

## **BILL OF LAW RECOGNIZES INTERNET ACCESS AS A PUBLIC TELECOMMUNICATIONS SERVICE**

On July 10th, 2023, the Chamber of Deputies approved in its Second Constitutional Procedure the bill of law that, among other matters, aims to recognize Internet access as a Public Telecommunications Service (bulletin No. 11,632-15) (the "Bill"), through various amendments to Law No. 18,168, the General Telecommunications Law ("GTL").

As a result of the abovementioned approval, the Bill has been returned to its chamber of origin (i.e., the Senate), which could approve all the amendments made by the Chamber of Deputies or reject them. If the latter case occurs, the Bill would pass to a joint commission composed of members of the Chamber of Deputies and the Senate.

Notwithstanding the fact that the Bill is still pending and could undergo modifications, or its approval by the legislative bodies may be delayed, we consider it relevant to describe and summarize those that, in our opinion, constitute its main characteristics, which you may find below:

### **Express recognition of the Internet access service as a public telecommunications service:**

Internet access service is expressly incorporated in Article 3 of the LGT as one of the services included within the public telecommunications services (without prejudice to the exception described in No. 2 below).

### **Exceptional qualification of the Internet access service as a limited service when it is provided by specific entities:**

An exception is included through which the Internet access service is considered a limited telecommunications service, when it is provided by user communities, neighborhood councils, cooperatives, foundations, municipalities, regional governments, public entities for the promotion of local or community development, or other non-profit

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organizations.

**Incorporation of principles applicable to public telecommunications services:**

The Bill incorporates a paragraph 4 to article 4 of the GTL establishing that the installation, operation, and exploitation of public telecommunications services will be governed by the principles of universality, continuity, technological neutrality, infrastructure sharing, transparency, efficiency and non-arbitrary discrimination in the allocation and recovery of scarce resources, mainly the radioelectric spectrum and numbering, among others.

**Creation of the National Digital Plan:**

A mandate is established for the Undersecretariat of Telecommunications ("Subtel") to develop, based on the principles set forth above, a **National Digital Plan** that must incorporate the following policies: a) use of the radioelectric spectrum, which will ensure its efficient and convergent use; b) investments, which shall promote, through public-private partnerships, the coverage of services at the national level; c) connectivity, which shall ensure that progressive digital connectivity, under quality conditions, is promoted to all inhabitants of the national territory; d) cybersecurity in the field of telecommunications; e) universal accessibility and essentiality of service, in which promotion or subsidy mechanisms will be established in order to progressively provide telecommunications services to all inhabitants of the territory; f) quality of services, in which quality standards will be established for the provision of services for the entire national territory; and g) promotion and research, which will foster research, innovation and the formation of specialized human capital in the sector.

**Simplification of procedures:**

The requirement to prepare an abstract and its subsequent publication in the Official Gazette is eliminated for the granting and modification of public telecommunications services concessions for the provision of Internet access, in those cases in which shared, local or community bands are utilized, as well as in the granting and modification of concessions that do not involve the assignment of radioelectric spectrum, with the exception of those that contemplate the installation or change of location of an antenna support tower, when they require permission according to urban planning and

construction regulations.

In addition, for any application for the granting or modification of a public or intermediate services concession, the requirement to publish an abstract in a newspaper of the capital of the corresponding province or region is eliminated. This requirement is replaced with the publication of the corresponding abstract on Subtel's webpage.

Finally, it contemplates that all notifications made under the GTL may be performed by electronic means.

**Obligation of non-discrimination of intermediate services by public services:**

Article 24 bis of the GTL, which regulated the dialed multi-carrier system of the public telephone service for international long-distance services, is replaced by the obligation of public service concessionaires to offer and provide all concessionaires of intermediate services, access, or connections to their network of the same class and/or characteristics.

**New obligations for telecommunications service operators:**

- New Information Obligation: telecommunications service concessionaires will be obliged to send semi-annually to the Ministry of Transport and Telecommunications a list of user complaints received.
- Mandatory Provision of Services: public telecommunications services concessionaires will have the obligation to provide their services to the interested parties who request it within their service area established by the concession decrees and their modifications; and to those interested parties who, being outside the service area, pay for the necessary extensions or reinforcements.

Regarding concessionaires of fixed public Internet access service, minimum geographical units are established to determine their service area in urban and rural areas. Subtel may exempt from these obligations operators with a national fixed access market share of less than 2%.

Regarding mobile public service concessionaires, it is established that the mandatory geographic area is the one considered in the calculation of the service area of their respective technical project.

Finally, several modalities are established to facilitate access to public services to as many people as possible.

- **Web Access to Operation and Monitoring Information:** public telecommunications services concessionaires must enable a web address, which shall allow Subtel to access information contained in their control and network monitoring centers in real time. In addition, they must provide data on service quality, alarm detection and resolution of network failures, which are necessary for the exercise of the functions and powers of Subtel.
- **Obligation to Deliver Technical and Commercial Information:** It expressly establishes Subtel's power to request technical and commercial reports from telecommunications service concessionaires and permit holders, being those concessionaires and permit holders obliged to deliver them.

#### **Demand subsidy:**

It allows the use of the Telecommunications Development Fund to subsidize the payment of Internet access service bills to the most vulnerable users in the national territory (i.e., subsidizing demand instead of only subsidizing supply, as has been the case up to now).

#### **Increase in sanctions and definition of new criminal offences:**

- The maximum fines amount applicable for violations of telecommunications regulations is increased to 500 UTM -approximately USD37,500- for broadcasting and free reception concessionaires (previously 100 UTM); and 5,000 UTM -approximately USD375,000- for other cases (previously 1,000 UTM).
- An increase in the penalty is established for the criminal offence contemplated in the GTL for maliciously interfering, intercepting, or interrupting a telecommunications service, increasing it to the maximum penalty degree of minor imprisonment (previously, minor imprisonment in any of its degrees).
- Introduction of a new criminal offence for the interruption of services by destruction, damage, or malicious disablement of telecommunications infrastructure, with a penalty of minor imprisonment in its medium to maximum degrees.

#### **Entry into force of the Bill:**

Most of the provisions of the Bill will become effective once it is

published as law in the Official Gazette.

Likewise, the Bill establishes that, within one year from the publication of the respective law in the Official Gazette, public service concessionaires must define their respective service areas for the purposes of the provisions of paragraph 7.b) above regarding the mandatory provision of services.

The information contained in this alert corresponds to a bill of law that is still under discussion. The information contained herein may be subject to modifications as the bill progresses through the legislative procedure of the Chilean National Congress. For more information please refer to the following link: [Processing in the Senate](#)

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