

Draft decision imposing upon PT Comunicações, S.A. the obligation to send to subscribers a form enabling them to choose between detailed and non-detailed billing

Pursuant to Law no. 5/2004, of 10 February (ECL), providers of publicly available electronic communications services must make available to subscribers detailed billing, where requested (article 39, paragraph 2, point b) of ECL).

According to paragraph 1 of article 94 of ECL, PT – Comunicações, S.A. (PTC), being the universal service provider, is under the obligation to make detailed billing available to subscribers, in order to allow the latter to verify and control the charges incurred in using the public telephone network and related publicly available telephone services. For this purpose, paragraph 2 of the referred article 94 lays down that the following minimum level of detail must be ensured:

- a) Initial price of the connection to the telephone service, where appropriate;
- b) Subscription price, where appropriate;
- c) Price of use, identifying the different traffic categories, indicating each call and the respective charge;
- d) Periodical equipment rent price, where appropriate;
- e) Price for the installation of additional material and equipment requested subsequently to the commencement of the service provision;
- f) Subscriber's consumption;
- g) Compensation resulting from reimbursement.

As regards billing detail, it is important to consider the provision of paragraph 1 of article 8 of Law no. 41/2004 of 18 August, under which subscribers have the right to receive non-detailed bills.

ICP-ANACOM is aware that PTC has not been fulfilling the obligation established under article 94 of the ECL, as is illustrated by the decisions of this Authority dated 27/04/2005 and 03/06/2005, which have applied penalties for violation of the provision in point c) of paragraph 2 of article 94 of the ECL, as that company has provided a simple or summarized bill, which does not indicate each call and the respective cost, to all those who have not requested a detailed billing.

On 8 July 2005, approval was granted to a new PTC adherence contract for the provision of publicly available telephone service at a fixed location, wherein 4 types

of bills are established, customers being entitled to choose, free of charge, among any of these types:

- Level 1 – bill with the full list of communications and values per communications categories;
- Level 2 – bill with details of the different traffic categories, including each call and the respective cost;
- Level 3 – bill breaking down in chronologic order all performed communications;
- Level 4 – corresponds to level 3 billing, but suppressing the last four digits.

According to the provision of article 94 of the ECL, clause 11.3 of the contract establishes that the bill shall include the elements which correspond to the minimum level of detail provided for in paragraph 2 of that legal provision, except for level 1 billing, which shall be made available to the customer, where he/she expressed his/her intention in this sense. Part 3 of the adhesion form states that in case this part is not filled out, level 2 billing shall be provided.

Thus, compliance with the legal provisions as regards detailed billing in contracts to be concluded by PTC with new subscribers is guaranteed.

However, it is necessary to safeguard the rights of subscribers of the universal service who have concluded contracts with PTC before the contractual model approved on 08/07/2005 entered into force.

From a combined reading of article 94 of the ECL and paragraph 1 of article 8 of Law no. 41/2004, it can be concluded that PTC must not provide detailed billing to customers who have not been given the opportunity to opt for non-detailed billing.

On the light of the above, pursuant to point g) of article 9 of the Statutes of ICP-ANACOM, attached to Decree-Law no. 309/2001, of 7 December and in the scope of assignments provided for in points d), h) and n) of paragraph 1 of article 6 of the above-mentioned Statutes and of the regulation objective provided in point c) of paragraph 1 and points a) and b) of paragraph 4 of article 5 of the ECL, the Board of Directors of ICP-ANACOM, aiming to ensure compliance with obligations laid down in article 94, paragraphs 1 and 2, of the ECL, and in article 8, paragraph 1, of Law no. 41/2004, of 18 August, hereby approves the following draft decision that determines upon PTC:

1. That the company sends to former subscribers (those who have concluded contracts prior to the contractual model approved on 08/07/2005) within 60 working days, together with the billing, a form which enables them to choose between one of the types of billing provided for in the adhesion contract recently approved. This form must clarify which elements are comprised in each type of billing and inform that, in case the subscriber does not express his/her will within the time limit determined by PTC, the level 2 billing shall be provided, the detail of which correspond to that provided for in paragraph 2 of article 94 of the ECL.

2. That the company notifies ICP-ANACOM within the same 60-day time limit that the determination of the preceding paragraph has been complied with, attaching thereto a copy of the form supplied to subscribers.

3. That the company provides billing with the level of detail provided for in paragraph 2 of article 94 to all subscribers who have not opted for level 1 billing or have not expressed their will, following the expiry of the deadline to reply to the forms.

Under articles 100 and 101 of the Code of Administrative Procedure, PTC shall be notified to give its opinion on the present determination in writing, if the company so desires.