

## **Telecommunications Customer Protection Ordinance**

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### 1. Telecommunications Customer Protection Ordinance (TKV)

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of 21 January 1998;

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18 December 1997

First Ordinance Amending the Telecommunications

Customer Protection Ordinance

Federal Law Gazette I No 19 issued in Bonn on

21 April 1999

### 2. Official Analysis of the Federal Government concerning the

Telecommunications Customer Protection Ordinance

Translation -

In case of divergent interpretation,

the German text shall prevail

As of April 1999

## Ordinance

concerning Customer Protection

in the Telecommunications Sector

\*)

(Telecommunications Customer Protection Ordinance)

(TKV)

of 11 December 1997

The Federal Government hereby issues the following

Ordinance under §41 of the Telecommunications Act of 25 July

1996 (Federal Law Gazette I p 1120):

### **Part One. General Provisions** ➔

#### **§1 Scope**

1. The present Ordinance regulates the special rights and obligations of providers of publicly available telecommunications services and of parties contractually using or desiring such services (Customers).
2. Any agreement diverging from the present Ordinance to the detriment of the Customer shall be ineffective.

#### **§2 Non-Discrimination**

Dominant providers of publicly available telecommunications services shall offer such services to all Customers on equal terms, unless different terms are objectively justified.

#### **§3 Unbundling**

1. Dominant providers of publicly available telecommunications services shall offer these services separately in line with general demand on the market if a dividing line can be drawn between them in terms of content.

Services thus distinct shall be listed and priced individually in the service specifications.

2. Where several services are included in one offer or bill, the individual services shall be listed separately.

#### **§4 Offerings for Service Providers**

1. Operators of public telecommunications networks shall be obliged to supply their offerings in such a way as to allow providers of publicly available telecommunications services to market, in their own name and on their own account, and provide their Customers with such offerings. This shall not apply if the obligation is not objectively justified in any given instance. Equivalent obligations stipulated in the form of rights under §97 (4) of the Telecommunications Act shall remain unaffected.

\* The term "Customers" includes end users and resellers.

2. The network operator may not bind service providers exclusively or for an unreasonably long period, nor impose upon them any constraints as regards their own pricing, terms and conditions or any other field of activity. Service providers may not be offered any less favourable conditions than those that apply to the operator's own marketing organisation or to affiliated companies, unless this is objectively justified.

#### **§5 Call Price Computation**

With regard to accounting, providers shall observe the following principles:

1. The duration of calls subject to time-based tariffs in publicly available telecommunications services shall be established within a framework of regular adjustment to an official time standard.
2. Providers shall submit for regular checks for accounting accuracy and compliance with the contractually agreed rates, including zoning data, the systems, procedures and technical facilities used to convert into charges payable the call data gathered under subpara 1 above.
3. Compliance with the requirements according to subpara 1 above as well as the accounting and billing accuracy of the data processing facilities according to subpara (2) above shall either be ensured by a quality assurance system or annually verified by officially appointed, sworn experts or comparable authorities. To prove compliance with this provision, a test certificate from an accredited quality assurance certifying body or the test results from an officially appointed, sworn expert shall be submitted to the Regulatory Authority.

#### **§6 Suspension of Service**

1. Any company required to provide universal services under §19 of the Telecommunications Act or providing services under §97 (1) of the Telecommunications Act may only suspend or temporarily restrict such services on account of essential requirements in conformity with Community law. It shall pay regard to Customers' interests and confine to the service concerned the suspension or restriction, as far as technically feasible.
2. Essential requirements justifying restricted universal service are
  1. security of network operations;

2. maintenance of network integrity, especially the prevention of serious interference to the network or damage to software or stored data;
  3. interoperability of services;
  4. data protection.
3. Where services are suspended or temporarily restricted for a longer period, providers of publicly available

telecommunications services shall inform Customers in appropriate manner of the nature, extent and duration of the suspension. In the event of foreseeable suspended or restricted service, providers shall also be required to give prior notice to Customers who depend on uninterrupted connection or on a capability to establish calls at any time and who have informed the provider accordingly, in writing, stating reasons. The requirement to give prior notice of the beginning of suspension shall not apply if such notification

1. is not objectively possible beforehand in the given circumstances, or
2. would delay the termination of interruptions that have already occurred.

## **§7 Liability**

1. Claims for damages and claims to cease and desist initiated by the Customers of providers of publicly available telecommunications services shall be regulated by §40 of the Telecommunications Act and by general legal provisions.
2. Providers of publicly available telecommunications services shall be liable for pecuniary damage up to a maximum of twenty-five thousand Deutschmarks per user. This shall not apply in relation to users providing publicly available telecommunications services themselves. Providers of publicly available telecommunications services may limit by amount, by agreement among each other, their liability for such services. Any contractually agreed limit may not be less than the total of the minimum amounts of liability in relation to the other user's end-users who have suffered damage. The provider's liability in relation to all claimants collectively shall be limited to twenty million Deutschmarks for each event causing damage. If the compensation payments due to several claimants on account of the same event exceed the maximum amount payable, the amount of compensation shall be reduced by the ratio of the total of all claims for compensation to the maximum amount payable. Limitation of liability by amount shall not apply if the damage was caused wilfully.

## **§8 Limitation of Actions**

Contractual claims asserted by the providers of publicly available telecommunications services and claims arising from the use of such services asserted by their Customers shall be subject to a limitation period of two years. §201 of the German Civil Code shall apply accordingly.

## **Part Two. Voice Communication Services and Network Access** ➡

### **First Section. General Provisions** ➡

#### **§9 Availability as a Universal Service**

1. To the extent that a company provides voice telephony and directly related services by virtue of an obligation to provide universal service under §19 of the Telecommunications Act or services under §97 (1) of the Telecommunications Act, the Customer shall have a right to provision of the relevant services in accordance with the legal regulations and the General Terms and Conditions of Business of the party obliged. The network connection provided shall be capable of allowing the Customer, within the limits imposed by the law, to make and receive national and international calls, and shall support voice, facsimile and data communication.
2. The Customer may terminate a contract with a voice telephony provider not obliged to provide universal services without complying with the period of notice if the services offered by such provider fail to meet the requirements of the minimum catalogue as laid down in the Ordinance concerning Universal Services for the Telecommunications Sector and if the provider failed to inform the Customer, in writing, of this fact on conclusion of the contract.

#### **§10 Declaration from the Property Owner**

1. Whoever provides access to public telecommunications networks may require a declaration of consent from the person having the property right to be presented to the network operator in respect of the property concerned (Declaration from the Property Owner, annex 1) before entering into a contract on such services.
2. The network operator shall give a counter-declaration to the person having the property right (annex 2).
3. Where another provider is requested to provide access to a public telecommunications network, the beneficiary of the declaration from the property owner shall enable the other provider of access to public telecommunications networks to share use of the lines and facilities installed on the premises, provided that the property owner does not make out any further declarations and such shared use is not precluded by the requirements of the beneficiary. The beneficiary may charge a fee for this, based on the costs of efficient service provision.

#### **§11 Provision of Security**

1. Providers of publicly available telecommunications services required to offer universal services under §19 of the Telecommunications Act shall have the right to make the provision of universal services to end-users subject to payment of a reasonable security if there is reason to believe that the Customer will fail to honour contractual obligations or will fail to honour them within the prescribed period. Security may be provided in the form of a surety bond from a financial institution registered in the European Economic Area. The provider shall be entitled to limit the provision of security to such surety bond and a money deposit. The security shall be returned or

cleared without undue delay as soon as the conditions requiring its provision cease to apply.

2. Reasonable within the meaning of para (1) sentence 1 above shall typically be the installation price plus six times the rental. Any requirement to pay a higher amount shall be justified in relation to the Customer by specifying the circumstances of their particular case. To determine claims to be secured, account shall be taken primarily of outstanding amounts from earlier contracts on the provision of general network access or voice telephony, the Customer's calling and payment habits as well as objective indications of an increased level of tariff units in the future.
3. In other respects, the options open to providers of publicly available telecommunications services with regard to securing claims shall be given by general legislation.

### **§12 Fault Repair Service**

Dominant providers of voice telephony shall, at the Customer's request, respond to a break in service, at night and on Sundays and public holidays also, without undue delay. The contractual terms for the fault repair service shall be included in the provider's General Terms and Conditions.

### **§13 General Network Access**

1. General access to fixed public telecommunications networks shall be provided by means of a spatially freely accessible interface. It shall be installed at a suitable place to be agreed with the Customer. This shall be done in compliance with the standards and interface specifications referred to in the Official Journal of the European Communities under Article 5 (1) of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ L192/1) as amended by Article 5 (1) of Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJ L295/23) or made compulsory under Article 5 (3) in conjunction with Article 10 of the above Directive.
2. Within the framework of the voice telephony service the Customer shall have the option of restricting use of their connection by having calls to certain types of number barred on the network side.
3. As far as technically feasible, the Customer of a dominant provider of voice telephony may expect to be offered calling line identification and direct dialling-in facilities on their connection, subject to the constraints of data protection regulations.
4. Customers having general access to fixed public telecommunications networks shall have the option of using switching and support services as well as directory enquiry services.
5. Where a Customer migrates to another provider of general access to a public telecommunications network, notice of termination may be accepted by the new provider and transmitted to the former.

## **Second Section. Bills and Objections ➔**

### **§14 Itemised billing**

Where a Customer, prior to the end of the relevant billing period, requests itemised billing for publicly available voice communication services, the provider shall make out such bill subject to technical feasibility and to the applicable data protection regulations. This shall not apply when a bill is not usually issued in conformity with the special type of service provided. Subject to the relevant data protection regulations, an itemised bill shall show a sufficient level of detail to allow checking and verification of charges payable. The standard form of itemised billing shall be free of charge.

### **§15 Billing**

1. Unless otherwise agreed between the Customer and other providers of publicly available telecommunications services, the provider offering the Customer access to the public telecommunications network (billing party) shall make out a bill which also includes rates incurred for calls established on the Customer's connection by selection of another network service provider. The individual providers and at least the total amount of charges due to them shall be stated on the bill. This shall not affect §14. Payment to the billing party shall also have a discharging effect in relation to the other providers specified on the bill. The billing party shall transmit to the other providers for the purpose of enforcing claims in relation to their Customers the necessary customer and call data.
2. Where the Customer pays the bill in part only, it shall, unless otherwise agreed, be assumed in case of doubt that payment of the claims of the individual providers is effected according to their share of the total.

### **§16 Verification of Charges Billed**

1. Where a Customer objects to the amount of call charges billed for publicly available telecommunications services provided on the networks intended for publicly available voice communication, the total volume of calls recorded shall, due regard being paid to the protection of co-users, be broken down into the individual call data, even when an itemised bill has not been requested, and a technical inspection carried out, the documentation of which shall be presented to the Customer upon request.
2. Where no call data were stored for technical reasons or at the Customer's request or stored call data were erased at the Customer's request or on account of legal requirements, the provider shall not be obliged to verify individual calls if the statutory periods relating to erasure of stored call data were indicated to the Customer on the bill in clearly visible printed form. Where data are not stored for technical reasons, the verification requirement shall not apply if the Customer was advised in clearly visible printed form, prior to billing, of this restricted capability of the connection.
3. The burden of proof that the offering, down to the interface at which the Customer has general access to the network, was provided in good technical condition and properly billed shall lie with the provider. If the technical inspection identifies defects or errors which could have affected computation of the charges objected to, there shall be made the rebuttable presumption that the provider's call charges were incorrectly established. If it is proved that the connection was used in circumstances beyond the Customer's control or if facts give reason to assume that the level of call charges

results from third-party manipulation of public telecommunications networks, the provider shall not be entitled to demand from the Customer such call charges.

### **§17 Determination of Charges if Bills are Questionable**

Where there is reason to believe that calls have been incorrectly charged but the correct amount cannot be ascertained, the average call charges due to the respective provider in the past six undisputed billing periods shall be used as the basis for billing. This shall also apply whenever there is strong doubt, on account of the circumstances, whether a Customer's general network access has been used in a manner attributable to them to the extent for which they have been billed. Where general network access has been provided for fewer than six billing periods, the number of completed billing periods shall be used as a basis. In computing the average, the actual circumstances shall be taken into account. If, under comparable circumstances, the charges payable in the preceding billing periods were lower than the computed average, these charges shall be substituted for the computed amount. Any overpaid charges shall be refunded. If appropriate, the Customer shall have the right to prove that the connection was not used at all in the relevant billing period.

### **§18 Customer Specification of Payment Ceiling**

As from 1 January 2001 the Customer may specify in relation to the provider of publicly available telecommunications services a monthly payment ceiling for the given service. The provider shall ensure that this ceiling is not exceeded without the Customer's consent.

### **§19 Barring; Default of Payment**

1. Providers of general access to fixed public telecommunications networks and voice telephony providers shall be entitled to refuse provision of such services in full or in part (barring) if
  1. the Customer defaults on the payment of at least one hundred and fifty Deutschmarks and security provided has been used up, or
  2. there exists a reason for barring under para (2) below.

Barring may not be implemented sooner than two weeks after written warning and after the Customer has been informed of their right to seek legal redress. Written warning of call barring may be sent in conjunction with the demand for payment. Barring without previous announcement and observance of the given waiting time shall only be permitted when

1. the Customer has given cause for termination without notice of the contractual relationship, or
2. harm to the provider's facilities, notably to the network, is imminent as a result of repercussions from terminal equipment or public safety is at risk, or
3. the volume of charges rises to a very great extent and there is reason to believe that, if barring was implemented at a later date, the Customer would not pay, would not pay fully or would not pay in time charges for services provided in the meantime and security provided has been used up and barring is not



unreasonable.

2. As far as technically feasible, barring shall be restricted to the service concerned and service shall be restored without undue delay once the reasons for such measure no longer exist. Full barring of general network access shall only be implemented after outgoing traffic has been barred for at least one week.
3. Barring according to para (1) subpara 1 above shall not be carried out when well-founded objections to the bill have been raised and the average amount according to §17 of this Ordinance has been paid or an agreement extending the term of payment reached.

### ***Third Section. Special Additional Services ➔***

#### **§20 Allocation of Subscriber Numbers**

1. Where subscriber numbers are not allocated by the Regulatory Authority under the provisions of §43 (2) of the Telecommunications Act, the Customer shall obtain numbers required by means of written allocation from the provider of access to the public telecommunications network (secondary allocation). Such numbers shall be taken from the numbering blocks allocated by the Regulatory Authority to the telecommunications network operator or to the telecommunications service provider (primary allocation).
2. The Customer shall have a right to obtain subscriber numbers on a non-discriminatory basis, subject to the conditions and arrangements laid down by the Regulatory Authority under §43 (2) of the Telecommunications Act and to the obligations imposed upon the network operator. This shall also apply to Customers whose providers are not network operators at the same time. Through allocation of a subscriber number, the end-user acquires a provider-independent, lasting right to use this number, subject to the Telecommunications Act and the conditions and arrangements of §43 (2) thereof. A subscriber number cannot be transferred by act of party.
3. Customers shall accept changed subscriber numbers if these are caused by measures or decisions taken by the Regulatory Authority in relation to the provider under §43 of the Telecommunications Act and related rules of procedure, or if allocation was made on the basis of incorrect data supplied by the Customer.
4. For the allocation of a subscriber number, a provider may charge solely the costs incurred for allocation.
5. Subscriber numbers assigned by the provider prior to the date of entry into force of this Ordinance shall be considered allocated.
6. Objections to numbers allocated or to changed subscriber numbers may only be raised by the Customer in relation to their provider within the specified period of six weeks from receipt of written allocation. Where the Customer, through no fault of their own, was prevented from objecting within the specified period, they may still raise objections within two weeks of elimination of the circumstance causing prevention. The Customer shall be informed of this period in the written notice of allocation.

#### **§21 Entry in Public Directories**

1. The Customer may request their provider of publicly available voice communication services to include them in a generally accessible subscriber directory, not necessarily one limited to the provider, free of charge, and may check and correct or have the entry deleted again.
2. Subscriber directories shall state at least the number, name, first name and address of the network access holder, provided these particulars are available to the provider and may be published in Customer directories. Subject to the applicable data protection regulations, the network access holder may request that co-users also be included in the directory against payment of a fee. This right shall also be granted to resellers of voice communication services in respect of their Customers. The provisions on the Customer's right to withhold consent, wholly or in part, to entry in directories of their data shall remain unaffected.
3. Providers shall take care that all subscriber entries in directories are made on a non-discriminatory basis.
4. Any company obliged under §19 of the Telecommunications Act to issue directories or providing this service under §97 (1) of the Telecommunications Act may request subscriber data from the providers of publicly available voice communication services. Fees charged shall be based on the cost of efficient service provision.
5. Paras (1) to (4) above shall apply accordingly in respect of entry in directory enquiry services.

## **§22 Provision of Directories**

The Customer may expect their provider of publicly available voice communication services to provide them once a year, as a rule, with a directory including the numbers of subscribers in the relevant region.

## **Part Three. Provision of Transmission Lines ➔**

### **§23 Availability as a Universal Service and Declaration from the Property Owner**

With regard to transmission lines designated as a universal service offering, §9 and §36 of this Ordinance shall apply accordingly. §10 of this Ordinance shall apply accordingly with regard to the use of property in connection with the provision of transmission lines.

### **§24 Interfaces**

Transmission lines shall be provided via spatially freely accessible interfaces. The network termination of the transmission line shall be installed at a suitable place to be agreed with the Customer. On the other hand the interface may be integrated in the terminal or switching equipment, as agreed between the transmission line provider and the Customer. Where terminal or switching equipment in the case of sentence 3 above is not supplied by the transmission line provider, the latter shall not be responsible for any malfunction of the equipment.

### **§25 Neutrality of Usage**

At the Customer's request, dominant providers of transmission lines shall supply such transmission lines on a neutral usage basis, subject to any given technical constraints. The Customer may request provision of a fully transparent transmission line conforming to the relevant interface specifications for use in unstructured form, according to their requirements. The use of particular channels may neither be prohibited nor prescribed by contract. Any contractual arrangements restricting transmission line usage or imposing non-technical restrictions on transmission line connections or on the connection of terminal equipment shall be ineffective.

## **§26 Discontinuation of Supply**

Any dominant transmission line provider not required to provide such lines as a universal service that intends to discontinue its supply of transmission lines shall notify the Regulatory Authority and Customers affected of such intention. The provider shall inform Customers in particular that they may contact the Regulatory Authority in the matter of the planned discontinuation. The Regulatory Authority shall decide whether the period of notice is reasonable and publish this in its Official Gazette.

## **Part Four. Customer Information** ➔

### **§27 Publication of Customer Information**

1. Providers of publicly available telecommunications services shall publish general information for end-users and provide interested parties with easy access to this information. Included shall be information on access, conditions of use and supply, the Customer's right to withhold consent wholly or in part to the entry in directories of their data, prices, and, with reference to voice telephony, information on the quality parameters according to §32 of this Ordinance. The requirement of sentence 1 above shall be deemed fulfilled when such information is published in the Official Gazette of the Regulatory Authority and is available to Customers at providers' offices. Should published information appear elsewhere, the provider shall inform the Regulatory Authority promptly thereof. The Regulatory Authority shall publish in its Official Gazette a note concerning the reference.
2. In addition to the requirement according to para (1) above, providers of access to fixed public telecommunications networks shall be obliged to publish, in line with para (1) above, the technical characteristics of interfaces in accordance with the appendix pertaining to §27
3. of this Ordinance. Changes to existing or the introduction of new interface specifications shall be published three months prior to their implementation.
4. In addition to the requirement according to para (1) above, dominant transmission line providers shall be obliged to publish, in line with para (1) above, information on technical characteristics, quality characteristics usually achieved and the conditions for the attachment of terminal equipment in a manner complying with Article 4 and Annex I of Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (OJ L165/27) as amended by Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJ L295/23).
- 5.

General information for end-users on general access to fixed public telecommunications networks shall include details of typical delivery periods, typical fault repair times, compensation arrangements in the case of interrupted service as well as a summary of the procedure for initiating conciliation according to §35 of this Ordinance. Reference shall also be made to the possibility of Customers being informed as provided for by §6 (3) of this Ordinance.

## **§28 General Terms and Conditions; Alteration of Contract**

1. As far as the General Terms and Conditions of providers of publicly available telecommunications services are included in contracts under §23 (2) no 1a of the German Law Governing Standard Business Conditions, the provider's order form shall include a reference to publication in the Official Gazette of the Regulatory Authority and to the possibility of inspection at the provider's offices.
2. Providers of publicly available telecommunications services may alter existing contracts by including General Terms and Conditions, service specifications and rates in accordance with §23 (2) no 1a of the German Law Governing Standard Business Conditions. §27 shall apply.
3. Customers shall be notified in appropriate manner of any alteration of contract according to para (2) above and its contents, and also where such will be published. Where a contract is altered under para (2) above to the detriment of the Customer, the Customer concerned may give notice of termination of the contractual relationship for the date on which the alteration is to take effect. The Customer shall be informed of their right to give notice of termination. Any alteration to the detriment of the Customer shall not take effect prior to such information being given. The right to give notice shall be forfeited if the Customer does not exercise such right within one month of being informed thereof.
4. Notwithstanding §29 (2) of the Telecommunications Act, retroactive alterations of contract shall only be permissible when they are for the benefit of the Customer and solely for the purpose of subsequently eliminating distortions of competition in compliance with the prohibition of discrimination. §1 (2) of this Ordinance shall not apply.

## **§29 Periods relating to Publication**

1. Changed rates and rate-related components of the General Terms and Conditions of dominant voice telephony and transmission line providers shall not take effect sooner than one month after publication thereof. This time-limit shall not apply in respect of special rates for particular occasions, valid for short periods only. Information on new offerings from dominant transmission line providers shall be published as soon as possible. The Regulatory Authority may in individual cases permit divergences from the time-limit specified in sentence 1 above.
2. With regard to rates and rate-related components of General Terms and Conditions that are subject to approval, publication according to para (1) above shall not take place before approval has been granted.

## **§30 Agreement on Services in the Absence of Approved Rates**

Where rates subject to approval are agreed without the approval prescribed by law having been obtained or a temporary Regulatory Authority order issued and there exist no rates to take the place of the agreed rates as provided for by §29 (2) sentence 1 of the Telecommunications Act, the agreement shall be ineffective.

### **§31 Disconnection of Terminal Equipment**

Where a Customer's terminal equipment is disconnected under §59 (6) sentence 1 of the Telecommunications Act, the network access provider shall notify the Customer of such disconnection without undue delay, stating reasons and informing them of their right to object under §59 (6) sentence 2 of the Telecommunications Act. As soon as the terminal equipment that was the cause for complaint has been disconnected from the network termination, access shall be restored.

### **§32 Quality Parameters**

1. The operators of fixed public telecommunications networks and dominant providers of voice telephony shall establish the following quality parameters:
  1. supply time for initial connection (typical delivery period),
  2. fault rate per access line per year,
  3. fault repair time (typical repair time),
  4. unsuccessful call ratio,
  5. call set-up time,
  6. response times for operator/switched services,
  7. response times for directory enquiry services,
  8. percentage of coin and card-operated public payphones in working order,
  9. billing accuracy.
2. The quality parameter referred to in para (1) subpara 7 above shall also be established by providers of directory enquiry services offered on a number beginning with the digits 118.
3. Indicator, definition and measurement method shall comply with the appendix pertaining to §32 (3) of this Ordinance. Until such time as a definition and measurement method have been agreed at European level, the definition, indicator and measurement method applicable in respect of the quality parameter referred to in subpara 9 above shall be determined by the Regulatory Authority. The Regulatory Authority shall publish in its Official Gazette the requirements resulting from sentences 1 and 2 above.

### **§33 Quality Reports**

1. Operators of fixed public telecommunications networks and voice telephony providers not having a dominant position in the market in respect of these offerings shall establish quality parameters as specified under §32 of this Ordinance within a maximum of eighteen months from startup of business.
2. The relevant statistics shall be provided to the Regulatory Authority upon request. The Regulatory Authority shall publish in its Official Gazette such statistics, in appropriate manner, once a year.

## **Part Five. Regulatory Authority Procedures** ➔

### **§34 Procedures in the case of Restricted Access**

1. Where a dominant transmission line provider restricts the provision or reduces the availability of a transmission line, the Customer affected may bring the case before the Regulatory Authority, requesting it to decide whether such restricted access is in conformity with the provisions of the Telecommunications Act and with the ordinances issued under the Telecommunications Act. The parties concerned shall be notified of the Regulatory Authority's substantiated decision within a period of one week of its adoption.
2. Operators of telecommunications networks and providers of publicly available telecommunications services confronted with the barring, termination, fundamental change to or restriction of the availability of services supplied to them by dominant providers of voice telephony services may bring the case before the Regulatory Authority, requesting it to decide whether such restriction is in conformity with the provisions of the Telecommunications Act and with the ordinances issued under the Telecommunications Act. Para (1) sentence 2 above shall apply.
3. The Regulatory Authority shall publish in its Official Gazette a list of procedures according to paras (1) and (2) above once a year.

### **§35 Conciliation**

1. Any end-user of a provider of access to a public telecommunications network or of a voice telephony provider claiming that their rights under this Ordinance have been infringed may bring the case before the Regulatory Authority for the purpose of settling the dispute.
2. The Regulatory Authority shall hear the parties concerned with a view to reaching an amicable settlement. The procedure shall end with agreement between the parties or with a statement from the Regulatory Authority that the parties have failed to reach agreement. The parties shall be informed in writing of such outcome.
3. Each party shall bear the costs it has incurred by participating in the procedure itself.
4. The procedure specified in paras (1) to (3) above shall also be open to Customers of dominant transmission line providers.

### §36 Guaranteeing Universal Service

Dominant voice telephony providers refusing to conclude a contract on the use of voice telephony or directly related universal services without the Customer agreeing to withdraw shall notify the Regulatory Authority promptly, stating reasons. The Regulatory Authority shall make sure, under the procedure in place to guarantee universal service, that the relevant services are made available to the Customer.

## **Part Six. Concluding Provision** ➔

### **§37 Entry into Force; Expiration**

The present Ordinance shall enter into force on 1 January 1998. §18 shall enter into force on 1 January 1999. The Telecommunications Customer Protection Ordinance 1995 of 19 December 1995 (Federal Law Gazette I p 2020) shall expire with the entry into force of the present Ordinance.

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The German Bundesrat has given its consent.

Bonn, 11 December 1997

The Federal Chancellor

Dr Helmut Kohl

The Federal Minister of Posts and Telecommunications

Wolfgang Bötsch

## **Annex 1. (pertaining to §10 (1))** ➔

Declaration from the Property Owner

from.....

(Property owner)

to.....

(Network operator)

The property owner agrees to the network operator installing on his/her property

.....Street (Square) no. ....

in.....

as well as in and on the buildings situated on this property all the equipment required to install, test and maintain connections to its public telecommunications network on the property concerned or on an adjacent property and in the buildings situated on it. This right shall also cover cabling that is already installed on the premises. The equipment shall only occupy as much of the property as is necessary and reasonable.

Where such equipment causes damage to the property and/or the buildings situated on it, the network operator shall undertake to properly restore the damaged parts of the premises. The equipment installed by the network operator shall be relocated or - where the equipment does not serve the property itself and relocation is not sufficient - removed if it prevents changed use of the property and if it is no longer acceptable for it to remain in that place. The cost of relocating or removing the equipment shall be borne by the network operator. This shall not apply to equipment serving that property only unless the public telecommunications network requires changes at the same time.

Furthermore, the network operator shall, as far as is reasonable, be obliged and entitled to remove at its own expense equipment it has installed within one year of the property owner giving notice of termination. Upon request, the equipment shall be removed without undue delay after notice has been given, unless removal is incompatible with the interests of a third party warranting protection.

This declaration shall remain in force indefinitely. It may be withdrawn by giving six weeks' notice.

.....

Place, Date Signature of the Property Owner, for a condominium signature of the Manager

.....

Name and address (Street and number, postcode and place) of the Property Owner or Manager

**Annex 2. (pertaining to §10 (2)) ➡**

Counter-Declaration

from.....

(Network operator)

to.....(Name, address)

(Property owner)

The network operator shall undertake, without prejudice to any existing legal or contractual claim, to properly restore the property of (Owner).....

.....Street (Square), no. ....



in.....

and the buildings situated on it as far as the premises have been damaged by the equipment used to install, maintain or extend connections to its public telecommunications network on the property concerned or on an adjacent property and/or in the buildings situated on it as a result of being used by the network operator. As far as is technically feasible and in compliance with existing safety requirements, the network operator shall use cabling that is already installed on the premises. The network operator shall relocate equipment it has installed or - where the equipment does not serve the property itself and relocation is not sufficient - remove it if it prevents changed use of the property and if it is no longer acceptable for it to remain in that place.

The cost of removing or relocating the equipment shall be borne by the network operator. This shall not apply to equipment serving that property only unless the public telecommunications network requires changes at the same time.

Furthermore, the network operator shall remove at its own expense equipment it has installed within one year of notice of termination being given, provided this would not unreasonably inconvenience the property owner. At the property owner's request, the network operator shall remove the equipment without undue delay, unless removal is incompatible with the interests of a third party warranting protection.

This declaration shall remain in force indefinitely. It may be withdrawn by giving six weeks' notice.

....., Date.....

..... (Branch office)

.....

**Appendix. pertaining to §27 (2) ➔**

Technical Characteristics of Network Interfaces

Technical characteristics of interfaces at commonly provided network termination points, including where applicable reference to relevant national and/or international standards or recommendations:

- for analogue and/or digital networks:
  - a. single line interface,
  - b. multiline interface,
  - c. direct dialling-in (DDI) interface,
  - d. other interfaces commonly provided;

- for ISDN (where provided):
  1. specification of basic and primary rate interfaces at the S/T reference point, including the signalling protocol,
  2. details of bearer services able to carry voice telephony services,
  3. other interfaces commonly provided.

### **Appendix. pertaining to §32 (3) ➔**

Supply Time and Quality of Service Indicators, Definitions and Measurement Methods  
Indicator 1) Definition Measurement Method Supply time for initial connection

ETSI ETR 138 ETSI ETR 138

Fault rate per access line

ETSI ETR 138 ETSI ETR 138

Fault repair time

ETSI ETR 138 ETSI ETR 138

Unsuccessful call ratio

ETSI ETR 138 ETSI ETR 138

Call set-up time

ETSI ETR 138 ETSI ETR 138

Response times for operator services

ETSI ETR 138 ETSI ETR 138

Response times for directory enquiry services

As for operator services

As for operator services

Percentage of coin and card-operated public payphones in working order

ETSI ETR 138 ETSI ETR 138

Billing accuracy National definitions and measurement methods

## National definitions and measurement methods

1) Indicators should allow performance to be analysed at a regional level (ie no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).