

## **THE FIRST STAGES OF THE NEW COMPETITIVE TELECOMMUNICATIONS MARKET IN ARGENTINA**

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### **The Deregulation Process. Background.**

In November 2000, Argentina completed a gradual de-regulation process and opened its telecommunications markets to competition.

In fact, the process was initiated in 1990 with the privatization of Entel, the former state owned telecommunications monopoly. Telefónica de Argentina S.A. ("Telefónica") and Telecom Argentina S.A. ("Telecom") acquired each 50% of the property of the National Telecommunications Network, Telefónica in the south and Telecom in the north of the country, and received licenses including the temporary exclusive right to provide local and long distance telephone services to the clients on their respective exclusive areas. The international services were provided by Telintar, a company owned 50-50% by Telefónica and Telecom.

Later, Decree 264/98 established that as from November 1999, Telefónica de Argentina S.A. and Telecom Argentina S.A. could compete against each other in their respective jurisdictions on long distance and international telephone services. Thus, Telintar was dissolved. Additionally, two new consortiums were allowed to provide long distance and international basic telephone service to clients in all the territory of Argentina: one led by Movicom-Bell South, and the other by CTI-GTE.

However, in the 90's the competition became increasingly active in other telecommunications services, such as domestic data transmission services, all value added services and in the mobile wireless telephony, where cellular and PCS licenses were granted in bids and auctions, resulting Telecom, Telefónica (who had preemptive rights to receive such licenses under the Entel privatization rules), Movicom and CTI, the four winners who now compete against each other in all the regions. The wireless market may receive new players with the announced 3<sup>rd</sup> Generation licenses that the Government is studying to auction in the near future.

### **The New Rules for the Competitive Market.**

In year 2000, a new set of rules was created for the new competitive scenario. With Decree 764/2000, the Government confirmed the broad opening of the Argentine telecommunications market and approved a new set of rules, effective as of November 9, 2000. These new rules regulate four basic aspects (1) Telecommunications Licenses; (2) Interconnection; (3) Universal Service, and (4) Administration, Management and Control of the Radioelectric Spectrum.

However, Broadcasting services are still regulated separately, by Law 22.285

### **1) New Telecommunications Licenses.**

Annex 1 to Decree 764/2000 establishes the new Rules on Telecommunications Licenses.

The new rules establish a “single” Telecommunications license, called “License for Telecommunications Services”, thus eliminating the old distinction between licenses for telephony services and licenses for other telecommunications services.

There is no restriction for the participation of foreign capital in the provision of telecommunications services. The licenses are granted without time limitation and are issued “on demand” pursuant to the compliance with certain basic requirements described below, allowing the provision to the public of any type of telecommunications services, fixed or mobile, by wire or wireless, with national or international scope, regardless of whether the infrastructure is owned or leased by the licensee.

For mobile services that may require the use of radioelectric spectrum frequencies, the licensee shall obtain from the National Communications Commission the appropriate permit for such use, in accordance with the General Rules for the Administration, Management and Control of the Radioelectric Spectrum. For other type of licenses which services may require the use of wired infrastructure, the Telecommunications Law provides that the holders of such licenses are entitled to use the air space, land or underground spaces of the public domain of the National, Provincial or Municipal states, without compensation whatsoever (Section 39, Law 19.798, although certain amendments to this rule are currently being discussed by the Congress, so that this use of public spaces may not be gratuitous in certain cases).

The applicant of a Telecommunications License must inform which are the services it plans to provide and its license is registered for the provision of such services. Once the license is granted, its holder may expand it to cover other services by informing to the CNC such decision with no less than 30 days before the commercial launch of the new service, including the technical information required for the obtention of the original license.

The lessors of telecommunications infrastructure to telecommunications services providers and the resellers of telecommunications services are also required to obtain a Telecommunications License.

Requirements for the obtention of a Telecommunications License:

Besides the formal legal documentation of the foreign or national companies or physical persons applying for a License (ie: bylaws, financial statements, etc.), the applicant shall provide a description of the services, the geographical coverage thereof, a technical plan and a plan for investments

expected for the first three years of service. The investment plan must be consistent with the technical plan.

With regards to application costs, there is an application fee of US\$ 5.000 charged by the CNC for the Telecommunications Licenses.

The licensees are required to initiate the provision of their services within 18 months as from the date when the licenses are issued in the Official Gazette. At that time, the services shall be rendered on a regular, continuous and non-discriminatory basis, under quality conditions.

The licensees shall be free to establish the tariffs applicable to their services, which shall be applied on a non-discriminatory basis, and shall guarantee the transparency of the prices of any services provided to the public.

Among other regulations applicable to telecommunications services, licensees shall comply with the obligations imposed under the Interconnection Rules, General Rules on Universal Service, National Plan on Numbering, Fundamental Plan on Signaling, Rules on Radioelectric Spectrum Use, Rules on Tariffs, as applicable.

It is important to point out that the transfer of shares representing the control of the licensee, as well as the assignment of the licensee to a third party is allowed, pursuant to a prior notification and approval of the CNC, which shall not be unreasonably denied provided that certain conditions are met, such as the compliance of any commitment with the State, and the inexistence of debts of control and verification fee, financial obligations under Universal Service, etc. However, if the transfer of shares does not represent a change in the corporate control of the licensee (measured in terms of ownership and voting rights), the CNC shall only be informed and no authorization is required.

## **2) Rules on Interconnection.**

Annex 2 of Decree 764/2000 provides for the new Rules on Interconnection.

The Rules on Interconnection apply to all interconnection agreements to be executed by the Telecommunications Providers, which agreements can not contain discriminatory conditions or terms opposed to these Rules.

The Interconnection Rules are designed in the interest of the user of Telecommunications Services. Thus, the objectives are to promote the entrance of new providers and to enhance competition to increase the quality of services and reduce prices paid by the users thereof.

The general principles adopted by the Interconnection Rules are the following:

- (i) Agreement:** Interconnection prices, terms and conditions shall be freely agreed upon by the Providers following the minimum requirements of the Interconnection Rules.

- (ii) **Obligation:** the Requesting Provider has the right to request interconnection, and the Dominant Provider has the obligation to grant interconnection, while the rest of the providers are mandated to be interconnected with the networks of other providers.
- (iii) **Non-Discrimination:** The Providers have the right to obtain economic or technical interconnection conditions equal to those offered to other providers requiring similar facilities independently of the service provided.
- (iv) **Reciprocal Compensation:** The Providers have the right to establish reciprocal compensations on the origin, transportation and termination of the communications.
- (v) **Efficiency:** No Provider may impose any interconnection term or condition that may generate an inefficient use of networks and equipment of the interconnected Providers.
- (vi) **Open access:** The dominant providers shall use networks of open architecture and shall comply with technical standards and recommendations of the ITU and the Fundamental Technical Plans in effect for the provision of the interconnection required and to allow the interconnection of other telecommunications providers.
- (vii) **Prices and Charges based on long term incremental costs:** The requesting providers are entitled to be charged the prices and charges for the functions and essential network elements provided by the dominant providers based on long term incremental costs.
- (viii) **Commercialization of Services:** Interconnection agreements shall not restrict the providers on their freedom to offer and commercialize to third parties any services allowed by the interconnection

The Rules establish that the Secretary of Communications will exceptionally intervene in Interconnection issues in the following cases: (a) if a Provider denies the interconnection required by another Provider; (b) if, at any stage of the negotiations following acceptance of the interconnection petition, there are unjustified delays or lack of agreement that impede the execution of an interconnection agreement; (c) if, after execution of the agreement, there are unjustified delays in the enforcement of the agreed terms; (d) whenever founded reasons of public interest require the Secretary's intervention.

The interconnection agreements are required to be filed with the Secretary of Communications within 10 days following the signature thereof. The agreements are public except for the confidential information, at the criteria of the Secretary. The execution of such agreements shall be published and during the following 30 days, the interested third parties and other Providers may file observations or challenges to be solved by the Secretary. The Secretary will solve any of these issues specially taking into account the interest of the final user and the principles described above.

The Interconnection Rules identifies certain "essential facilities" which are certain functions and network elements of the dominant providers, who are mandated to provide access thereto at long term incremental costs which shall be publicly offered in a list of prices. Among these functions and elements identified and defined by the Rules as "essential facilities", the Rules

define the following technical concepts: (1) Local access or termination; (2) Local loop; (3) Port; (4) Co-location; (5) Operator service; and (6) Local transit.

### **3) General Rules on Universal Service.**

Annex 3 to Decree 764/2000 establishes the General Rules on Universal Service.

Universal Service is a concept that comprises a set of telecommunications services that shall be provided to all users regardless of their geographical location, with a certain quality standard, at reasonable accessible prices.

The objective of the Universal Service rules adopted is to promote that all the population have access to the telephone service, taking into account the regional, income or physical limitations or impediments, and the special social needs of certain habitants, and to promote the provision of services thereto in conditions that may be equivalent to the rest of the users.

Other objectives pursued under these rules include the promotion of different regions of the country by means of the telecommunications services, and to promote the culture, education and public health, the access to information, the communications between educational institutions, libraries, health centers, etc.

The subsidies corresponding to programs of Universal Service shall be administered through a Universal Service Fiduciary Fund. All the Providers of Telecommunications Services shall contribute to such Fund by means of a contribution equivalent to 1% of their total income on the telecommunications services provided thereby, net of any taxes and fees imposed thereto.

The administration of the Fund is in charge of an Administration Council composed by representatives of the Telecommunications Providers, Provincial Governments, and Consumers Associations.

### **4) Rules on Spectrum Administration, Management and Control.**

Annex 4 to Decree 764/2000 provides for the new rules on Radioelectric Spectrum Administration.

The new rules on spectrum administration were a firm step from the Government to establish clear, transparent rules on the allocation of frequencies, and a change of the principle where certain frequencies were granted "on demand" to the principle that, as a scarce resource, its use is granted through auction processes, or exceptionally, on demand, providing for the application of equitative distribution criteria and preserving the general interest.

The Communications Secretary shall authorize the use of frequency bands as follows: Upon reception of a request for the use of a frequency band, it shall

publish in the Official Gazette, the request received for such frequency band providing for a 15 day term so that third parties may have knowledge of such request and, eventually to register themselves as interested parties therefor. Then, the Secretary will decide to auction such bands, whenever there are more registered interested parties than frequency bands available for their use, or whenever it declares the scarce of such frequency bands. If none of these two conditions apply, then the use of the frequency band shall be granted on demand.

A recent resolution, issued by the Communications Secretary (Res. 235/01) determined that the frequency bands on the range from 30 MHz to 960 MHz shall be considered "scarce" for a geographical zone whenever the remaining availability for its use shall be equal or lower than 50% of the total assigned to a specific activity.

### **The Telecommunications market today. The new players.**

Upon the liberalization of the market, several new players applied for and obtained telecommunications licenses. Among others, AT&T, Techtel, and NSS ("I-Plan") are new licensees for telephony services. Residential local telephony is still dominated by Telefonica and Telecom, and the competition for long distance and international services is still in its infancy, with Movicom.-Bell South and CTI competing with the basic telephone incumbents. A niche that several new players are competing now for is the integrated telecommunications services (voice, data and internet access provision) to the business clients.

On the other hand, new infrastructure projects are expanding the existing networks with Impsat, Comsat, Techtel, AT&T, and Silica Networks as some of the new fiber optic broad band carriers.

Finally, the ISPs are now experiencing a concentration phase, where several big players are purchasing small ISPs in order to expand their number of subscribers. America Online initiated its services in 2000 and is likely to become a major player, together with Ciudad Internet (grupo Clarín), Advance (Telefónica), Arnet (Telecom) and Netizen (who recently acquired the ISP business of El Sitio). Several of these have started to offer ADSL services, competing with cable TV related companies (such as FiberTel, of Cablevisión TCI) in the high speed internet market.