

Comisión Nacional de Comunicaciones

ARGENTINA

The following are a number of principles enshrined in the Argentine Republic's current regulations that would be applicable to the regulatory framework governing migration to next generation networks (NGN):

- That the current regulations are underpinned by the principles which govern free trade, free market access, the smooth and unrestricted movement of all useful information, the absence of any form of intervention which might distort it, and exclusion from the legislation in force of any provision in favour of monopolies and/or privileges.
- That Article 42 of the National Constitution expressly provides that the authorities shall defend competition from all forms of market distortion, monitor natural and legal monopolies and ensure the quality and efficiency of public services.
- That, in accordance with these principles and rules, the Argentine Republic signed the Fourth Protocol to the General Agreement on Trade in Services with the World Trade Organization (WTO), ratified by Act No. 25.000, thereby committing itself to opening up its telecommunication services to competition, without any restrictions, as from 8 November 2000, with the exception of satellite services.
- That, likewise, the sector's regulatory framework, in conjunction with the principles (enshrined) in the Constitution principles, requires the adoption of regulations that are free from all privilege and which ensure the equality and freedom of trade and industry in the telecommunication market, without barriers to the entry of new operators or obstacles to the evolution of services and incorporation of new technologies.
- That the National Government, by virtue of the legislation in force and in defence of the principles enshrined therein, has undertaken to lift the access barriers previously established, putting an end to explicit or underlying privileges stemming from the exclusivity regime, establishing competition without any further transitions, and ensuring that no obstacles remain from any monopoly regime or limited competition.
- That the fixed and non-extendable deadline for the ending of the regime of exclusivity or limited competition implies, once it has expired, the duty to recognize both the acquired rights of users to consume telecommunication services within a framework of unrestricted competition and the right of providers, both existing and incoming, to operate within the market under rules of competition that are clear, stable, fair, non-discriminatory and impartial.
- That experience with markets governed by competitive rules shows that costs can be reduced and the number of telecommunication services increased, thereby facilitating growth in all of the country's economic activities.
- That it is the inalienable role of the State, at the current stage, to regulate in favour of competition and, in exercising that authority, to base all aspects of the regulation on the right of users, which represent the prime consideration in each and every one of the provisions in the proposed regulatory framework.
- That the key factor in these reforms, with a view to fostering competitive markets, is enabling the entry of new operators into the telecommunication industry.

- That, in a liberalized market, the licensing regime must be sufficiently flexible to facilitate the entry of competitive telecommunication service providers in such a way as to ensure effective competition.

- That opening up to competition must translate into a broad range of services available to consumers, increased productivity for greater access to information and technology, and the fostering of economic development for the benefit of the community as a whole.
- That the licensing regime should not constitute an obstacle but rather an incentive to providers, whether already in place or entering the market, to whom it should provide the necessary assurances of respect for their investments and capacity to provide services by generating responsible and sufficiently flexible mechanisms to ensure that the sector is able to receive and incorporate any innovation designed to enhance the level of service to the user, thereby making Argentina a lead country in the area of telecommunication service provision for the benefit of its inhabitants.
- That new licensing regulations have been issued governing all aspects of the licensing regime, fostering development of the market and operator initiatives and encouraging competition, while at the same time ensuring the evolution, quality, efficiency and continuity of telecommunication services for the benefit of the general interest.
- That any provider holding a licence is authorized to provide any type of telecommunication service, with or without own infrastructure, throughout the territory of Argentina, the granting of such a licence being independent from assignment of the means required to provide the service.
- That a single, open and non-discriminatory licensing regime has been adopted, with a transparent awarding procedure – upon request – that is based on fulfilment of the documentary and information requirements laid down in the Regulations, which do not include conditions that obstruct access to the telecommunication market.
- That, in summary, the conditions laid down in the Licensing Regulations serve to safeguard unrestricted access to the market for potential operators, establishing requirements that do not present obstacles to the development of a competitive market and which reasonably ensure, among other things, fulfilment of the following objectives: a) the elimination of any restrictions which prevent operators from accessing the telecommunication market; b) service provision subject to technical and quality requirements; c) competitive behaviour on the part of operators, which must refrain, in accordance with the general prohibitive principle laid down in the regulations, from engaging in anti-competitive behaviour or predatory pricing; d) user protection in all areas relating to the quality, scope and cost of services; e) the network interconnection necessary to ensure the interoperability of services, pursuant to the National Interconnection Regulations, which are hereby approved; and f) the safeguarding of national defence and public safety and security interests.
- That the network economy is a fundamental means of ensuring the development of a highly competitive telecommunication market.
- That, at the present stage in the process of opening up of the sector to competition, it is essential to establish a framework that enables telecommunication service providers to conclude interconnection agreements at reasonable prices and under transparent and non-discriminatory conditions which allow the user unrestricted choice.
- That it is appropriate for the regulatory framework to provide for a procedure for establishing terms and conditions for interconnection that favour the principle of the free will of the parties, as foreseen under our legal system, while at the same time providing for situations in which agreement cannot be reached, with intervention by the regulatory body being an option at the request of either of the parties.
- That experience around the globe has shown that increased competition leads to lower prices and greater service penetration.

- That technological progress and the right choice of technology can transform a rural customer in a remote area into a profitable customer.
- That it is necessary to pursue all actions aimed at ensuring that universal service provision goes hand-in-hand with opening up of the sector, and to determine its scope and the costs associated with its provision and financing.
- That it is right to ensure that the country's population has access to essential telecommunication services, irrespective of their economic circumstances, geographic location or physical limitations.
- That within this framework, and under the terms of the General Regulations on Universal Service, the purpose of universal service is to ensure that those population segments that would be unable to receive essential telecommunication services under normal market conditions have access thereto.
- That, insofar as the scope of the concept is concerned, it is to be noted that universal service provision in other countries has begun to encompass more complex services, including, in some cases, Internet access services.
- That mechanisms are being established to ensure competitive neutrality, such that no particular provider is accorded preference or any technology favoured to the detriment of others, to which end we foresee the implementation of minimum-subsidy auctions and joint financing of loss-making services, as suggested by the Organization for Economic Cooperation and Development.
- That the universal service seeks to facilitate public access to the fixed telephone service and to subsidize those services that are unprofitable on account of the higher costs resulting from: (i) the specific regional characteristics of the area in which service is to be provided (high-cost areas); or (ii) the low level of customer consumption, particularly in the case of the retired and/or pensioners; or (iii) any special tariff conditions or other service-related conditions laid down by the National Executive; or (iv) costly conditions of service provision in the case of customers with limited mobility.
- That the objective is to subsidize customers in accordance with the conditions laid down in the Regulations and not population groups that are unconcerned with provision of the fixed telephone service, this being without prejudice to the fact that plans are in hand for the definition of specific programmes to deal with the question of general public access to the fixed telephone service through, for example, the development of public telephony plans.
- That the agreement signed by the Argentine Republic with WTO guarantees the right of each Member State to define the type of universal service obligation it wishes to maintain, and that such obligations shall not be considered to be anti-competitive per se provided that they are administered in a transparent, non-discriminatory and competitively-neutral manner and are not unduly burdensome for the type of universal service defined by the Member State.
- That the need is for regulations that are free from all privilege and which guarantee equality and the freedom of trade and industry in the telecommunication market, without restrictions on the incorporation of new operators and technologies or obstacles to service dynamics.

All these aspects have been taken into account and reflected in National Executive Decree 764/2000, which sets out the main framework for the provision of telecommunication services at the present time.

