

# TELECOMMUNICATIONS LAWS OF THE WORLD

Argentina vs United States



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# ARGENTINA



*Last modified 29 October 2022*

## OVERVIEW OF LEGAL LANDSCAPE

Argentina is the third-largest economy in Latin America. Although it benefits from a wealth of natural resources, a diversified industrial base and a highly skilled labor force, statist and interventionist policies expose the economy to persistent boom-bust cycles. It is the fourth most populated country in Latin America and one of the countries with the highest penetration of mobile services.

The Government Body in charge of the control of the telecom and media industry is the National Entity of Communications (“**ENACOM**”), an autonomous and decentralized entity. It is in charge of the application of the Digital Argentina Law 27,078, Audio-visual Services Law 26,522, and related regulations.

Also, the Undersecretary of Telecommunications and Connectivity is in charge of the dictation of regulation about telecommunications.

Both entities are on the Federal Government. States and localities have no authority for regulation of the services, they only request a permit for the installation of telecommunications infrastructure.

The main regulations applicable to the ICT sector are:

- Digital Argentina Law 27,078,
- Audio-visual Services Law 26,522,
- Decree 764/2000 (Spectrum),
- Decree 690/2020 (Price Regulation),
- Decree 588/2008 (Universal Service),
- Resolution 286/2018 (Interconnection),
- Resolution 697/2018 (Licenses),
- Consumer Protection Law 24,240.

# UNITED STATES



*Last modified 6 October 2022*

## OVERVIEW OF LEGAL LANDSCAPE

In the United States, interstate telecommunications are regulated at the Federal level by the Federal Communications Commission (FCC) and intrastate telecommunications are regulated by the state public utility commissions/public service commissions. The FCC also regulates, but to a lesser extent, Voice Over Internet Protocol (VoIP), which, according to the FCC, is a jurisdictionally mixed service.

All 50 states and the District of Columbia regulate intrastate telecommunications, including intrastate portions of VoIP service. There is great variation in telecommunications regulation under state law. However, all states generally require telecommunications providers to register with the state public utility/service commission, some require particular types of carriers to file tariffs for applicable services, and about half of the states requires carriers to contribute to state universal service funds and other similar programs. Additionally, some states and many localities collect emergency 911 fees.

The states do not have jurisdiction over either information services or wireless services, both of which are inherently interstate.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Licensing Regulation rules licenses, resale services, serving areas, obligations of the licensee to other licensees, to customers, and to the Regulator. The regulations set a Single License System that allows the licensee to provide any kind of telecommunication services (fixed or mobile, wired or wireless, national or international). Licenses are granted without a term limit, on demand, with a national scope, and with freedom of choice on technology and investments.

Spectrum regulation establishes that the spectrum is a public domain property, and it is granted on a precarious basis. The bandwidth to be granted must be related with the services to be provided. The bands are granted on demand or by a public auction.

The pricing regulation of telecommunications services had established “fair and reasonable” prices, which meant unregulated prices, until the Decree 690/20 was enacted. This Decree states that the prices will be reasonable, fair, must cover the operation expenses, assure a reasonable profit margin, and that they will be “regulated” by the Authority.

This Decree, enacted in August 2020, prohibited raising prices until December 2020, and subsequent resolutions of the Authority allowed higher prices since that date. But these resolutions and the Decree were challenged in the courts, and a lot of companies (Telecom, Telefónica, Directv, Telecentro, TV Cable Color, etc.) received precautionary measures in their favor, halting the price regulation and consequently allowing price freedom again.

## REGULATORY BODIES OR AUTHORITIES

### ENACOM

Perú 103, Ciudad de Buenos Aires, ZIP C1067AAA.

+5411 4349-9145

[www.enacom.gob.ar](http://www.enacom.gob.ar)

### Undersecretary of Telecommunications and Connectivity

Roque Sáenz Peña 788. ZIP C1067AAC.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Communications Act of 1934, as amended (the Act), authorizes the Federal Communications Commission (FCC) to regulate telecommunications, cable, wireless, satellite and other similar services in the US. Please see [Chapter 5 of Title 47 of the United States Code](#) (47 U.S.C § 151 et seq.) ) and [47 C.F.R Chapter I](#), the rules of the FCC implementing the Act.

## REGULATORY BODIES OR AUTHORITIES

The Act authorizes the [FCC](#) to regulate and license telecommunications services and the use of the radio spectrum, as well as to enforce the Act.

Where not pre-empted by the Act, state public utilities commissions/public service commissions regulate intrastate telecommunications, including by requiring a state authorization.

Either the US Congress (through the Act) or the FCC has designated certain non-governmental or quasi-governmental entities with the authority to administer and audit compliance with certain programs. For example,

+5411 4347-9200

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## **TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS**

Any natural or legal person providing any ICT service (such as Fixed or Mobile Telephone, Internet Access - fixed, mobile, satellite etc.) or media services (cable or wireless TV, radio), is subject to ENACOM regulations.

On the other hand, services provided through Internet only (WhatsApp, Skype, Zoom, Netflix, etc.) are not subject to these regulations.

the [Universal Service Administrative Corporation \(USAC\)](#) is authorized by the Act to administer the Universal Service Fund (USF), which subsidizes telephone and broadband services in rural and high-cost areas and to low-income individuals, and Internet service to schools and libraries. USF is supported by the revenue contributed by telecommunications carriers and other providers of telecommunications. USAC is authorized to audit contributor compliance with the FCC rules on USF contributions. USAC also makes disbursements from the USE programs to service providers qualifying for support.

## **TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS**

The FCC regulates:

- Telecommunications services generally and some Voice over Internet Protocol (VoIP) offerings
- Submarine cables
- Wireless services including, but not limited to, commercial mobile wireless, private mobile wireless, microwave, and satellite through rules on licensing, technical requirements, and interference applicable to both commercial, private, and non-commercial spectrum users (ie local governments/public safety) except Federal government agencies
- TV and radio broadcast services
- Experimental radio services
- Access to telecommunications, advanced communications services, cable/video programming, and customer premises equipment for people with disabilities
- Intercarrier compensation for the exchange of traffic
- Use and protection of customer information by telecommunications carriers
- Cable television (but not "Over the Top" streaming services) rates at the basic level

- Equipment authorizations for both intentional and unintentional emitters of radio frequencies

## OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Single Licenses are granted by the ENACOM. ENACOM does not have the authority to deny a license if the application meets all the requirements. Once the License is acquired, the licensee can request a Registration of Services, by which they are able to provide the registered services. To register services, no technical, legal, or economic support documents must be filed, only a simple petition.

Once the license and registration are granted by ENACOM, the licensee is required to provide the registered services within 24 months from the date of registration, permit the interconnection of its networks to any provider that requests the interconnection as established by the National Interconnection Rule; and provide information about traffic, total revenues and other information related to the geographical coverage area, to ENACOM.

Single Licenses are granted to both domestic and foreign companies (branches of foreign companies that are registered to conduct business in Argentina). There are no restrictions on foreign participation in the capital of the licensee. A completely foreign-owned company, if locally registered or a branch of a foreign company, can qualify for a license and a spectrum permit.

The Single License can be obtained upon filing the following information with ENACOM:

- Full legal name, Articles of Incorporation, Bylaws, Minutes of designation of valid authorities duly registered with the corresponding registries;
- Principal place of business and address in which legal notices shall be deemed duly given by ENACOM;
- An affidavit indicating that the applicant and its shareholders are not subject to any incompatibility;
- An affidavit assuring the compliance with the standards and technical specifications regarding telecommunications equipment and devices.

## OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Entities are authorized to provide domestic telecommunications services in the US pursuant to a Section 214 authorization, which is automatically granted by the FCC upon registration with the FCC (and USAC). There is no requirement to renew a Section 214 authorization.

Entities seeking to utilize the radio spectrum to provide domestic telecommunications service must apply for and obtain a radio license for the frequencies to be used before commencing service. Providers of licensed wireless, broadcast or satellite services are required to operate consistent with the terms of their FCC license and applicable FCC rules, including those limiting operating parameters to protect against interference. Licensees providing commercial mobile radio services are classified as telecommunications carriers. Radio licenses are term-limited and must be renewed to permit continued operation beyond the license term.

Entities seeking to provide telecommunications services between the United States and any foreign point must apply for and obtain an international Section 214 authorization from the FCC before commencing service. There is no requirement to renew a Section 214 authorization.

Telecommunications carriers must obtain an FCC Registration Number (FRN).

Telecommunications carriers and other providers of telecommunications must file an FCC Form 499-A registration with USAC prior to commencing service and contribute to USF pursuant to the revenue reported in quarterly filed Form 499-As.

FCC radio licenses and Section 214 authorizations generally may not be transferred or assigned except with the prior approval of the FCC (internal reorganizations and involuntary bankruptcy being exceptions). Approval of applications for license transfers or assignments may occur as rapidly as overnight or can take many months, depending on the nature of the license(s), the competitive issues raised, and whether foreign ownership is involved. Some state laws also require approval by the state's

To hold a spectrum permit, the process depends on whether the spectrum authorization is granted by auction or by direct award. Radio spectrum can be assigned to service providers through public auctions, bidding processes (when there is a shortage of band frequencies), or upon demand. When a request to use a frequency band is filed with the ENACOM, it shall publish the frequency band requested in the Official Gazette, establishing a period of 15 days for third parties to have the opportunity to give evidence of their interest of said frequency band. If there are more interested parties registered than bands of frequencies available for authorization or if a shortage of frequencies is foreseen, the authorization for the use of a frequency band will be made through public auctions. If there are no third parties interested in a particular frequency band other than the one that has filed a request or if there is no shortage of frequencies foreseen, authorizations will be granted on demand.

### **DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES**

A licensee must be incorporated in Argentina or have a registered branch office in Argentina.

respective public service/utilities commission prior to the transfer of control or assignment of state telecommunications authorizations.

### **DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES**

With respect to non-wireless services, there are no outright prohibitions on foreign telecommunications carriers serving US customers and no requirement for foreign carriers to hold the Section 214 authorization through a US subsidiary. However, an applicant for Section 214 authority that is a foreign telecommunications carrier, an entity that is affiliated with one or more foreign carriers, and/or an entity with a 10% or greater direct or indirect foreign owner, generally will experience a more rigorous and much longer application process often taking six months or more. This is because the FCC will refer such application to an interagency review body called Team Telecom to review the application with respect to national security, law enforcement, foreign policy, and trade concerns. Team Telecom is comprised of officials from the Department of Justice, Department of Homeland Security, Federal Bureau of Investigation, Department of Defense, and potentially other agencies. Team Telecom will typically seek more information from the applicant regarding its ownership (particularly foreign ownership), affiliates, the nature of the facilities and equipment used, the provisioning of services, the protection of customer data, network security, and how the applicant will respond to

law enforcement service of process. The FCC will not act on the application until Team Telecom indicates it has no objection to the grant. In some cases, the applicant may be asked to execute a network security agreement or take other mitigating measures to address potential concerns. On rare occasions, Team Telecom may object, in which case the FCC will generally not grant the license application.

The Communications Act does impose foreign ownership limitations on radio licenses. Section 310 of the Act prohibits any radio license from being held by a foreign government or its representative. Commercial mobile radio licenses, broadcast licenses, certain types of aeronautical licenses are subject to additional restrictions. These restrictions prohibit such licenses from being held by any foreign entity and any US corporation with more than 20% direct foreign ownership or voting power. In addition, where an application for a commercial mobile radio, broadcast, or aeronautical license has indirect non-controlling foreign ownership of 20% or more or indirect controlling foreign ownership of 25% or more, the FCC will refer the application to Team Telecom for review. The FCC will not act until the executive agencies indicate no objection.

Telecommunications common carriers, providers of interconnected VoIP and non-interconnected VoIP are required to have an agent in Washington, DC to receive service of process related to FCC matters (47 U.S.C. § 413; see also 47 C.F.R. § 1.47(h)).

## **EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

The Interconnection Rules provides licensees with a right to interconnect. Licensees must seek to negotiate, in good faith, requests for interconnection at any technically feasible point. Any party may refer a dispute regarding interconnection or access to ENACOM for resolution if no agreement is reached. Licensees with Significant Market Power must publish a Reference Offer.

There are many mandatory matters to be addressed in the interconnection agreement such as: tariffs and invoicing systems, technical and operational matters, etc.

Domestic inter-carrier roaming is not mandatory and is regulated through commercial agreements reached between the relevant carriers.

## **EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Telecommunications carriers are required to interconnect facilities and equipment with other carriers in order to exchange traffic. Generally, interconnection is negotiated between telecommunications carriers. State public service/public utilities commissions approve interconnection agreements and adjudicate interconnection disputes between carriers. Carriers are required to pay various forms of intercarrier compensation for the exchange of traffic.

Providers of wireline local exchange service are sometimes required to file intrastate tariffs with state public service/public utilities commissions pursuant to state law. Carriers file interstate tariffs for a decreasing number of legacy services with the FCC.

Mobile wireless service providers enter into roaming agreements with each other in order to allow customers to receive service outside of their home network. Providers of commercial mobile data services must offer data roaming arrangements on commercially reasonable terms and conditions, subject to certain limitations.

## TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Consumer regulations states that licensees must provide to the consumer all the information related to the service, in Spanish, in a clear, detailed, free of cost manner. On the website and in the stores, it must be informed:

- The consumer's rights recognized by this Rule,
- The standard contract filed to the ENACOM,
- The address and free phone number of Customer Service of both the company and the Regulator, and the procedure to file claims,
- Details and prices of the services,
- Covered areas,
- Terms for the reception of messages with ads,
- Procedure to unsubscribe from content services (must be the same as the procedure to subscribe),
- Policies about recycling and final disposition of electronic waste, of electronics used for the service.

Besides, the licensee must publish information about the speed, quality of the link, type of services, on a site that must be linked to the main site of the company. For each type of service, the licensee must inform commercial characteristics of the service, speed, downloads limits, oversubscription rate, technical standards of quality service, resetting operation time, quality and availability of links, and network management measures.

## TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The FCC has adopted numerous [consumer protection rules](#), which generally do not apply to telecommunications services provided to enterprise/business customers or to wholesale services provided to other carriers.

FCC consumer protection rules include:

- The protection of telecommunications proprietary information generally and customer privacy by telecommunications carriers (including both wireline and wireless) based upon the requirement under the Act to protect and hold confidential, Customer Proprietary Network Information (CPNI), which is defined as:
  - 'Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. Subscriber list information is the information in a telephone directory' (47 U.S.C. § 222)
- The FCC Truth-in-Billing policy, which applies to telecommunications services offered to consumers and is designed to improve consumers' understanding of their telephone bills. Among other things, the rules require that a telephone company's bill must:

- Be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered
  - Identify the service provider associated with each charge
  - Clearly and conspicuously identify any change in service provider
  - Contain full and non-misleading descriptions of charges
  - Identify those charges for which failure to pay will not result in disconnection of the customer's basic local service
  - Provide a toll-free number for customers to call in order to lodge a complaint or obtain information (47 C.F.R § 64.2401)
- The regulation by the FCC of the process for switching a consumer's telecommunications carrier in order to protect against unauthorized changes (47 C.F.R §§ 64.1100 - 64.1190)
  - Telemarketing including using robocalls, robotexts, and auto-dialers
  - Access to telecommunications services and equipment by persons with disabilities, including hearing aid compatibility, access to advanced communications services and equipment, access to Internet browsers built into mobile phones, telecommunications relay services, and accessible video programming and video programming apparatus

## REGULATORY TAXES AND FEES

The cost of the License is USD 100. There is no cost for the registration of specific services.

Telecom services providers must pay:

- the Control, Inspection, and Verification fee: 0.50% of the total income accrued for the provision of services, net of taxes, and charges.
- the contribution to the Universal Service Trust Fund: 1% of the total income accrued for the provision of services, net of the taxes and charges.

## REGULATORY TAXES AND FEES

Telecommunications carriers and other providers of telecommunications are required to pay various regulatory fees and surcharges. These fees and surcharges, however, are not classified as 'taxes' and must clearly be distinguished from taxes on any invoice.

Specifically, a telecommunications carrier must contribute to the Universal Service Fund, absent an applicable exemption. The current contribution factor for USF is approximately 25% of qualifying interstate revenues.

Telecommunications carriers and other providers of telecommunications may be required to pay contributions

- payment for the use of the radio spectrum.

## KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

ENACOM can impose fines for breaking the federal regulations and consumer regulations.

Both federal and local Consumer Protection offices can impose fines for breaking Consumer Protection laws.

Fines, closure, confiscation of the products, can be imposed by Consumer Protection Offices.

ENACOM can impose fines, closure, administrative precautionary measures about ceasing to operate, and in the most serious cases, the penalty could be the termination of the Register.

to Telecommunications Relay Service, Local Number Portability (LNP), and the North American Numbering Plan Administrator (NANP) for numbering resources (invoiced following registration with USAC). It is permissible under FCC rules to pass these contributions and fees through to end user customers.

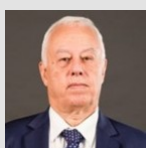
Telecommunications carriers, submarine cable licensees, and wireless, broadcast and satellite licensees are required to pay an annual FCC regulatory fee (which is established annually in August based upon the service category).

Most states have instituted state universal service fund and emergency 911 fees (emergency 911 fees are also frequently assessed at the local/municipal level).

## KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Compliance with the Act, the FCC rules, and the terms and conditions of licenses and authorizations are investigated and enforced by the Enforcement Bureau of the FCC. The Enforcement Bureau may first contact the licensee through a notice of inquiry or proceed directly to a Notice of Apparent Liability. If the Bureau finds noncompliance, the investigation is typically resolved through an Order of Forfeiture, which can mandate fines or order the seizure of property. Alternatively, the Bureau and licensee can resolve the investigation by jointly entering into a Consent Decree, which may involve an admission of liability, a reduced fine, and a multi-year compliance plan. Violations of a consent decree's terms is considered a violation distinct from any subsequent violation of the FCC's rules. In cases of egregious violation, the FCC may revoke some or all of a wrongdoer's licenses. The FCC has delegated investigative capacity to USAC to review (in the first instance) a carrier's compliance with its Universal Service Fund contribution obligations.

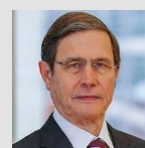
### KEY CONTACTS



**Guillermo Cabanellas**

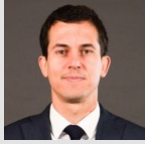
Partner  
DLA Piper Argentina  
T +54 11 4114 5517  
g.cabanellas@dlapiper.ar

**Antonio Arias**

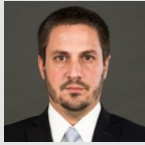


**Michael Senkowski**

Partner  
DLA Piper LLP (US)  
T +1 202.799.4103  
Michael.Senkowski@dlapiper.com



Partner  
DLA Piper Argentina  
T +54 11 4114 5554  
a.arias@dlapiper.ar



**Augusto Mancinelli**  
Partner  
DLA Piper Argentina  
T +54 11 4114 5575  
a.mancinelli@dlapiper.ar



**Esteban Russell**  
Of Counsel  
DLA Piper Argentina  
T + 54 9 116 197 8088  
e.russell@dlapiper.ar



**Nancy Victory**  
Partner  
DLA Piper LLP (US)  
T +1202.799.4216  
nancy.victory@dlapiper.com

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