

## **Argentina: The Last Steps in the Deregulation Process.**

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This article is written in March of 1998. At this moment the Argentine telecommunications market is at a very important stage as the government has just issued a package of resolutions that determined the last term for monopolic basic telephone services, established a schedule for gradual liberalization of certain services and the basic rules and policies towards the total liberalization of the telecommunications market.

Argentina is the region's second most advanced country in terms of privatization and deregulation of the telecommunications services, only preceded by Chile, who broadly opened its markets in 1994. Argentina took a slower pace and started an escalated deregulation process in 1990.

### **Background. Basic Telephone Service. Privatization. Temporary exclusive rights.**

The first step in the process was the privatization of Entel (Empresa Nacional de Telecomunicaciones), the state owned company that rendered all types of telephone services in a monopoly basis. The company was divided into two corporations, each of which was adjudicated an area of exclusive service (north and south of the country) for local and domestic long distance telecommunications. An international public bid took place and the licenses were awarded on November 8, 1990 to Telefónica de Argentina S.A. ("Telefónica") and Telecom Argentina Stet France Telecom S.A. ("Telecom"). The public telephone network that belonged to Entel was transferred in property to each of the BTS Licenses within their exclusive area of service.

The international telecommunications services were exclusively granted to Telintar S.A. a company owned 50-50% by the two Basic Telephone Services (BTS) Licensees. The international services include international transmission of voice, data, international telex, and the lease of interational "point to point" links for telephone services, data transmission or value added services.

Both the domestic and the international basic telephone services were granted to the licensees mentioned above for their exclusive provision during an "Exclusivity Period", initially established until November 8, 1997. The Bidding Terms (Decree 62/90) established the possibility of a three year extension of such period, provided that the Licensees had complied with certain specific goals and obligations established thereunder.

During the Exclusivity Period, the Licensees are not allowed to provide by themselves any other telecommunication service outside the scope of their licenses. The Basic Telephone Service is defined as "the provision of fixed telecommunications links that form part of the public telephone network and the provision through said means of urban, interurban and international live voice telephone services".

The urban and interurban Basic Telephone Service is also rendered in Argentina by several small independent operators (Cooperativas) that existed before the privatization of Entel, who hold exclusive rights for the provision of such services -within their own specific areas- until the end of the Exclusivity Period granted to Telefónica and Telecom.

### **Other telecommunications services rendered in competition.**

Besides the basic telephone service, other telecommunications services are already rendered in Argentina in a competition basis, including certain services open to full competition, and certain others granted in a limited competition basis, for example by limitation in the number of licenses and scope of service areas.

According to current regulations, any company wishing to obtain a license for the provision of telecommunications services in competition is required to have as sole corporate purpose the provision of telecommunications services excluding broadcasting (Decree 1461/93).

**The domestic data transmission service** is provided by several companies in competition. Startel S.A. is the name of the company owned 50/50% by Telefónica and Telecom which competes with the other companies in the provision of this service<sup>1</sup>.

**Cellular service** is provided by several companies. Decree 1461/93 established a division of the country for the provision of mobile services. Basically, Area I is the Northern region of the interior of the country, Area II is the Buenos Aires Region (Area Múltiple Buenos Aires -"AMBA"), and Area III is the southern region of the interior of the country. This division is maintained for the upcoming PCS services.

The first company who started the provision of cellular services was Movicom (whose shareholders are: Motorola, BellSouth and BGH), who obtained a license for Area II -AMBA- (Band A) in 1988. After the privatization of Entel, the BTS Licensees were jointly granted a license for the provision of cellular services in Band B of the same area as Movicom. Thus, they created Miniphone, owned 50% by each BTS Licensee.

The mobile services in Areas I and III are provided in Band A by CTI Norte and CTI Sur<sup>2</sup> who respectively won the public bid therefor in 1993; and by Telecom Personal (wholly owned by Telecom) in Area I, Band B, and Unifón (wholly owned by Telefónica) in Area III, Band B.

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<sup>1</sup> There are specific regulations that forbid the cross subsidies from Telefonica or Telecom into Startel or other subsidiaries by use of income derived from the basic telephone service.

<sup>2</sup> The shareholders in both companies are: Grupo Clar n: 24,5%; GTE: 25,5%; Lucent Technologies: 10%; Compa a Austral de Inversiones (Cayman) Ltd.: 24,5%; The Argentine Investment Company: 8.5%; TCW Americas Development Association, LP: 7%.

**Trunking, paging and other similar services** are open to full competition. Authorizations are limited, however, to spectrum availability. Other telecommunications services open to full competition are the so called "**Value Added Services**". These services include data electronic mail, fax information services, voice and audiotext information services, electronic exchange of data services, etc.

**Internet Access Service** is regulated as a value added service and is currently provided by a broad number of licensees. However, until the end of the Exclusivity Period, all providers are legally required to lease point to point links for international data transmission with Telintar, who -as mentioned above- received the exclusive rights therefor. The price of such links has made the service very expensive for final customers. In a recent public hearing called by the Communications Secretary related to internet, mostly all the participants criticized the high prices charged by Telintar, as well as the speed of the data transmission, which necessarily has to go through one same link for all internet access providers. The tariffs for internet access were recently reduced as both BTS Licensees have dedicated special telephone numbers to all Internet Access Providers through which their customers can contact them via data transmission lines at lower rates than the regular local basic telephone service rates (Resolution 499/98).

On **PCS Services**, an international public bid will take place for the adjudication of two licenses for bands called AA' and BB' in the Buenos Aires area (Area II). The Government has issued the Bidding Terms and Rules for PCS Services by Decree 266/98, published on March 13, 1998. The call for Bids will take place during the first semester of 1998. Another call for Bids for Areas I and III is established to take place within the next six months after the adjudication of PCS licenses for Area II. The objective of the government in these Bids is to promote the development of national wireless networks.

Licenses and frequencies will be adjudicated without time limits. Licensees may use any digital access technology for the provision of PCS services, provided that it allows interconnection with the rest of the telecommunications services.

The two cellular operators of Area II (Movicom and Miniphone) are not allowed to participate in the Bid for PCS services in such Area but, as their licenses were considered to include the right to migrate to new technologies for mobile services, they were each granted the right to purchase a PCS license (for bands CC' and DD', respectively) at the average proportional price of the winning bids. However, they may only start rendering PCS services 16 months after the adjudication of bands AA' and BB'. Their cellular licenses would be adequated to the new service.

The cellular service providers of Areas I and III are allowed to participate in the PCS Bid for Area II. However, as Unifon and Telecom Personal are wholly owned subsidiaries of Telefónica and Telecom, respectively, they are exceptionally allowed to participate jointly to bid for only one license which, in case they win, will be granted to only one of them provided that Telecom and Telefonica have previously divided Miniphone and the 20 Mhz of band frequency that this company may have purchased by exercise of the option to purchase PCS band width as described above, and that the 40 Mhz for PCS services to be adjudicated under the bid are also divided among themselves.

In any case, the rule is that any provider of mobile telephone, cellular or PCS services in

one same Area of Service may not hold more than 50 Mhz of band width. Additionally, no person or company may hold a direct or indirect participation in more than two providers of mobile, cellular or PCS services within one same area of service.

### **The Last Steps of the Deregulation Process**

Last year, Telefónica, Telecom and Telintar requested the three year extension of the Exclusivity Period provided in the Bidding Terms indicating that they had complied with all the objectives and obligations required thereunder. The Government hired the German company Deutsche Telepost Consulting GmbH (Detekom) for the control of Licensees performance and, by Decree Nr. 264/98, has just answered to such request.

Under Decree 264/98, issued on March 10, 1993, the Government has not only decided on the extension required but also established a schedule for deregulation of telecommunications services and a program for transition towards the total liberalization of the telecommunications market<sup>3</sup>.

The Exclusivity Period of the BTS Licensees was not extended for three years but only for two more, until November, 1999. As certain of the obligations imposed to the BTS Licensees were found by the government not fully performed while on several others the licensees exceeded the objectives required, the alternative of granting a two year extension instead of adopting a tough position and terminating the exclusivity resulted an equitable choice that also serves for the initiation of the transition plan towards a total liberalization of telecommunications services in a gradual manner.

The liberalization of the basic telephone service is established to take place between October and November, 1999, when the extension of the exclusive rights of the BTS Licensees will end. After said date, the BTS Licensees will be able to compete against each

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<sup>3</sup> The date of effectiveness of Decree 264/98 depends on the conclusion of a judicial case initiated by an Argentine citizen who claimed that before the government decide on the extension required by the SBT Licensees a public hearing should take place. ("Youssefian, Martin v. National State/ Communications Secretary"). Notwithstanding the outcome of the case, and even in the case that a public hearing has to take place for the public to exercise their right to be heard, the government is not bound by the opinions or decisions that may result therefrom. Thus, the Decree had the effect of advancing the Government's decision on the issue in order to prevent the continuance of an uncertain situation for all interested parties and prepare the scenario for the following years, based on the international obligations assumed.

other and they will also have to compete with two new licensees of basic telephone service with national coverage.

The **two new licenses for Basic Telephone Service** will be granted to companies formed by: Independent Operators of BTS ("Cooperativas"); operators with acknowledged possibilities to extend the areas of BTS services; and members who jointly meet the following conditions: (a) operators of telephone services with similar quality parameters as the ones of the public telephone network -the current cellular services providers whose shareholders evidence international experience in fixed telephone services, with evidenced settlement in Argentina as of March, 1998, and (b) operators of physical networks for transmission of TV signals (cable operators) covering at least 5 cities of more than 150.000 habitants or a minimum of 100.000 customers, jointly or individually; and/or other providers of telecommunications services with physical networks already installed. These companies shall have no links with the current SBT Licensees.

The two new licenses to be granted shall contain the same rights and obligations that derive from the licenses of the current SBT Licensees.

Thus, the government has decided to generate competition in the short term by extending as from November, 1999, the areas of service of the current BTS Licensees to all the national territory, and by including two new basic service providers, in total 4 providers in competition.

As from November, 1999, the SBT Licensees shall have no further business in common (ie: Miniphone, Telintar, or Startel, which shall be divided among them).

The requirements established for who can apply for the two new BTS licenses clearly indicate that the government has privileged the alternative existent networks as well as the expansion thereof in order to decrease the dominant position that the BTS Licensees have as owners of the national public network. The continuation of services rendered by small independent operators is also privileged. The Decree also evidences that the government's decision, based on the international experience, is to encourage genuine investments and to take advantage of the existing infrastructure to develop new networks.

It is established that in October/November of year 2000, **licenses for long distance and international service** will be granted. It is advanced that the data transmission providers who have license therefor even before the privatization of Entel and that participate in the markets by their own means with investments in alternative national and international networks, may be able to apply for the long distance and international telephone licenses.

The **General Rules for Licenses and a National Plan on Licenses** shall be issued within 180 days since publication of Decree 264/98 (March 13, 1998). These regulations shall be subject to the compromises assumed before the World Trade Organization and the agreements executed among the Mercosur countries (regional organization formed by Argentina, Brasil, Uruguay and Paraguay). Among other requirements, these rules shall include: (a) minimum levels of service quality standards required in accordance with international parameters; (b) minimum levels of investments required in view of the development of networks; (c) separate accountability and other measures to prevent cross subsidies; etc. Additionally, the rules will respect principles of international reciprocity in the

criteria and restrictions for the adjudication of licenses, as well as the principles of transparency, non discrimination, and loyalty in the development of competition.

Within such same term, the Communications Secretary is also required to prepare and issue the **General Rules on Universal Service**. These shall be prepared following the international experience and shall include a definition of the concept of Universal Service and services included; the clients that will benefit from those services (ie: senior citizens; low income clients, etc.); areas to be benefited; price considered reasonable for the referred services; and will establish the mechanisms for financing eventual deficits derived thereof, under the principle that all operators shall proportionally contribute under non discriminatory terms.

Additionally, the Communications Secretary is required to prepare and issue the **General Rules on Competition Practices** in order to ensure effective conditions for competition in the newly designed telecommunications scenario, which shall contemplate conducts such as cross subsidies, discriminatory treatment and abuse of dominant position, among other practices that may appear in the market.

With regards to **tariff regulation**, as from November 1999, the principle will be the freedom for the operators to establish their own tariffs. However, for those areas where to the criteria of the Communications Secretary there is no effective competition, the latter shall continue its regulation. In all cases, tariffs shall be informed to the public and be non discriminatory.

Decree 264/98 also resolved the **immediate liberalization of Public Telephone Services**, to be provided in open and full competition in accordance with the Public Telephone General Rules, and the National Plan for Licenses to be issued by the Communications Secretary. Tariffs for public telephones shall be freely established by the operators in those areas where effective competition exists.

Finally, the Decree established that 100 days after publication thereof and every six months thereafter, the Communications Secretary shall call for **public bids for the adjudication of licenses of basic telephone service in rural areas**, including places with less than 500 habitants located at more than 15 kilometers from the limit of Basic Tariffs Area of the current SBT Licensees. The rules and bidding terms are being prepared by the Communications Secretary.

Decree 266/98, issued on same date as Decree 264/98, issued the new **Interconnection Rules**, that seek to foster competition and to consolidate the development of networks. These rules establish the obligation to all providers to interconnect their services based on prices, terms and conditions freely agreed thereupon while the Regulatory Agency is allowed to intervene in case the parties do not reach an agreement. The general principles of non discrimination, transparency and publicity of all agreements, are adopted in the Interconnection Rules. Finally, and until a methodology that may allow the Regulatory Authority to define prices based on long term incremental costs is implemented, a list of reference interconnection costs was established, in order to prevent that the absence thereof obstructs the entrance of new providers to the market.

### **Regulatory framework for the de-regulated scenario.**

The total deregulation of telecommunications services by no later than November 8, 2000

was compromised by Argentina in the Negotiations on Basic Telecommunications of the World Trade Organization, which ended on February 15, 1997. Thus, Argentina now faces the challenge of designing an adequate regulatory framework that would efficiently ensure competition as well as good services and fair prices for the future deregulated market. As contradictory as it apparently seems, deregulation requires a new regulation replacing and re-ordering the former. In fact, the current telecommunications regulatory framework consists of a varied series of laws, decrees and resolutions, some of which are still in effect although they were created during the monopoly of Entel but, nevertheless, served for the defining exclusive rights granted to the BTS Licensees. A new scenario, where new entrants are expected, should be necessarily accompanied by a new clear set of rules that ensure such new players a fair play.

Fortunately, most of the key issues, such as interconnection rules, control of tariffs in certain areas until effective competition exists, definition of scope, terms and conditions under which new licenses will be granted, Universal Service, and specific antitrusts regulations, among others, have been identified and, as prescribed by Decree 264/98, new rules are currently being drafted therefor, as there is a shared concern on the adequate regulation required. The challenge now is to design the proper rules to achieve such goals.

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