

# BERETTA GODOY

## *WHEN SUCCESS CALLS- THE FRAMEWORK OF THE TELECOMMUNICATION INDUSTRY IN ARGENTINA*

*The sophisticated communication network existing in Argentina offers a wide range of opportunity for all kinds of players in the industry. This paper will highlight the key aspects of the regulation of telecommunications in the country, from telecommunication services to providers of equipment.*

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## THE ARGENTINE TELECOMMUNICATIONS FRAMEWORK

In the early 1990s the Argentine government divided the phone services market between two companies, Telefónica de Argentina S.A. (“Telefónica”) and Telecom Argentina S.A. (“Telecom”). The country was divided into two areas: the southern part was serviced by Telefónica and the northern part by Telecom.

These companies were granted the exclusive right to provide local and long distance telephone services to clients in their respective areas. The international services were provided by Telintar, a company owned 50-50% by Telefónica and Telecom. This duopoly remained in force until 2000, when local and foreign companies were first allowed to provide phone services to any local or foreign companies. However, there are still practical barriers to free entry in Argentina’s major cities because most of the key infrastructure belongs to Telefónica and Telecom.

Other telecommunication services, such as mobile phone, internet, or data transmission services were supplied under a framework of free competition from the beginning. With respect to mobile services, four companies are currently operating in Argentina: (i) Claro (owned by the Mexican Telmex); (ii) Movistar (owned by Telefónica); (iii) Personal (owned by Telecom); and (iv) Nextel S.A. Claro is currently the largest mobile operator in Argentina with a 35.1% of the market share, followed by Movistar with 32.9% of the market share. Personal is third with 29.9% and Nextel has 2.1% of the market share.

According to the last census performed in October, 2010, 57,860,500 mobiles are currently in service in Argentina for a population of 40,000,000 approx. This number is considerably higher than the number of users of fixed-line telephone services which is 9,417,317 and shows the importance of the mobile market in Argentina which is expected to increase in the following years.

In relation to internet connections in Argentina, the major providers are also related with phone service companies such as Telefónica and Telecom or TV cable providers like Multicanal or Cablevision, both owned by Grupo Clarin which is the biggest multimedia group in Argentina. This service, like the mobile phone service, has also increased in the past years (e.g. in 2010 there was a 20% increase compared with 2009) and it is expected to continue its expansion.

### 1. OVERVIEW OF THE ARGENTINE TELECOMMUNICATIONS FRAMEWORK

Telecommunications in Argentina are governed by the National Telecommunications Law No. 19,798 (“NTL”), Decree No. 764/2000 (the “Decree”) and by all the individual regulations issued by the National Telecommunications Commission (“CNC”)<sup>1</sup> as application authority of the NTL.

Telecommunication is defined by the NTL as “*every transmission, emission, or reception of signs, signals, images, sounds, or any type of information that can be transmitted by wire, radio-electricity, optical media or any other electromagnetic system*”.<sup>2</sup> The CNC is in charge of granting telecommunications licenses, valid throughout the entire Argentine territory, non-assignable without the authorization of the CNC, and not subject to time limits.<sup>3</sup>

As set out above, any Argentine or foreign company can apply for a license to provide telecommunications services. To do so, foreign companies must register a branch or create a subsidiary in Argentina. The holder of the license would be the Argentine branch or subsidiary.

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<sup>1</sup> The CNC is an agency of the Telecommunication’s Secretariat and was created by Decree No. 660/1996.

<sup>2</sup> National Telecommunication Law No. 19.798, Section 2.

<sup>3</sup> Decree No. 764/2000, Section 4.1.

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Under the NTL, a license is required to provide telecommunication services in Argentina. The NTL provides a single license system which telecom companies must apply for regardless of the service they intend to provide. However, the application for a license must include a description of the technical and economic aspects of the services to be supplied, and after its grant, the license will be limited to such services. A license can be expanded to cover other services by filing a supplementary application detailing the technical and economical aspects of the new service.

Currently, a telecommunication license may include the following services: (i) fixed or mobile phone services, (ii) wire or wireless internet or data services, (iii) "value added" services such as alarm services, audio-text, conference call, and (iv) video and audio calls.<sup>4</sup> It may also include international or domestic connection services, with or without network infrastructure, the lease of telecommunications infrastructure or the resale of telecommunication services. A license need not be limited to the aforementioned services or technologies.

The lease of telecommunications networks, facilities and equipment also requires a telecommunications license, if it is a "lease", in the strict legal sense of the word, it means taking the control and operation of the physical leased asset. The word "lease" is also used in the telecommunications market to identify agreements for providing services, such as granting access to networks or connection services operated by a licensed telecommunication company, which do not require the user of the services to obtain a license.

Except for the tariffs on public payphones,<sup>5</sup> the prices of telecommunication services can be freely set. Prices are not regulated if they are set in a competitive market.<sup>6</sup> They must be applied to objective categories of clients, on a non-discriminative manner. The prices of services provided to the general public must be transparent. The CNC can request telecommunication companies to report their prices.<sup>7</sup> Telecommunication companies must grant access to their services on a non-discrimination basis, meaning that all the providers have the right to obtain economic or technical interconnection conditions equal to those offered to other providers requiring similar facilities.

If the relevant services require the use of wired infrastructure, licensees are entitled to use the air space, land or underground spaces of the public domain of the National, Provincial or Municipal states, subject to the payment of a permit fee.<sup>8</sup> The use of frequencies of the radio-electric spectrum requires a special permit with the Secretariat of Telecommunications.<sup>9</sup>

Licensees are required to initiate the provision of their services within eighteen months of the publication of the license in the Official Gazette.

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<sup>4</sup> For providing services that may require the use of radio-electric spectrum frequencies must obtain from the CNC the appropriate permit for such use, in accordance with the General Rules for the Administration, Management and Control of the radio-electric spectrum.

<sup>5</sup> Resolution No. 1122/1998 of the Telecommunication Secretariat.

<sup>6</sup> Decree No. 764/2000, Section 11. However the prices of telecommunication companies with dominant market position (defined as 75% market share) are regulated by the CNC.

<sup>7</sup> Decree No. 764/2000, Section 11.

<sup>8</sup> Law No. 19.798, Section 39.

<sup>9</sup> As described by Section 5.1 of Decree 764/2000, "the radio-electric spectrum is an intangible resource, scarce and limited, whose management is under the exclusive power of the Federal State". The permits for its use can be substituted, modified or revoked, totally or partially, at the discretion of the Federal Telecommunications Secretariat. The term of the permit must be determined on a case-by-case basis, and in no case should be less than five years.

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## 2. PROCEDURES TO OBTAIN A TELECOMMUNICATIONS LICENSE

A license application is comprised by three sets of documents:

- (i) *Legal*: corporate information of the applicant, such as articles of incorporations, by-laws or partnership agreements, tax registration before the tax authority, etc. As described before, all these documents must belong to a legal entity registered in Argentina.
- (ii) *Technical*: description of the technical aspects of the service to be provided, including description of the network, location, and geographic coverage for the first three years. The content of this report may vary according to the service to be provided and it is extensively described in the CNC's regulations.
- (iii) *Economic*: A description of the investment plan for the first three years, including network and operation investments with details of investments in network installation and operations – if fitting – and other telecommunications infrastructure, describing quarterly the concept and amount of the costs projected for the said period. In addition, the applicant shall provide a description of the origin of the resources for fulfilling the investment and technical plan with the following; (a) in case of self financing, its source must be identified and reported; and (b) in case of resources obtained, or planned to be obtained from third parties, the companies, persons and/or financial entities planned to provide the resources shall be reported, indicating the sums each one will provide, as well as their estimated date of provision and their terms of reimbursement.

The applicable regulations set forth that the CNC must issue its decision on the grant of the license within 60 working days as from the filing date. It can request the submission of additional information and documents, in which case the 60-day term would be counted as from such additional filing. It is not uncommon for the CNC to request additional filings, even more than once in the same application.

The lapsing of the aforementioned 60-day term does not have the effect of an automatic approval of the license application and, in practice, the grant of a telecommunications license may demand from twelve to eighteen months as from the filing date, depending on the services to be provided, their complexity and the requirement of additional information by the CNC.

After the license is granted and as provided by Section 10 of the Decree, the licensee will have to comply with additional obligations with the CNC such as reporting obligations on an annual basis, including, relevant information related with the status of the service.

## 3. TRIPLE PLAY SERVICE UNDER ARGENTINE FRAMEWORK.

Triple Play service (Cable TV, telephone and Internet by a single provider) in Argentina is still limited to certain legal provisions stated on Law No. 22,285 of Audiovisual Communication Services, which forbids companies with a license to provide public services (such as fixed-line phone services) to provide audiovisual services. In the last years only the cable TV provider Telecentro S.A. ("Telecentro") provided triple play services in the City of Buenos Aires, as well as a few small companies outside Buenos Aires because, not being providers of telephone services, they are not limited by the provisions of Law No. 22,285.

The biggest phone services companies like Telefónica and Telecom are offering these services through agreements with affiliated cable TV companies. This situation has been challenged over the past year by triple play providers such as Telecentro. However, the matter is still unsettled and Telefónica and Telecom continue to offer this service. New companies applying for a license would be able to provide Triple Play Service.

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On January, 2011, Telecentro was also authorized to provide the mobile service, which means that if it gets the air space that used to be owned by *Movicom* (acquired by Telefónica in 2005), it would be the only company to provide *cuatriplay* service in Argentina.

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If you have any question or comment regarding the foregoing, do not hesitate to contact us by calling at (54-11) 4326-7386, via fax to (54-11) 4326-7396 or via e-mail addressed to [godoy@berettagodoy.com](mailto:godoy@berettagodoy.com).