Privatization & (and) Deregulation of the Argentine Telephone Service 1990-2000

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I. Introduction.

This paper presents a description and analysis of the telephone privatization and consequent deregulation process that has taken place in the Argentine Republic over the last ten years. The privatization of ENTel (Empresa National de Telecomunicaciones, the public nationwide telephone company) brought about great changes in the industry as

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well as the creation of new regulatory agencies. It also meant that the state would put the provision of telephone service into private ownership selected by means of an international public bid; the management and assets would be transferred to the private sector while the regulation and control of the industry would remain on the governmental level.

In order to convey just how fundamental a change this was for the industry this paper will briefly focus on the state of the industry up to 1989 and then explore in detail the legal framework and regulatory agencies created for implementing such a radical change. It will then continue with some relevant data on new services implemented, investment amounts, lines installed, etc. Finally, the paper will briefly discuss the deregulation of the local, long distance, and international telephone service provision.

II. ENTel—The Former National Telecommunications Company.

Argentina's telecommunications industry dates back to the year 1881, when a Swiss company laid the first telephone lines in downtown Buenos Aires. Towards the middle of the century, however, a local subsidiary of The International Telephone and Telegraph Corporation (ITT), the American-owned Unión Telefónica del Río de La Plata, was operating the service until Juan D. Perón declared its nationalization. A newborn state company, ENTel, was created as a symbol of the Peronist government's nationalization process, which also included the railroads, mail service, and energy.

From that point, ENTel managed to secure a legal monopoly throughout most of Argentina. No licenses were granted to private enterprises. The only other companies operating (on a very small scale) were CAT and a number of small "cooperative" structures, all in regions where ENTel was not present.


3. See Lewis, supra note 1, at 160 ("... the state was creating new public enterprises in a number of fields. According to William Glade, Perón's expansion of government ownership of industry 'was perhaps unequalled in Latin America until the Castro regime was installed in Cuba.' In addition to YPF, Gas del Estado, and the state merchant marine fleet, which were all inherited from past administrations, the public sector came to include the railroads, which were purchased from Britain and France; the telephone system; a river fleet, bought from the Dodero Steamship Line; most of the nation's waterworks and electrical power plants; some coalfields discovered in southern Patagonia; an airline company; and a heterogeneous conglomerate called DINIE (Dirección Nacional de Industrias del Estado), formed in 1947 from several expropriated Axis properties. DINIE owned ten metallurgical plants that produced goods ranging from machinery and steel storage drums to diesel motors and surgical equipment; four electrical equipment companies; four textile mills; nine firms producing pharmaceuticals, cosmetics, or agricultural chemicals; five industrial chemicals plants; four construction and engineering companies; and two import-export firms.").

4. Id. at 193 ("The United River Plate Telephone Company, an ITT subsidiary, was acquired for $95 million.").

5. Compañía Argentina de Teléfonos S.A.

The main problems that ENTel faced were those encountered in other Argentine nationalized companies: non-professional management that was highly dependent on political objectives. Compounding this, there was almost no allocation of resources devoted to the maintenance or renewal of the network's infrastructure. During this period, developed countries had embraced new technologies such as digital (mobile and fixed) telecommunications services while Argentina counted on fifty-year-old manual switchboards. These reasons along with a lack of long-term governmental policies caused the company to offer only highly inefficient services. The military government (1976–1983) did nothing to change ENTel's situation.

For example, during the early and mid-1980s getting a phone line installed in Argentina qualified as an "impossible" mission. Phone lines became so valuable that they greatly influenced real estate. In Argentina's capital, Buenos Aires, a two-bedroom apartment would be marked up 10 to 15 percent if it had an existing telephone line.

These inefficiencies not only resulted in a limitation of telephone service but also opened the door to corruption. The fact is that if someone knew whom to contact high enough in the company's management he or she could be among the privileged to have a phone for U.S. $2,000. This figure varied depending on the number of employees required to set up the line after getting through their own red tape. Although no "official" source exists to prove these types of transactions, these schemes were well known to a great number of Argentines during the 1980s.

During 1986–1987, some politicians in the Radical party (in office during that time) proposed bringing in Telefónica de España's professional management team to run ENTel while keeping the company under a state-controlled regime. This project never materialized.

Toward 1989, ENTel was submerged in a state of financial chaos due to the abandonment of its lines, switchboards, commercial practices, and lack of investment. The company's debt represented 60 percent of its assets. Some analysts estimate that ENTel's debt doubled because the government had eliminated subsidies, causing the company to finance its negative balances by acquiring new debt. Many of ENTel's negative numbers

7. See Lewis, supra note 1, at 491 ("Since 1967 ENTel has failed to get its accounts approved by the Accounting Office for Public Enterprises (Sindicatura General de Empresas Públicas). Meanwhile, more than 60 percent of the telephone network is either obsolete or out of order. . . .").

8. Id. at 455–56 ("For the most part, the military resisted the idea of privatization. Efficiency was only one factor they considered. National security dictated that certain kinds of production and services had to be guaranteed. It also indicated a need for developing the poorer regions of the interior, which might be done through locating branches of the state enterprises there. Finally, the armed services were worried that a high rate of unemployment might create opportunities for the guerilla Left to infiltrate the labor movement; therefore, the military put a higher priority on maintaining full employment than on reducing economic costs. Indeed they even insisted in some cases on adding to the state enterprise sector. In 1979 they forced the government to purchase the Swiss-owned Compañía Italo-Argentina de Electricidad for $93 million, and in 1980 they forced the acquisition of Austral, a private airline company servicing the interior of the country.").

9. Id. at 491 (". . . and it often takes ten years or more to have a telephone installed.").

10. Raul Alfonsin was President of Argentina from 1983–1989.
were also due to the enormous amount of litigation brought against it for breach of contract and labor-related disputes. This was the general state of ENTel before it became private.

III. A New Beginning: Law No. 23.696 (State Reformation).

In July 1989, Carlos S. Menem became President of the Argentine Republic. It was a time of political and social turmoil. Inflation was at 5000 percent annually and social problems spilled onto the streets of Buenos Aires as supermarket sackings took place. Radical changes in the structure of the Argentine economy were needed; President Menem stated, "emergency surgery without anesthesia was required." The government wanted to send a clear message to the Argentines and to the rest of the world: Argentina wanted to become a nation that had a free market economy and to leave behind the "elephant state" concept of public ownership of utilities. Menem needed the backing of the Argentine Congress and during the first days of his first term he enacted two critical pieces of legislation: Law 23.696 (State Reformation) and Law 23.928 (Convertibility).

The "Convertibility Law" basically pegs the Argentine peso to the U.S. dollar on a one-to-one basis. For every peso in circulation there is one dollar in Argentina's Central Bank that will "back it up." No printing of pesos can be authorized unless it has a matching dollar deposit.

The second crucial law from 1989 is known as the "Reform of the State" Law. It marks a specific turning point in over fifty years of Argentine policy geared toward state-owned, state-run, deficit-accumulating companies. First, the law declared the emergency situation of the public administration (which included its companies). Second, the law mandated that privatization of enterprises must be declared by the executive power and must be approved by the Congress. However, it also singled out a few companies for privatization in a corresponding annex. The first company to be listed in the annex was ENTel.

This law provided the green light for the Argentine government to begin its new role in the restructuring of the country's telephone service. The privatization of ENTel was the first major sign from the government favoring the introduction of private capital through direct investment. During this period, most analysts seemed to agree that the Argentine telecommunications industry was underdeveloped and that its growth potential was enormous. They were correct.


The Decree established the major legal, geographic, and economic criteria to be applied in the pre-selection and selection of the companies that are to be granted the

11. See Cellani, supra note 6.
two licenses to provide telephone service. It also contained the rights and obligations of
the contracting parties.

The choice of direct privatization instead of other alternatives (such as concessions)
was made after the government concluded that the best method would be to limit its
own intervention as much as possible. In addition, private enterprise was more interested
in keeping the capital it would have to put down. For these two reasons, it was decided
that management as well as property would be transferred to the private sector.

Presidential Decree 60/90 previously created two separate companies before the
actual international "calling" for potential interested parties in order to facilitate the tran-
sition from public to private ownership by transferring the stock in these to the com-
panies that would be selected in the bid. The two companies were "Norte S.A." and
"Sur S.A." The government divided the country and the A.M.B.A. (Buenos Aires Multiple
Area) into two parts. Each of these "parts" was similar in size and would be transferred
to the company eventually selected to run telephone service provision in it. So, one
company would run the service in the northern area of Argentina and another would
operate in the southern area. Each one of these regions presented sub-regions with the
following situation:

(1) Areas in which ENTel or CAT was providing telephone service.
(2) Areas in which the service was provided by small cooperatives.
(3) Areas in which no service was being provided.

For the provision of international telecommunications service, a third company
"Telintar" (SPSI)14 was created, which would be run and divided equally between the
two selected companies.

As for the decree itself, the first point to be made is that the government viewed as
of vital importance to ensure that certain "operational goals" of the system be assured.
These goals required strong initial investments. Due to this fact, it was decided that
a "temporal exclusivity period" would be awarded. Once this period had come to an
end, telephone service would enter a "competition" era. In other words, the transition
produced is from a permanent state monopoly to a temporary private exclusiveness that
would finally lead to competition.15

The decree established two types of licenses in order to operate telephone and tele-
phone related services in the Argentine Republic:16 Licenses under an exclusivity regime
and licensees under a competition regime.

A. LICENSES UNDER AN EXCLUSIVITY REGIME.

Each of the two companies (one for the north and the other for the south of the
country and the A.M.B.A.17) and the SPSI (international phone service provider made
up of the two licensees18) shall be granted an exclusive license to operate the following
services:

14. "...sociedad anónima titular del Servicio Internacional (SPSI)"; taken from Presidential
Decree 62/90.
15. As this article shall later explain, total competition began on November 9, 2000; however,
competition between four carriers had already begun a year earlier (October 10, 1999).
16. This was the system during the years of temporary private exclusiveness.
17. Buenos Aires Multiple Area.
18. Telintar S.A.
Local and long distance service (each of the two selected companies will have an exclusive license to operate this type of service in its established area of the country).

International phone service (an exclusive license to the SPSI).

These licenses, under the exclusivity regime, shall be granted for a period of five years counted from two years after possession is granted. Thus, each company would have an exclusive license for a total of seven years (beginning in November 1990). The initial two-year period was established as a timeframe for the selected companies to organize and coordinate between themselves in order to provide their services. The decree provides an eventual three-year extension on this exclusivity regime if certain goals are achieved and accepted by the regulatory agency.

This method of granting licenses finds constitutional backing in article 75.18 of the Argentine Constitution. This article establishes that these types of temporal "privileges" can be granted to provide for the prosperity and progress of the country.

B. Licenses under a Competition Regime.

The SSEC9 shall provide the telecommunication services (under the competitive regime) established under Section 9.11, which are: national telex, national data (ARPAC), mobile maritime, and other services to be determined (in all of the Argentine territory).

Through the SSEC, or other separate corporations, the licensees shall conduct all their business and activities dealing with the telecommunication services allowed under the competition regime. The SSEC shall be granted a "competition regime" license in order to offer these services.

Once the exclusive license period ends, the companies may be granted licenses to provide services under the current competition regime as well as their original services outside their regions (Section 13.7.1). The most important part of this section is that new licenses may be granted to other carriers to provide telephone service in any part of the country.20 The decree also specifically states that the licensees (under the exclusivity regime) must provide access to the network by interconnecting when asked by another carrier.

1. Prerequisites.

The decree established several prerequisites that had to be met by the interested companies. The most important ones were:

- Pay $20,000 U.S. dollars to purchase the terms and conditions of the bid, and
- Offer an amount to be paid upon taking possession. The base price must be paid in cash and the excess amount in Argentine external debt bonds.


20. Full deregulation began on November 9, 2000; however, the exclusivity period came to a partial end when competition between four carriers began on October 10, 1999.
2. Rights and Obligations.

The decree includes all the rights and obligations of the licensees. It is a very extensive and complex legal as well as technical work. The most important aspects concerning the rights and obligations of the parties involved include:

(1) Stock holdings of the acquiring company shall always amount to at least 51 percent of the total stock of the company for which it was granted its license unless otherwise authorized by the corresponding regulatory authority.

(2) Licensees are authorized to make public offerings of their company's stock once they have been granted possession.

(3) Licensees do not take on any of ENTel's liabilities, except:
   (a) Those contracts that, although having been agreed upon by ENTel, are still being fulfilled.
   (b) Certain detailed collective bargaining agreements.
   (c) Employment obligations derived from the labor laws and social security laws except any current claims under litigation or payments that have been approved by the date of the transfer to the licensee.

"Basic Telephone Service" is defined in this decree as "the provision of the fixed telecommunications loops that form part of the public telephone network or that are connected to such network and the provision by those means of local, long distance and international service by means of 'live voice.'" In other words, in order to be able to access the service, one must be connected to the carrier's telephone networks. The consumer shall achieve this by means of a "service provision contract" and the payment of a connection fee.

All of the services that are not included in this definition shall be provided on a "competitive regime" from the moment that the licensees take possession (section 8.5). Such services include: cellular (with some restrictions), national telex, national data, and mobile maritime data.

The obligations of the licensees are described in Section 10. The main obligation is to provide basic telephone service. However, the government also wanted to make sure that a general expansion and better overall efficiency of the telephone net was guaranteed. The following are a few examples.

Each company is required to ensure that it maintain the service on "continuous, general, and equal terms." Companies are also required to meet all the technical and access requirements for the regulatory agencies to be able to carry out their functions. As will be discussed in section VI of this paper, a specific telephone service provider regulatory agency was a new concept for existing Argentine regulation.

Two other important obligations relate to specific parameters regarding the amount of public telephone service in each sub-region, and to the requirement that a provider may not disconnect any area from the national satellite service under any circumstances. Some services were established as free of charge, such as emergency numbers (police, fire station, ambulances, white page listings, phone book distribution, and directory assistance).

Interconnection was also an important issue. Section 10.4 establishes that companies (including the SPSI and SSEC) must interconnect according to the established procedures of the regulatory authority in order to guarantee the continuity, expansion, and quality of the service. The demands of interconnection must be met on a non-discriminatory basis and the prices to interconnect shall be non-discriminatory and published. Once
the "exclusivity period" is over, the SPSI must also interconnect on a non-discriminatory basis with the carriers providing additional local, long distance, and international telephone service that shall enter the deregulated competitive market.\textsuperscript{21}

Section 10.6 establishes that cross subsidies\textsuperscript{22} are prohibited: "The licensees are prohibited from utilizing income derived from their Basic Telephone Service operations to subsidize the services provided under a competitive basis." It is important to note that some services were permitted to be provided through the SSEC on a competitive basis during the exclusivity period of basic telephone service provision.

Section 10.7 states that all type of conflicts that may arise between the licensees regarding the provision of telephone service shall be resolved by the regulatory authority.

Section 9 of the decree deals with the services provided by SPSI (currently Telintar). This company, which is to be operated and owned equally by both companies obtaining the licenses, shall provide the international telephone service during the period of exclusivity. Once this period ends, this service shall be provided on a competitive basis.

3. \textit{Mandatory Goals.}

The government made sure that certain goals of its telecommunications policy were established as legal obligations for the new companies. The goals provided benchmarks for certain numbers of installed phone lines or percentages of phone line installations to be increased within fixed time frames. These were the "mandatory goals" under section 10.1.8.1. The most important were:

1. Telephone network expansion by means of new line installation.
2. Efficiency in calls defined as "efficiency in completing local calls within each region; efficiency in completing long distance calls within each region; and efficiency in completing international calls."
3. Efficiency related to the time to complete inquiries by subscribers, telephone repairs, operator assistance with long distance or international calls in those areas that required it.
4. Decreased average time to install a new telephone line.

4. \textit{Rate Regulation.}

Probably one of the most important sections of the decree is Section 12 dealing with rate regulation. The main premise, according to the government, was for the licensees to reduce the rates in basic service in relation to the inflation during the exclusivity period. This was to be achieved through a method that would also establish a reasonable return for a company operating in an efficient manner. After this, the rates could fluctuate

\textsuperscript{21} See \textsc{Thomas G. Krattenmaker}, \textit{Telecommunications Law and Policy} 427 (1998) ("The (U.S.A.'s) Telecommunications Act of 1996 radically revised prior law by insisting that regulation be designed to stimulate competition among wired carriers in the "local loop." The key provisions in this regard are sections 251 and 252, which impose "interconnection" duties on incumbent local exchange carriers (ILECs.").

\textsuperscript{22} \textit{Id.} at 400: ("... Cross-subsidization, which occurs when one group of customers pays part of the cost of providing service to another group.").
according to the change in the monthly consumer price index. The licensees were also given the right to adjust the rates after 6, 12, 18, and 24 months after taking possession. This period was to be known as the "Transition Period." This adjustment would end up amounting to a 16 percent rate of return, having been approved by the regulatory authority.

Once the transition period ended and the exclusivity period began the licensees were required to reduce their rates on a 2 percent annual basis. This was a fundamental clause that had to be met in order to obtain access to the three-year extension on the exclusivity period (Section 12.4.1-2). They also had to demonstrate that the residential rates had increased in a "less accelerated rhythm" (taken from the legal text) than inflation during the exclusivity period.

If the companies were able to meet the goals to obtain the three-year extension on their exclusivity period they would then have to further reduce their rates by 4 percent per year (done by taking the previous year as a parameter and applying the monthly consumer price index).

Some changes in the system of rate regulation came about in November 1991, when the licensees entered into an agreement with the government whereby telephone rates would be based on the U.S. dollar and would be adjusted on a semester basis according to the Consumer Price Index of the United States.

In February 1992, another agreement was signed by which rates were dollarized. The result of this was that the "pulse" (unit of measurement used for telecommunications) was fixed at $0.0391 U.S. dollars. In October 1992, the unit's value was modified once more to $0.0397. In this way, the unit is modified two times a year depending on the evolution of the Consumer Price Index of the United States. The corresponding rate is then converted into Argentine pesos (which have been fixed at one for one with the U.S. dollar since the Convertibility Law was enacted in 1991).

Once the exclusivity period ends the companies shall have the right to renegotiate the agreements regarding rates and goals with the regulatory authority. The interesting aspect of Section 12.6 is that it states that the regulatory authority shall only control the rates in those areas of the country in which it deems that real competition does not exist. This statement raises some questions as to how the regulatory authority defines "real competition." This statement should have been more precise in order to avoid unnecessary market interference. If no agreement is reached then rates shall be established by the regulatory authority and the Ministry of Economy.

5. Sanctions.

The decree provides the following sanctions that may be applied to the service providers:

(1) Citation.
(2) Fine.
(3) Termination of the right to exclusivity.

23. S.C. Resolution 1686/99 (October 8, 1999) established that as of October 10, 1999 "full competition" would begin between four carriers for the provision of local, long distance, and international telephone service in all of the country.
(4) Termination of the license. This is the most serious of the four, and it can be the direct consequence of:
(a) failing to meet the imposed obligations;
(b) partial or total service interruption on a reiterated basis;
(c) change of social object in bylaws or change of domicile to outside of Argentina;
(d) stock assignment without the previous authorization of the regulatory agency;
(e) assignment of its license without the previous authorization of the regulatory agency;
(f) reduction of the investment company in the licensee to less than 51 percent of its stock; or
(g) bankruptcy.

The sanctions are applied by the regulatory authority except for the type stated in number 4, which is applied by the executive power.

The decree specifically states that the assets related to the provision of the telephone service cannot be sold, assigned, transferred, or encumbered in any way (section 13.11). Any exception to this must be previously authorized by the regulatory agency, which shall evaluate whether the asset is one that the service cannot do without, or whether it substantially affects its provision.

V. Structure of the Privatization Transaction.

Each of the two companies' stock was divided into three categories: A, B, and C. The first type was not transferable due to the fact that it constituted 51 percent of the total capital, which meant that in effect it represented the control of the company. The class B stock represented 39 percent of the total and could be transferred. Nine percent of the B stock went to the licensees and the remaining 30 percent was kept by the government and sold on the stock market a few months later. The class C stock was to remain for the companies' personnel in what was established in Decree 62/90 as the "Participated Property Program."

In May 1990, several international telecommunications firms were interested in the ex-ENTel privatization. Some of these included: Nynex Corporation, GTE Corporation, Bell Atlantic, as well as other investment partners. However, the former ENTel was sold to (with the corresponding temporary exclusive licenses) Teléfonica de Argentina (in the south of the country) and Telecom de Argentina-Stet France Telecom (in the north). So the final privatization process consisted of the 60 percent of stock in the preexisting companies (Norte S.A. and Sur S.A.) transferred to the new companies in 1990, 10 percent to the employees of the ex-ENTel, and the remaining 30 percent was sold on the stock market (1992).

As mentioned earlier, the decree established that part of the price—the base price—had to be paid in cash and the rest in external Argentine debt bonds. This mechanism had an added advantage for the companies because the bonds could be purchased on a secondary market at a lower price but their nominal price was recognized by the government. The government on the other hand would reduce about $5 billion of its external debt.
The following chart illustrates the transaction in millions of dollars:

<table>
<thead>
<tr>
<th></th>
<th>Bonds</th>
<th>Cash/Docs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telefónica</td>
<td>$2,720</td>
<td>$316</td>
<td>$3,036</td>
</tr>
<tr>
<td>Telecom</td>
<td>$2,308</td>
<td>$302</td>
<td>$2,610</td>
</tr>
<tr>
<td>Total</td>
<td>$5,028</td>
<td>$618</td>
<td>$5,546</td>
</tr>
</tbody>
</table>

*Source: S.C.*

We must also take into account the additional funds the government was able to acquire when it sold its 30 percent in the stock market (December of 1991 for Telefónica and early 1992 for Telecom). In this way, the sale of Telefónica de Argentina's government-held stock added $830 million dollars to the deal. Another $1.227 billion came from the sale of Telecom's stock.

### VI. Regulatory and Control Authorities.

As stated in the Introduction, the management and assets of ENTel would be transferred to the private sector while the regulation and control of the industry would remain with the governmental. In this sense "regulation of public services is not a consequence of its privatization. It should have always existed no matter who was providing the service. Since this was not the case, regulation had to be organized as a matter of urgency and simultaneously with the privatization of the corresponding sector."

Regulation in this industry is of extreme importance in order for it to develop. Telecommunications is much like other industries in which scarce resources are to be assigned (i.e., numbers and frequencies). These resources are also constantly undergoing changes to make them more efficient. This is why on an international level the WTO has established the "independence of the regulatory entity." In other words, this entity shall be independent from any service provider and shall not have to answer to it. The decisions and procedures of the regulatory entity shall be impartial.

Before getting into the specific regulatory agencies created (or modified), a short reference shall be made to article 42 of the Argentine Constitution (1994 text). This article gave constitutional support to agencies to ensure the quality and efficiency of public services (such as telephone service) and to make sure that market competition was guaranteed. It must be noted, however, that this article was incorporated to the 1994 amendment of the Argentine Constitution. Regulatory agencies in the telephone industry had already been created. This article is important because it is cited in many decrees and agency resolutions.

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The Argentine telephone sector is regulated by:

(1) **Secretaría de Comunicaciones**: this agency existed before the privatization process under the control of the Ministry of Public Works and Services. Its role is defined in Presidential Decree 64/190, which assigns it the mission to “regulate, control and verify public telecommunications services.” In 1996, once ENTel had been privatized, the Ministry (now the Ministry of Economy, Public Works and Services after an earlier fusion) proposed that the area of communications should be transferred to the sphere of the “Presidency” and given the rank of a “Secretaría” (Presidential Decree 245/96). Its main objectives are: to assist the executive branch in the proposals and policies relating to communications and its regulation; to generate the telecommunications policies that are necessary to keep up with this evolving field; cooperate with other agencies in the regulation of this sector; generate the mechanisms needed to ensure the rights of the users of the service; and to assist in the resolution of the claims brought against the decisions of lower ranking regulatory agencies such as the C.N.C. (Presidential Decree 251/96).

(2) **National Communications Commission**: this agency was created as a specific response to the privatization process. The main purpose for its creation was to centralize the regulation, control, and verification functions into an efficient, specialized, and independent organ that would ensure the client’s rights as well as the service provider’s rights. It should be noted that the original agency was called the C.N.T. (National Telecommunications Commission) when it was created in 1990. After a few years the government concluded that the agency had proved to be inefficient in enforcing the obligations of the carriers under the exclusivity regime as well as those under the competitive regime. Thus the C.N.C. was created. Its main functions are: to apply, interpret, and enforce the decrees and laws regarding the telecommunications industry; to assist the Secretaría de Comunicaciones in elaborating and keeping up to date the technical telecommunications planning relating to operative compatibility and minimum quality standards of interconnection; to assist the Secretaría de Comunicaciones in the enacting of the “reglamentos” (rules) of the different types of telephone services available; to prevent anti-competitive, monopolistic or discriminatory conduct such as “non-loyal” subsidies that services in the competitive regimes receive from the exclusive licenses operators; to ensure the quality and technical compatibility of the public telecommunications network; and to apply the sanctions established in the corresponding licenses and authorizations.

(3) **Legislative Control**: the legislative branch also has some control over the industries “players” by way of two bodies:

(a) **Auditoría General de la Nación**: Law 24.156 provides jurisdiction allowing external control of the acts of the regulatory authorities as well as the obligations (specified in the corresponding contracts) of the private companies awarded licenses through the privatization procedure.

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26. For example, Decree 264/98.
(b) Commission on State Reform and Privatization Surveillance: Law 23.696 basically limits to asking for detailed information on any aspect dealing with privatization and drafting proposals related to the privatized industries.

(4) Executive Control: the President of Argentina has the power under Decree 62/90 to terminate the licenses in the cases previously stated.

(5) Public Hearings: although this does not really constitute a control mechanism in the literal sense, I have included it due to its importance in granting participation to the relevant parties (as well as the general public) in the early stages of drafting regulations. This system was implemented (Res. S.C. 57/96) in order to assure transparency and participation in the decisions regarding the sector. These hearings are held on matters dealing with technical or regulatory aspects in the communications area.

VII. Telecommunications Expansion—Changes in the Last Ten Years.

As it was stated earlier, one of the government's main goals was to ensure that the sector would develop by means of direct investments from the companies. These goals were basically established in the privatization decree's provisions. When the private companies took over, the total number of telephone lines in Argentina was 3,600,000 (with 3,167,747 in service). This works out to be about twelve lines per every 100 people. Most experts agree that this was a relatively low number particularly for Argentina's per capita income. Under the decree, the total number of lines that had to be installed in the A.M.B.A. northern area was 128,700 by 1993 and 241,200 by 1996; for the southern A.M.B.A., the numbers were 224,250 by 1993 and 418,600 telephone lines by 1996. Goals for the overall quality of the service also had to be met. These figures meant large investments for both providers. However, there were two reasons that made them inevitable:

(1) The companies had to meet the goals set out by the government in order to be granted an extension on their exclusive licenses.

(2) Investments would be in their own benefit. They knew that there was an unsatisfied demand for new lines and that investments would be needed to provide additional services (call waiting, answer phone, detailed billing, caller I.D.) through digitalization of the network.

According to the U.A.D.E.,27 the total amount of investments between both companies reached $15 billion from 1990 to 1997. The Secretaría de Comunicaciones states that investment for the period 1991–1995 was $10 billion and another $10 billion for the 1996–2000 period. This has enabled Argentina to currently have over 7,500,000 operational telephone lines. By 1995, Argentina's telephone network had 13,000 km of fiber optic cable added to it. Additionally, the digital output print reached 100 percent for the northern area and almost 100 percent for the south by 1997.28

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27. Universidad Argentina de la Empresa.
Cellular/mobile communications are under the "competition regime" with two bands having been assigned for the country. One cellular communications company, Movicom, had been operating since 1988. In 1992, a second company was licensed so that some degree of competition would be available. This company, Miniphone, is jointly owned between Telefónica and Telecom. Currently the number of subscribers is about 350,000. In what is known as the "interior" of the country (outside the A.M.B.A.) a third company has been providing service since 1994. This company is CTI Móvil and is owned by GTE Mobile and AT&T (among others).

The facts stated above demonstrate that important international telecommunications companies have been operating in the Argentine market for a number of years. Telefónica and Telecom have also been providing cellular service in their areas since 1996 (150,000 subscribers in the interior). Another interesting fact to note is that cellular technology has enabled rural areas to be connected to the national network in some cases even before they could access basic telephone service. All services not under the exclusive regime could be provided under competition. Some services had been on a competitive level before 1990, but since deregulation the government has granted hundreds of licenses for these types of services. This enabled smaller firms to compete in the telecommunications market. Some of these firms provide services such as Internet access, paging, alarm systems, data transmission, and 600 (900) phone services. These competing industries had made investments during the first privatization era years that exceeded two billion dollars.

One of the most important changes of the privatization era was known as the "rebalance of rates." The main reason for this decision had to do with the link between previous rate regulation and Argentina's past. During many years, Argentina's economy had been closed and services provided by state-owned monopolies. Cross-subsidization was common under this model. Consequently, Argentina's international telephone rates greatly exceeded other countries. Long distance calls increased dramatically after the 240 km mark and ranked among the most expensive in the world. The egregiously expensive international rates resulted in subsidization of incredibly low local rates that were far below its actual cost.

Cross-subsidization ended once the markets opened and competition became guaranteed in the medium term. This was established in 1997 by Presidential Decree 92/97. Long distance and international phone rates fell, which the government viewed as an extreme benefit in regional and international commerce as well as in improving the countries' overall competitiveness. Local calls, on the other hand, reflected a rate increase and some provisions were made so that certain low-income groups would be protected. This rebalance method also brought about claims because the system of "public hearings" had not been respected before making this decision. However, the Supreme Court of Argentina determined that the rebalance method was legal and had been executed within the constitutional power vested in the Executive.

28. Supra note 24.
29. This was the situation until November 9, 2000.
30. CSJN (Supreme Court of Argentina), 7/5/98, Defensor del Pueblo c/Estado Nacional-Poder Ejecutivo Nacional s/amparo ley 16.986.
The following chart illustrates the level of changes in the sector during the first eight years of privatization:

<table>
<thead>
<tr>
<th>Service</th>
<th>1990</th>
<th>1998</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Installed Lines</td>
<td>3,631,282</td>
<td>8,061,950</td>
<td>122</td>
</tr>
<tr>
<td>Lines in Service</td>
<td>3,167,747</td>
<td>7,518,821</td>
<td>137</td>
</tr>
<tr>
<td>Number of Public Tel.</td>
<td>22,549</td>
<td>107,580</td>
<td>377</td>
</tr>
<tr>
<td>Digitalization of Network</td>
<td>13,21%</td>
<td>100%</td>
<td>657</td>
</tr>
<tr>
<td>Installation Cost</td>
<td>$1,750</td>
<td>$150</td>
<td>-1666</td>
</tr>
<tr>
<td>Cost of Pulse</td>
<td>$0.06451</td>
<td>$0.04490</td>
<td>-30</td>
</tr>
<tr>
<td>Services Available</td>
<td>26</td>
<td>41</td>
<td>57</td>
</tr>
<tr>
<td>New Line Installation Time</td>
<td>730 days</td>
<td>15 days</td>
<td>4.867</td>
</tr>
<tr>
<td>Average Repair Time</td>
<td>90 days</td>
<td>2 days</td>
<td>4.500</td>
</tr>
</tbody>
</table>

*Source: S.C.*

VIII. The Start of Local, Long Distance, and International Deregulation.

In March 1998, Decree 264/98 was enacted and set the basic structure under which competition would operate. The incumbent licensees were only granted an extension of two years and not the complete three years that were available. The 1998 decree states that overall, the investment and quality-expansion goals of the 1990 privatization decree had been met satisfactorily. However, it also mentions that according to the regulatory authorities, some parameters (which the decree does not specify) as to the degree of certain quality standards have not been "completely" met. Because of this a solution was needed that would uphold the contracts entered into by the government as well as assure the best interests of the general public. Hence, the partial extension on the exclusive licenses was granted.

The decree also states that given the international regulatory experience as well as the particular structure of the industry in Argentina, the most convenient decision is that of establishing a "transitional period" that will lead to full competition. Once this transitional period has ended, a total of *four basic telephone service providers* shall have the corresponding licenses to provide service for *the whole Argentine territory*. So, two additional licenses shall be granted in addition to the existing ones of Telefónica de España and Telecom (which may from that point on provide service in the whole country). These are the providers that shall compete to offer basic telephone service at "just and reasonable prices."

32. The extension was for two more years of exclusivity, at the end of which two more licenses were granted.
In July 1998, Argentina enacted the Fourth Protocol to the General Agreement on Trade in Services (WTO), Law 25.000, by which it became obligated to completely open its telecommunications market on November 9, 2000 (this is also stated by Presidential Decree 465/2000 and Presidential Decree 764/2000).

On October 10, 1999, the transitional period came to an end and the four "competitors" that began their interaction in the market were: Telefónica de Argentina, Telecom de Argentina, Movícom-BellSouth, and C.T.I.

Although it is really too early to be able to reach a conclusion as to what provider the consumer will prefer, the following statistics have been included to reflect some initial data on the situation during the last quarter of 1999. The data was gathered from 5,549 users in the A.M.B.A. area and of fourteen smaller areas in the rest of the country.

According to a recent poll (Julio Aurelio S.A. Agency, October 1999), the company preferred by the "residential consumer" is Telefónica de Argentina for long distance service. When consumers were asked what carrier they would choose once the choice was available, 39.8 percent responded that they would choose Telefónica de Argentina, 15.8 percent Telecom, 13 percent Movícom—BellSouth, and 3.9 percent would go with C.T.I. It is also interesting to point out that 5.7 percent stated that they would choose any of the carriers and the remaining 21.7 percent were undecided.

In the "commercial consumers" category, 24.1 percent would choose Telefónica de Argentina; 13.5 percent picked Telecom, 9.1 percent wanted Movícom—BellSouth, and 2.7 percent for C.T.I.; 24 percent selected “any of the above,” and 26.5 percent “didn’t know at this time.”

According to the Julio Aurelio Agency, the most significant aspect of the poll's outcome is that almost 59 percent of Telecom’s current users would be willing to change their provider.

Telefónica de Argentina states that it has already managed to get 34,000 clients from its main competitor, Telecom.

As of October 10, 1999, the consumer is able to change his telephone service provider every two months. The first change is free of charge. After this, the following changes cost between nine and twelve dollars. But, starting in March 2000, the process is completed by a simple telephone call that enables the switch.

IX. Complete Deregulation.

Presidential Decree 465/2000 (June 2000) mandated “full deregulation of the market beginning on November 9, 2000 for the provision of telecommunications services with no restrictions and in accordance with the terms of the treaties subscribed by the Argentine

33. However, it must be noted that the original Decree (62/90) in Section 13.5 had established October 8, 2000 as the date for total deregulation.
34. This is the date that was established by S.C. Resolution 1686/99 (October 8, 1999) in which the transitional period would end and "full competition" would begin between the four carriers for the provision of local, long distance, and international telephone service in all of the country.

Republic,” thus making it very clear that competition in the telecommunications market was approaching.

Presidential Decree 764/2000 is the body of law that sets up the legal framework under which the full competition era began to operate as of November 9, 2000. It also fulfills Argentina’s duties with the WTO to completely open the telecommunications market. It was enacted under President De la Rúa’s administration and is in tune with the telecommunications deregulation timeline that had begun with the privatization of ENTel almost ten years earlier.

One of the main changes that it makes to the system is that it replaces the former license regime with a single “general license.” This type of license is flexible in the sense that it enables the holder to “provide any type of telecommunication service, with or without its own infrastructure, in all of Argentina.” Broadcasting (which is governed by Law 22.285, “Ley de Radiodifusión”) is not included. In this way the decree reflects the new technologies that enable different types of telecommunication services to be provided. This type of license shall enable the provider to quickly respond to the requirements and needs of its clients. In other words, the government wanted to make sure that the licenses granted would “stand the test of time.”

The licenses shall be granted indefinitely (with no fixed time limit) and for all the Argentine territory as long as the requisites of the decree are met.

The decree has four Annexes: new rules for telecommunication licenses, national rules on interconnection, rules on universal service, and rules on the administration and control of the spectrum.

X. Conclusion.

The past ten years have marked radical changes in Argentina’s telephone sector. In 1990, the decision of allowing competition in the sector was made. The necessary legal mechanisms to permit this were created. An inefficient public company was divided and handed over to two private companies. These companies had the possibility of obtaining the benefits of a nine-year exclusive license. However, they also had the obligation of making substantial investments that would improve and extend the service beyond the nine-year term.

Analysis of the laws, decrees, and relevant economic and factual data reflected in this presentation lead us to several conclusions. First, the laws and decrees enacted enabled the privatization process to be handled in an orderly manner and the timetables for the different stages were respected from the onset. Second, different carriers were permitted to provide services such as cellular so that they could establish themselves as possible candidates once the number of licenses was expanded and the exclusivity period ended. Third, cross-subsidization was tackled to ensure that competition was fair. Fourth, the necessary regulatory agencies were created to assure “guidance” to the sector.

36. The Treaty referred to is the Fourth Protocol to the General Agreement on Trade in Services; Argentine Law 25.000.
37. There are, however, some exceptions dealing with satellite services.
However, the most important aspect to note is that in less than ten years a massive restructuring of the industry took place, and it is actually functioning the way it was originally planned. This fact should be stressed because, in countries such as Argentina, many projects tend not to be completed. The telephone privatization-deregulation process was different. Argentines now have a choice between four major carriers for their local, long distance, and international communications. Strong competition during 1999 is reflected by the following graph:

<table>
<thead>
<tr>
<th>Rates of a telephone call made at 1 p.m. from Buenos Aires on 12/9/99</th>
<th>United States</th>
<th>Cordoba 41</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecom</td>
<td>$0.88</td>
<td>$0.57</td>
</tr>
<tr>
<td>Telefónica</td>
<td>$0.83</td>
<td>$0.61</td>
</tr>
<tr>
<td>Movi.-Bell</td>
<td>$0.69</td>
<td>$0.39</td>
</tr>
<tr>
<td>C.T.I.</td>
<td>$0.79</td>
<td>—</td>
</tr>
</tbody>
</table>

It is also important to note that some competition in the provision of local telephone service was already visible in early 2000 as Telecom started to move in to some parts of the country in which Telefónica de Argentina was the dominant provider: in Cariló, Bariloche, and some areas of Caballito.

These companies are also offering certain programs that bring their rates even lower (such as selecting a specific country to which the lower rates would apply). This is just the first step in this era of competition. As new providers begin entering the market (as of November 2000) the consumer will surely benefit by lower rates and better service. As of October 2000, thirteen licenses had already been granted to operate local service in the A.M.B.A. and thirty-two for long distance. Under the general license regime established by Presidential Decree 764/2000 there have already been over 200 filings for licenses.

It seems amazing that today Argentina possesses one of the most modern telephone networks in the world when only a decade ago even dialing a local telephone number in Argentina carried the uncertainty of being able to have a "dial tone."

### XI. Bibliography.

*Diario Clarín*, 9/5/1999.


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39. This choice is available in limited areas.
40. These rates do not include the I.V.A. of 21 percent (Argentine value added tax).
41. Córdoba is a province located a couple hundred miles from Buenos Aires.
42. Cariló is a small coastal town located 450 km from the city of Buenos Aires.
43. Bariloche is a city in Patagonia located 1650 km from the city of Buenos Aires.
44. Caballito is an area of the city of Buenos Aires.