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ALERTA LEGAL

The New Telecom Antennas Law

After 5 years under discussion in the Chilean Congress, on June 11th, 2012, the long expected bill that regulates the installation of telecommunications antennas and its towers has become a Law in Chile. Law N° 20.599 (the “Antenna Law”) affects not only the new telecommunication antennas and towers to be installed in the future but also some of the infrastructure already installed within the Chilean territory.

The most relevant new requirements, restrictions and obligations established in the Antenna Law are:

I. Authorization from the municipal (local) authority

One of the most significant innovations contained in the Antenna Law is the new requirement of an installation permit which will be granted by the corresponding local authority: the Municipal Work Department. According to the Antenna Law, the relevant telecoms operators will now have to comply with a complex procedure on which the direct participation of the affected community is considered, before the installation of any antenna and its tower.

Depending on the height of the antenna tower (higher than 12 meters or higher than 3 meters and lower than 12 meters) the documentation and information that will have to be filed before the Municipal Work Department will vary.

Similarly, the applicable procedure for obtaining the installation permit will be different depending not only on the height of the antenna towers to be installed but also on other special situations related to the areas where the antenna towers are intended to be installed, such as “risk areas”, “protection areas” or “touristic interest areas”.

In rural areas and when the antenna tower height is equal or less than 3 meters as well as in some other special cases, an installation notice will be enough requirement for installing an antenna and its tower.

II. Mandatory camouflage or mitigation measures

Another important new obligation that the Antenna Law sets forth for the telecoms operators is the requirement to implement one of these 2 alternatives at the moment of installing an antenna and its tower:

i) Camouflage of the antenna and its tower. This mechanism consists in a sort of "costume" for the antenna and its tower in order to prevent the urbanism impact caused by these structures and harmonize them with the corresponding environment. Typical examples of this kind of measure are the antennas and its towers camouflaged in the form of palms, trees, bell towers, etc.

ii) Mitigation measures in favor of the community. According to the Antenna Law the mitigation measures may consist of either (i) the implementation of telecommunication services, or (ii) the improvement of green areas, pavements, bike lanes, luminaries, ornament or other similar measures.

According to the installation procedure established in the Antenna Law, the members of the community affected by the installation of an antenna and its tower will be entitled to participate in the decision for the selection of one of the above mentioned options.

III. Co-location Obligation

Co-location can be defined as the installation of 2 or more antennas in the same tower and its principal purpose is to avoid the proliferation of antenna towers in a determined sector or area, allowing the infrastructure sharing among telecoms operators.

The Antenna Law establishes that every time a telecoms operator plans to install an antenna it shall verify, prior to the installation, if there is another tower from a different telecom operator on which it is feasible to add another antenna. This obligation only applies, as a general rule, to the antenna towers installed after the issuance of the Antenna Law; however, there are some exceptions on which the co-location obligation applies with retroactive effect also over antenna towers installed prior to the issuance of the Antenna Law. Such cases are the following:

i) Territories which are saturated of infrastructure.

ii) Territories which have been declared as restricted radio-electrical propagation zones.

IV. Protection of sensible areas

Under the Antenna Law, "sensible areas" are those territories declared as

such by the Undersecretary of Telecommunication (“Subtel”) which require special protection due to the existence on them of educational institutions, nurseries, kindergartens, hospitals, clinics, urban territories where pylons are located, nursing homes or other institutions of similar nature declared as such by Subtel.

The Antenna Law establishes that it is forbidden to install antenna towers within sensible areas or in sites located within a distance which is less than 4 times the height of the respective antenna tower from the boundaries of the relevant sensible area, with a minimum distance of 50 meters.

However this prohibition has the following exceptions:

- Antenna towers that have a height equal or less than 12 meters.

- When the antenna towers are required by the relevant institution for its own purposes.

A relevant aspect in connection with sensible areas is that regulations applicable to these areas also apply with retroactive effect to antenna towers installed prior to the issuance of the Antenna Law.

V. Emissions

In connections with antennas’ emissions, the Antenna Law establishes a prohibition to install antennas on those urban zones that have been declared by Subtel as zones saturated of telecommunications radiant systems. A zone shall be declared as saturated of telecommunications radiant systems when the power density of the antennas installed in such zone exceed the limits determined by the technical regulation issued by Subtel in this regard.

Additionally, the Antenna Law sets forth that the Ministry of Environment will be in charge of issuing the environmental quality and emission regulations related to the electromagnetic waves emitted by the antennas. The Antenna Law establishes that the Ministry of Environment shall set forth power density limits which shall be equal or less than the simple average of the 5 most demanding standards established by the countries that are members of the OCDE.

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