



# CONSUMER RIGHTS UNDER THE NEW TELECOMMUNICATIONS SERVICES REGULATIONS (DECREE N° 18/2014, MINISTRY OF TRANSPORT AND TELECOMMUNICATIONS)

On 13 February 2014, new Telecommunications Services Regulations, applicable to all telecommunication services provided under the General Telecommunications Law, were published (Decree No. 18 of the Ministry of Transport and Telecommunications, hereinafter the “Regulations”). The main purpose is to regulate the rights and obligations between the service providers and their customers. As noted in its prologue, regulating these rights and obligations is of great relevance in an industry of such an immense economic and social impact, with increasing penetration and under constant technological change. As a consequence, the platforms and methods through which telecommunications services are provided and paid for change on a periodic basis, causing some regulations to become obsolete.

By means of these Regulations, different requirements, restrictions and obligations are imposed on telecommunications providers of all types. Furthermore, some additional specific obligations are imposed exclusively on providers of voice services, Internet services and paid TV services. These requirements are

intended mainly to protect the consumers from the moment of contracting the relevant service until this is terminated. Below you will find a brief description of the provisions that seem to be the most relevant from a consumer standpoint.

## **I. Contracting provisions and other general obligations**

Many of the Regulations’ provisions refer to the contracts to be entered into between providers and users of telecommunications services, most of which comprise reinforcements of obligations already contained in the Consumer’s Rights Protection Law (Law No. 19.496). Through their different communication channels, including websites, providers are instructed to present a clear and transparent contracting procedure. This involves making available at all times updated information regarding their services, their conditions, technical and commercial characteristics, prices and fees, geographic coverage, and also a copy of the relevant contract,

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in order to guarantee a transparent and non-discriminatory offer to their users. Additional obligations are required for the offer of bundled products, such as including an updated quotation comparison mechanism.

Further information and transparency are also expected in the contracts themselves. There is a list of minimum provisions that must be contained in every contract and some other additional ones for voice services, ISP services and paid TV service contracts. Among such obligations, contracts for the supply of internet access must include information related to blocking of contents according to the Net Neutrality Regulation (Supreme Decree. N° 368/2010). Likewise, paid TV contracts must include provisions regarding content blocking and parental control, and they must list all channels and services available to the user and detail a procedure for their modification. Regarding this last matter, the Regulation also sets forth that providers cannot change or eliminate the TV channels of a service without 20 days' prior notice, and these channels must be replaced with others of similar quality and content, or otherwise the user has to be compensated.

The Regulations also set forth obligations regarding the provision of the services. These include, for example, allowing users access to updated information about the use of the services up to the very day before the relevant request (except for certain specific cases such as international roaming and long distance calls). They also include allowing multiple companies to provide services within the same building or facilities. Again, some specific obligations are imposed on voice service providers and ISPs. For example, users of voice services must be able to communicate with all subscribers and users of voice services within Chile and abroad, and must be allowed to request or eliminate at any time, access to additional services, such as long distance calls, complementary services, and international roaming.

## **II. Payments and indemnities**

The Regulations set forth minimum standards for monthly invoicing by the providers. Invoices must be delivered on paper or in electronic form, at the user's choice, and must not include charges for services rendered before three months prior to the invoice date (except for international roaming and long distance calls, which may be incorporated up to six months afterwards). Likewise, the invoices must not give a payment date less than 20 days from the invoice date and must specify all the contracted services and payment mechanisms.

Public voice services and ISPs must deduct from the monthly invoice the time during which the relevant services were suspended, interrupted or altered for any cause not attributable to the user. In the case of suspension, interruption or alteration of any telecommunications service that exceeds 48 continuous or discontinuous hours during a month, not due to force majeure or an act of God, the relevant provider must indemnify its users with an amount equal to three times the value of the daily rate for each day of suspension, interruption or alteration of the service (and this amount must be included in the next monthly invoice).

## **III. Suspension of the services**

The Regulations allow providers to suspend the provision of relevant services if users have not paid their invoices within a term of five days following the payment date. However, no suspension is permitted if part of the fees contained in the relevant invoice has been subject to a complaint filed in accordance to the Telecommunications Complaints Regulation (Decree N° 194/2012), which has not been definitively settled in favour of the provider and as long as the uncontested balance of the referenced invoice has been duly paid by the user. The criteria used by the provider for the suspension of the service must be expressly mentioned in the contract and must be non-discriminatory. Once the pending fees are duly paid, the deadline for restoring the relevant service shall be the business day following the effective payment date.



#### **IV. Termination of the services**

The Regulations grant users the right to terminate contracts at any time and at their own discretion, by simply notifying their decision to the relevant provider, which must terminate the provision of the services within one business day. The provider must stop charging the relevant fees for the terminated services as from the notification date and any fees paid in advance shall be returned to the user. It is set forth that any actions required for the termination or modification of a contract may not be more burdensome than the ones required for contracting the services in the first place.

In the case of termination of voice services, the relevant providers have an obligation to maintain the relevant user's number in order to allow the user to request another service with that number within a certain period of time, after which providers may reassign the relevant number to another user. If the termination is due to the lack payment of an invoice by the customer within 90 days, the providers must keep available the number of the relevant user for 180 days from the date of termination of the service (or from the date of the last charge in the case of prepaid services). If the termination has any other cause, the relevant number must be kept for two years.

#### **V. Sanctions for non-compliance**

Sanctions for non-compliance of the Regulations are to be imposed by the Ministry of Transport and Telecommunications, through the Undersecretary of Telecommunications, according to the sanctions chapter of the General Telecommunications Law (law 18.168/1982). These sanctions differ depending of the severity of the relevant infraction. In the case of fines, they may vary from approximately US\$400 to approximately US\$70,000, which may be trebled in the case of repeated offences (recidivism). If a fine is not paid within 30 days, that circumstance may even lead to the cancelation of the respective telecommunication licence (depending on the case).

Provisions of the Telecommunications Complaints Regulations (Decree N° 194/2012) remain fully applicable regarding the service invoice.

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**V. Final comments**

Since the Regulations have a customer oriented focus, it is important to note that all the rules set forth in the Regulations are without prejudice to the rights and remedies contained in Law No. 19.496 (which regulates the protection of consumer rights, as mentioned above) and all other applicable regulations.

Finally, from a telecommunications regulations standpoint, it should be noted that as from the date the Regulations came into

effect, the former Telephone Public Services Regulations (Supreme Decree N° 425/1996), the regulations regarding the offers and prices of such services (Decree N° 742/2003) and Title III of the VoIP Services Regulations (Supreme Decree N° 484/2007) were derogated.

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