

I

REPORT

1. - By determination of 1 July 2009, the Management Board approved the Regulation governing the settlement and collection of fees due to ICP-ANACOM, approving likewise, and on the same date, the report of the public consultation.

This Regulation was published in *Diário da República* (Official Journal), 2nd series, no. 135, of 15 July 2009 and entered into force on 20 July 2009.

Subsequent to approval of the Regulation a set of important legislation was published on electronic communications:

- Decree-Law no. 123/2009 of 21 May which governs the regime that applies to the construction of infrastructures suitable for the accommodation of electronic communications networks, to the set up of electronic communications networks and the construction of infrastructures for telecommunications in housing developments, urban settlements and concentrations of buildings and buildings, which repealed Decree-Law no. 59/2000 of 19 April and which has been amended by Decree-Law no. 258/2009 of 25 September.
- Decree-Law no. 264/2009 of 28 September, amending Decree--Law no. 151-A/2000 of 20 July, which enshrines the legal provisions applicable to the licensing of radiocommunications networks and stations, supervision of the installation of said stations and use of the radio spectrum;
- Law no. 99/2009 of 4 September, which establishes the framework scheme of administrative offences within the communications sector;
- Law no. 51/2011 of 12 September, which amended and republished Law no. 5/2004 of 10 February.

- Administrative Rule no. 291-A/2011 of 4 November, amending Administrative Rule no. 1473-B/2008 of 17 December.

The publication of these regulations does not determine any substantive changes to the Regulation governing the settlement and collection of fees due to ICP-ANACOM, requiring only the update of some of the legislative remissions, either in the preamble or in the text of the articles, as well as some changes in terminology.

Accordingly, various adjustments were undertaken stemming, in the first place, from the terminology changes determined by Decree-Law no. 123/2009 and, secondly, from the amendments introduced by Administrative Rule no. 291-A/2011 of 4 November, in particular, regarding the incorporation of fees for use of spectrum related to complementary earth stations inherent to the implementation of the mobile satellite service in the 2 GHz band.

2. - Furthermore, two years having elapsed since its entry into force, it has become necessary to make a number of specific changes to the Regulation in the light of experience gained through its practical implementation.

As such, from the outset and taking into account the specificity entailed in the payment of fees due in respect of the issue of temporary licenses, express provision is now made that fees are to be settled before the license is issued.

With regard to the fees stipulated in points a) to f) of paragraph 1 of article 19 of Decree-Law no. 53/2009 of 2 March and with regard to the fees stipulated in articles 56 and 86 of Decree-Law no. 123/2009 of 21 May, reference to the payment of fees being due upon fulfilment of the request is eliminated. These fees are now payable upon submission of the respective request, clearing up any uncertainty pertaining to the interpretation of the legislation, while making provision for cases where the fee is paid making use of the "*balcão virtual*" (online services).

However, the most significant changes have occurred in respect of payments made in instalments and in respect of the rules governing notifications to be made by ICP-ANACOM.

In fact, since it was found that some of the operators had made use of the facility to make payment of fees due to ICP-ANACOM in instalments, and had applied,

likewise, for a waiver of the requirement to provide guarantee, it was deemed necessary to make express provision for the possibility, on an exceptional basis, that exemption may be granted in respect of the requirement to provide guarantee where the applicant cites economic and financial conditions as do not enable presentation of a guarantee, subject to ICP-ANACOM being able to request evidence of such claims.

In parallel, and also with regard to payments made in instalments, provision was made for the possibility, also on an exceptional basis, that the application to make fee payments in instalments may be submitted until such time as the *certidão de dívida* (liability certificate) is issued, allowing fee-payers to pay in instalments following expiry of the voluntary payment deadline.

These amendments are in accordance with the rules of procedure provided for in the *Lei Geral Tributária* (General Taxation Law) and the *Código do Procedimento e Processo Tributário* (Code of Tax Procedure and Process).

At another level, and as regards the system of notifications, express provision has been made that ICP-ANACOM may notify fee-payers by ordinary post, facsimile or electronic transmission of data, where the settlement does not involve a change to the contributory status of the fee-payer, limiting the obligation to make notification using registration and with notice of receipt to those cases where notification involves acts or decisions that may change the contributory status of fee-payers or where fee-payers are called on to attend in order to assist with or participate in investigations.

The lack of distinction between cases where notifications may be performed using registered post or ordinary post means that all notifications of ICP-ANACOM have always been made using registered post with notice of receipt, resulting in financial losses for ICP-ANACOM and the operators themselves, many of whom were forced to travel to CTT offices to collect notifications.

II

AMENDMENTS TO THE REGULATION GOVERNING SETTLEMENT AND COLLECTION OF FEES DUE TO ICP-ANACOM

Regulation no. 300/2009 - Regulation governing settlement and collection of fees due to ICP-ANACOM, was approved by determination of the Management Board of ICP-ANACOM of 1 July 2009 and entered into force on 20 July 2009.

After more than two years of the Regulation being in force, and in light of its practical implementation, it has been shown that specific changes are warranted.

Accordingly, express provision is now made that fees are to be settled before temporary licenses are issued; it is further stipulated that the fees due pursuant to the regime governing the construction of infrastructure which is suitable for accommodating electronic communications networks, the installation of electronic communications networks and the construction of *Infraestruturas de Telecomunicações em Loteamentos, Urbanizações e Condomínios* (Infrastructures for telecommunications in housing developments, urban settlements and concentrations of buildings) and *Infraestruturas de Telecomunicações em Edifícios* (Telecommunications infrastructure in buildings) are payable upon the submission of the respective application, which procedure shall also apply in the case of fees specified in points a) to f) of paragraph 1 or article 19 of Decree-Law no. 53/2009 of 2 March.

Furthermore, express provision was made that, under exceptional circumstances, the fee-payer may apply for a waiver of the requirement to provide guarantee and further provision was made - also on an exceptional basis - that applications to make fee payments in instalments may be made until such time as the *certidão de dívida* (liability certificate) is issued.

Finally, as regards the rules governing notifications, express provision was made that ICP-ANACOM may notify fee-payers by ordinary post, facsimile or electronic transmission of data, where the settlement does not involve a change to the contributory status of the fee-payer, limiting the obligation to make notification using registration and notice of receipt to those cases where the notification involves acts or decisions that may change the contributory status of fee-payers or where fee-payers are called on to attend in order to assist with or participate in investigations.

The amendments to the Regulation governing settlement and collection of fees due to ICP-ANACOM apply to ongoing processes of issuance, settlement and collection.

Accordingly, the Management Board of ICP-ANACOM, after submission to public consultation and pursuant to articles 9, point a) and 26, points b) and g) of ICP-ANACOM's Statutes, determined to approve the following amendment to the Regulation governing the settlement and collection of fees due to ICP-ANACOM.

Article 1

(Amendment to Regulation no. 300/2009 of 1 July 2009)

Articles 2, 5, 16, 18, 19, 20 and 22 of Regulation no. 300/2009 of 1 July 2009 are amended to read as follows:

"Article 2

Fees

1 - (...)

2 - The following fees are associated with administrative costs:

a) (...)

b) (...)

c) (...)

d) (...)

e) (...)

f) Fees in respect of the installation of ITUR - *Infraestruturas de telecomunicações em loteamentos, urbanizações e conjuntos de edifícios* (Infrastructures for telecommunications in housing developments, urban settlements and concentrations of buildings) and fees in respect of ITED - *Infraestruturas de telecomunicações em edifícios* (Telecommunications infrastructure in buildings);

g) (...)

h) (...)

3 - The following fees are associated with the optimisation of the use of common resources:

- a) Fees in respect of the use of frequencies for terrestrial electronic communications services;
- b) (...)
- c) (...)
- d) (...)
- e) (...)
- f) (...)
- g) (...)
- h) (...)
- i) (...)
- j) (...)
- k) (...)"

"Article 5

1 - (...)

2 - Without prejudice to other penalties as may be applicable in the event of failure to comply with the obligations stipulated in the preceding paragraph, ICP-ANACOM may, pursuant to article 8 of Law no. 99/2009 of 4 September, to articles 113, paragraph 9 and 10, and 116 of Law no. 5/2004, of 10 February, as amended by Law no. 51/2011 of 13 September, and articles 49, paragraphs 8 and 9, and 52 of Law no. 17/2012 of 26 April, impose mandatory pecuniary penalties."

"Article 16

Payment terms

Fees due to ICP-ANACOM are payable:

- a) (...)
- b) Upon the act of submission, in the case of fees stipulated in points a) to f) of paragraph 1 of article 19 of Decree-Law no. 53/2009 of 2 March and with regard to the

fees stipulated in articles 56 and 86 of Decree-Law no. 123/2009 of 21 May, as amended by Decree-Law no. 258/2009 of 25 September;

c) Prior to the licence being issued, where the application refers to a temporary license."

"Article 18

Non-compliance

1 - In the event that the fee-payer fails to make payment of fees in accordance with the time limits established in the present Regulation, late payment interest shall be applied and payable, in accordance with article 44 of *Lei Geral Tributária* (General Taxation Law), without prejudice to any surcharges as may be due, in particular as pursuant to paragraph 8 of article 19 of Decree-Law no. 151-A/2000 of 20 July, as amended by Decree-Law no. 264/2009 of 28 September.

2 - (...)

3 - Without prejudice to the preceding paragraphs, the non-payment of fees due to ANACOM determines application of article 110 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September, without prejudice to other sanctioning mechanisms as may be applicable."

"Article 19

Payment in instalments

1 - (...)

2 - (...)

3 - (...)

4 - Where the time limit for voluntary payment has elapsed, the request referred to in the preceding paragraph may, on an exceptional basis, be submitted until and no later than the day preceding the issue by ICP-ANACOM of the *certidão de dívida* (liability certificate).

5 - Requests from applicants for waiver of the requirement to provide guarantee, may also, on an exceptional basis, be granted, where economic conditions do not enable provision of such guarantee.

6 - Applications as referred to in paragraphs 4 and 5 are to be properly reasoned, whereby ICP-ANACOM may request additional evidence.

7 - Failure to make timely payment of any of the instalments determines that all remaining instalments become immediately payable."

"Article 20

Enforced Collection

1 - (...)

2 - ICP-ANACOM shall send a notice to the fee-payer, by ordinary post, prior to the issue of the *certidão de dívida* (liability certificate) for the purpose of enforced collection."

"Article 22

Notifications

1 - Notifications are to be made by registered letter with notice of receipt as refer to acts or decision which may alter the contributory status of fee-payers or where fee-payers are called on to attend in order to assist with or participate in investigations.

2 - In cases other than those specified in the preceding paragraph, notifications are to be made by registered post, with or without notice of receipt, by ordinary post, by fax or by electronic transmission of data."

Article 2

Entry into force

The present Regulation shall enter into force five days following its publication, whereas the amendments so introduced to the Regulation governing settlement and collection of fees due to ICP-ANACOM shall apply to all processes of issuance, settlement and collections as are ongoing.

Article 3
Republication

The Regulation governing settlement and collection of fees due to ICP-ANACOM, with the amendments approved by the present Regulation, is republished in annex hereto.