure for telecommunications networks.

Specifically regarding the radiocommunication transmitting stations

LEGAL – REGULATORY

(defined as the “set of equipment or devices, and other means necessary for carrying out communication, including their accessories and peripherals, which emit radio frequencies, enabling the provision of telecommunications services”) and user terminals, the Antenna Law stipulates that there must be compliance with the limits of human exposure to electric, magnetic, and electromagnetic fields established by law and regulations, the inspection of which is attributed to Anatel, and that state, district, or municipal bodies may send an official letter to the Agency about evidences of irregularities in this regard. Compliance, to wit, is evaluated by the competent authorities and, after the issuance of the compliance report, there can be no impediment to the installation based on claims related to human exposure to ionizing radiation.

In case of non-compliance with the Antenna Law, telecommunications service providers become subject to the administrative sanctions provided for in Law No. 9,472/1997 (General Telecommunications Law, LGT), such as, for example, warning, fine, and temporary suspension for up to 30 days, in addition to others, without prejudice to any applicable civil and criminal sanctions.

It is also opportune to point out that Bill No. 8518-D/2017 is currently being processed in the National Congress, which intends to amend the Antenna Law and authorize the installation of telecommunications infrastructure, in accordance with the conditions included in the license application submitted and in accordance

with applicable municipal, state, district, and federal laws and regulations, in case the competent body or entity to which the application is addressed fails to issue a decision within the aforementioned 60-day term, i.e., bringing the provision of positive silence within the scope of the aforementioned Law.

According to such Bill, the license would be subject to revocation, at any time, if the conditions of the application and applicable laws and regulations are no longer met, although an administrative appeal is also provided for, with suspensive effect, concerning the decision in this regard. Such Bill also mentions that applicants will be responsible for removing the infrastructure, as well as for repairing damages caused to the environment and third parties, in accordance with the provisions of the Federal Constitution and Law No. 6,398/1981 (which provides for the National Environmental Policy). The text of the Bill was recently approved by the Chamber of Deputies and is currently being processed by the Federal Senate, but without any prediction as to its eventual approval.

The licensing issue is particularly important with the arrival of 5th generation (5G) technology in Brazil in 2022, the implementation of which, compared to previous technologies, will require the installation of a much more expressive number of equipment to provide adequate coverage in the areas where telecommunications services will be provided.

LEGAL – REGULATORY

Due to the legal provisions above, we can infer that, in order to facilitate the implementation of 5G in the most diverse Brazilian municipalities, it is necessary to update local laws and regulations, which are often not aligned with the current technological reality of the telecommunications sector and which, therefore, often pose challenges to the installation of the necessary equipment. It should also be mentioned that there may be significant dissonance between the various applicable municipal laws.

In this regard, in May 2021, in order to promote the expansion of telecommunications network coverage and increase the quality of services, Anatel issued the [Open Letter to Brazilian Municipal Authorities](#), in which it recommended the reassessment of municipal legislation on the matter. In the words of the Agency, "... the difficulty in obtaining urban licensing for telecommunications infrastructure is one of the main obstacles to equipment installation. The bureaucracy for obtaining licenses for the installation of telecommunications infrastructure materializes, for example, from the excess in the number of rules and approval instances, to the prohibition of equipment installation in certain regions of the cities". Additionally, in the second half of 2021, Anatel prepared a [Municipal Bill Draft](#), in order to provide guidance to municipal authorities in the process of legislative update.

In line with the Agency's recommendation, important regulations were in fact issued on the subject, modernizing and facilitating the licensing of infrastructures. This is what happened, for example, in capitals such as Rio de Janeiro, São Paulo, Brasília, and Porto Alegre, in addition to other municipalities.

According to data collected by [Movimento Antene-se](#), which encourages the update of antenna laws in large Brazilian cities to expand access to connectivity, with the participation of entities from different sectors, [in January 2022 only 59 municipalities in the country had updated regulations](#). At the beginning of June 2022, this number increased to 92 municipalities, including 12 capitals (out of a total of 5,568 municipalities), an increase that illustrates the commitment of several local governments to adapt to the new technological realities.

The importance of sharing infrastructure between different economic sectors (e.g., sharing of poles between companies in the electricity and telecommunications sectors) or in the same field of activity should also be recalled, which can benefit the population with greater telecommunications services coverage with technologies currently available, in addition to 5G.

Finally, it is worth noting that the expansion of the telecommunications services coverage will also enable numerous new business opportunities, leveraging the Brazilian economy.

LEGAL – REGULATORY

As an indication of the impact that the arrival of 5G will bring to Brazil, the [Ministry of Economy](#) predicts that solutions that will make use of this technology could result in a benefit of BRL 590 billion per year for all verticals of the economy. In this scenario, [according to data from KPMG Brazil](#), 56% of companies have already included 5G in their strategic agendas.

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.

São Paulo, June 15, 2022.

Authors

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



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