

LAW THAT RECOGNIZES INTERNET ACCESS AS A PUBLIC TELECOMMUNICATIONS SERVICE IS PUBLISHED

On July 3rd, 2024, Law No. 21,678 was published in the Official Gazette, by which Internet access is recognized as a public telecommunications service (the "Law") through various amendments to Law No. 18,168, the General Telecommunications Law (the "GTL").

As a result of the abovementioned publication, we consider it relevant to describe and summarize what, 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 GTL as one of the services included within the public telecommunications services (without prejudice to the exception described in No. 2 below). As it will be detailed below, this implies, among other things, that public telecommunications service concessionaires will be under the obligation to provide their services to interested parties who request them within their service area (making it equivalent to potable water and electricity), it will allow the government to provide subsidies to demand, and it will simplify the oversight function of the Undersecretary of Telecommunications ("Subtel") with new reporting obligations and increased sanctions.

Exceptional situation of the limited Internet access service to directly provide such service to its consumers

An exception is included by which a telecommunications limited service permit holder may directly provide the service to its consumers when it is provided by telecommunications communities constituted in accordance with a regulation to be issued by the authority.

Incorporation of principles applicable to public telecommunications

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

services

The Law incorporates a paragraph 4 to article 4 of the GTL establishing that public telecommunications services will be governed by principles that ensure the adaptability and sustainability of the industry, among which the following stand out:

- Technological neutrality.
- Universality.
- Continuity.
- Technological convergence.
- Physical infrastructure sharing.
- Transparency, equity and efficiency in resource allocation.

Creation of the National Digital Plan

A mandate is established to the Ministry of Transports and Telecommunications to develop, based on the principles set forth above, a **National Digital Plan** that must incorporate the following policies:

- Use of the radioelectric spectrum policy, ensuring its efficient use.
- National investment policy, promoting national coverage of services in public-private partnerships.
- Connectivity policy, ensuring the promotion of progressive digital connectivity, under quality conditions, to all inhabitants of the national territory.
- Cybersecurity policy in the field of telecommunications.
- Universal accessibility policy, establishing promotion or subsidy mechanisms in order to progressively provide telecommunications services to all inhabitants of the territory.
- Quality of services policy, setting quality standards for the provision of services for the entire national territory.
- Promotion and research policy, fostering research, innovation and the development of specialized human capital in the sector.

Simplification of procedures

The Law modifies Article 14 of the GTL regarding the mechanism to amend telecommunications concessions. The general rule is that the amendment of a telecommunications service concession is made by means of a Supreme Decree of the Ministry of Transports and Telecommunications.

However, the Law incorporates a new exception to the general rule. In this respect, it allows the amendment of a public or intermediate telecommunications service concession by means of a resolution of Subtel in those cases in which specific services (prestaciones específicas) are to be added, according to the type of service provided and in accordance with the respective technical rule.

In this latter case, the Law also incorporates a set of requirements in Article 14 to safeguard free competition and to avoid granting any competitive advantages among telecommunications operators.

In addition, the Law simplifies the general procedure to amend a telecommunications concession in the following cases:

- The requirement to prepare an abstract and its subsequent publication in the Official Gazette is eliminated for the granting and amendment 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 amendment 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.
- Regarding any application for the granting or amendment 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, all notifications made under the GTL may be performed by electronic means.

Right to deploy networks

The Law incorporates the possibility, for operators of telecommunications services, to deploy overhead or underground lines and radiant systems for the provision of public or intermediate telecommunications services on authorized infrastructure, over national public property and the constitution of a legal easement for these purposes.

It also adds that the same right will be granted to holders of intermediate telecommunications services and public

telecommunications services, with respect to infrastructure of state property that are associated with or serve to the operations of a public service concession or a public works concession, allowing that in these cases support infrastructure may be included if necessary.

However, the first transitory article of the Law prohibits the exercise of the right to deploy overhead lines over public squares (plazas) as established in the first paragraph of article 18 of the GTL.

Obligation of non-discrimination

Article 24 bis of the GTL is replaced to set forth the obligation of public service concessionaires that provide telephone service through the multi-carrier system, to offer and provide all concessionaires of intermediate services that provide long distance services the same kind of access or connections to their networks with respect to the quality, extension, term, value or any other characteristic of the services provided to them due to or because of its access or use.

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 amendments; 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. A regulation will specify the security protocols and technical requirements necessary to implement these measures.
- **Obligation to Deliver Technical and Commercial Information:** It expressly establishes Subtel's authority 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

The Law 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 USD36,000- for broadcasting and free reception concessionaires (previously 100 UTM); and 5,000 UTM -approximately USD360,000- 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 Law

Most of the provisions of the Law will enter into force as of the date

of its publication in the Official Gazette.

However, the obligation incorporated in the final paragraph of Article 28C will enter into force 24 months after the publication of the Law in the Official Gazette.

The aforementioned obligation of Article 28C refers to the Subtel's need to deliver a favorable social profitability evaluation report prepared by the Undersecretary of Social Evaluation of the Ministry of Social Development and Family, in order to include investment initiatives for the development of telecommunications infrastructure in the annual program of projects to subsidy.

Authors: Alfonso Silva; Raúl Mazzarella; Sebastián Gómez; Antonia Araya