

An Institutional and Practical Evaluation of URSEC – Uruguay’s Communication Regulator – and its Relationship with Citizens

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1. Introduction

This study is about URSEC’s information practices. How well does the regulatory authority of Uruguay communicate about regulatory information and processes to different stakeholders? Can different stakeholders participate in these processes? Because our investigation illustrates regulatory communication could be more effective than they currently are practices – especially with consumers, users and citizens – this chapter also looks to how the role of the regulatory authority is evolving and could effectively evolve to better accommodate these stakeholders.

Relative to other countries in the region, Uruguay established a regulatory authority quite late. The consumer movements fomenting in Latin America during the 1990s in response to privatisation passed by Uruguay, where the consumer advocacy movement even now is weak and under resourced. Consumer defence practices in part are concerned with monitoring market conditions and negotiation on the consumer’s behalf when these are sub-optimal. During the wave of privatisation in the 1990s, consumer advocacy in the region was largely preoccupied with pricing of services in context of tariff rebalancing, which was the result of ending cross-subsidisation of service services that had allowed monopoly providers to offer lower prices. “Indeed, telecommunications generated greater numbers of official consumer complaints than any other sector in some Latin American countries in the 1990s” (Rhodes 2006). But not in Uruguay where the state monopoly ANTEL continued to efficiently provide fixed line services and sustain high teledensity rates. Hence, there was not the imperative of developing a sector devoted to protecting consumer rights because the state was already perceived as doing this.

However, with the advent of competition in mobile and other sectors, and given URSEC’s responsibilities around spectrum licensing for broadcasting, this chapter argues that there is an increasing need for improving URSEC’s communication practices in support of consumers, users and citizens. Further, as URSEC matures and the sector it regulates becomes increasingly concerned with market conditions, the regulatory authority should both cultivate and strengthen groups that are concerned with provision of broadcasting, telecom and ICT services. Additionally, with convergence and the emergence of new access technologies, the scope of advocacy in the ICT sector comprises an increasingly wider spectrum of issues. Civil society advocacy looks beyond individual consumer’s relationship with the market to a broader sphere of rights, including universal service, universal access, participation in policy and regulatory processes and decision-making, access to information, and communication rights.

New technologies increasingly afford greater participation in regulatory processes and facilitating a more inclusive discussion of priorities and strategies for defining the fixed goals of national ICT policy frameworks. Additionally, considering the importance of ICTs to national economies and to poverty reduction at the local level, the participation of the potential beneficiaries of these new opportunities will contribute to the formation of sustainable solutions.

From this perspective, there is a focus on two central themes: broadening the concept of stakeholder and identifying and evaluating corresponding mechanisms, both new and traditional, that can be marshalled to promote significant and productive participation by all stakeholders. Civil society and advocacy groups are natural allies of independent regulatory authorities in terms of the mission to promote conditions for

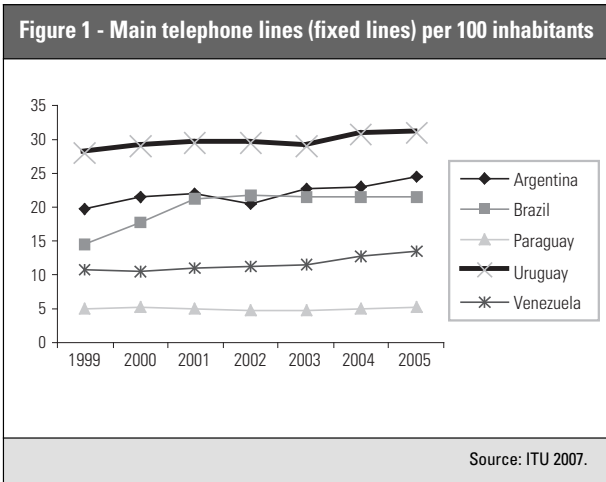
affordable access to the telecom network and services throughout all sectors of society.

This study was carried out with the goal of providing a perspective on these themes, as well as mechanisms for their inclusion in regulatory processes at a point in time when the Uruguayan regulatory authority is revising its communication strategy and practices. It has been undertaken within the framework of a cycle of studies that the World Dialogue on Regulation² has been conducting, focused on broadening participation in network development.

After a short five years of existence, URSEC has established four main areas of priority: advancing the democratisation of communication media; narrowing the digital divide; positioning URSEC as a recognised and respected institution; defending users and consumers. When considered as a whole, these priorities demonstrate a desire to transform URSEC into a more open and transparent institution, implicating a broader range of participants in its consultation and decision-making processes.

It is hoped that this study will contribute to this process by carrying out the initial steps of an evaluation of URSEC's communication practices and its relationship with citizens, and will also serve to promote transparent and inclusive regulatory practices. It is important to note that this study is based primarily upon a snapshot of an institution and its relationships taken in the second half of 2006, and should be considered within the broader process of institutional development, beginning with the creation of URSEC in 2001, continuing with the current transitional period which we hope will permit the regulator to overcome the deficiencies we have encountered.

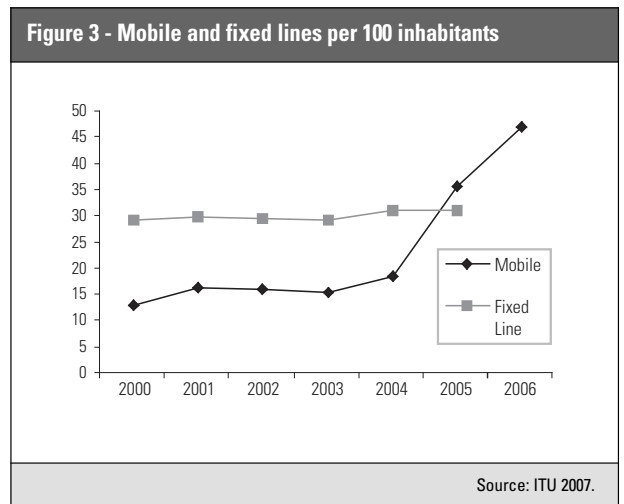
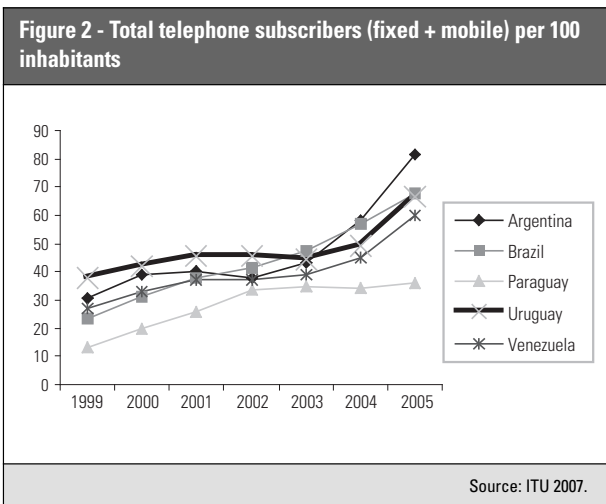
In order to present a complete understanding of this transitional process and the full context of our study, Section 8 of this paper briefly presents the measures which URSEC plans to implement during 2007. Many of these concern the areas examined here. In order to follow this period of transition and ascertain when these declarations have been transformed into concrete practices, it will be important to undertake a second follow-up study in 2008 to assess the implementation of URSEC's plans as have been outlined at the end of 2006.



1.1 Methodology

This is a preliminary and exploratory assessment of URSEC undertaken during late 2006. Our intention has been to investigate the state of URSEC's communication practices, in order to be able to make general recommendations as well as to identify further in-depth work that will need to be undertaken.

This assessment is based on in-depth interviews (see questionnaire in Annex 2) with representatives from URSEC, user groups and consumer advocacy groups (see Annex 1 for list of interviews); a website assessment; and review of documentation provided by the regulatory authority that is publicly available, as well as some internal documents that were made available for the purpose of this study.



Overall, we were guided by principles of best practice for regulators. These are institutional qualities that ensure that regulatory processes and decisions are reasonable, transparent and occur in an open, participatory environment.

2. A brief overview of telecoms in Uruguay

For readers unfamiliar with Uruguay, it is not a particularly difficult country in terms of terrain and the project of universal coverage. There are no mountain ranges, war zones, or particularly difficult places to reach. In fact, the entire country spans a mere 176,215 square kilometres, inhabited by three million people – about half of whom live in the capital city, Montevideo. But while Uruguay has enjoyed high teledensity relative to other countries in the region, new dynamics such as competition in mobile, emerging technologies, and the imperatives of the information society imply that new rules are being formed in the telecom and ICT sector, and that stakeholders need to be better informed about the sector, its regulation and how to participate in decision-making processes.

In February 2001, Law No. 17,296 was enacted, ending the state monopoly provision of telecom services and mandating the creation of URSEC – the national regulator for telecom and post. Thus privatisation came later to Uruguay than for most of the rest of the region, and nor was there a full opening of the market. The incumbent ANTEL would continue (as it does today) to provide fixed basic local telephony and the mobile sector, long distance and value-added services would be open to competition.

Uruguay is a bit of an anomaly. The persistent and endemic lassitude of over-staffed and ineffective under provision of state telecom that justified and drove privatisation initiatives in most countries was not the case in Uruguay. Monopoly provision of telecom services has been effective and the country

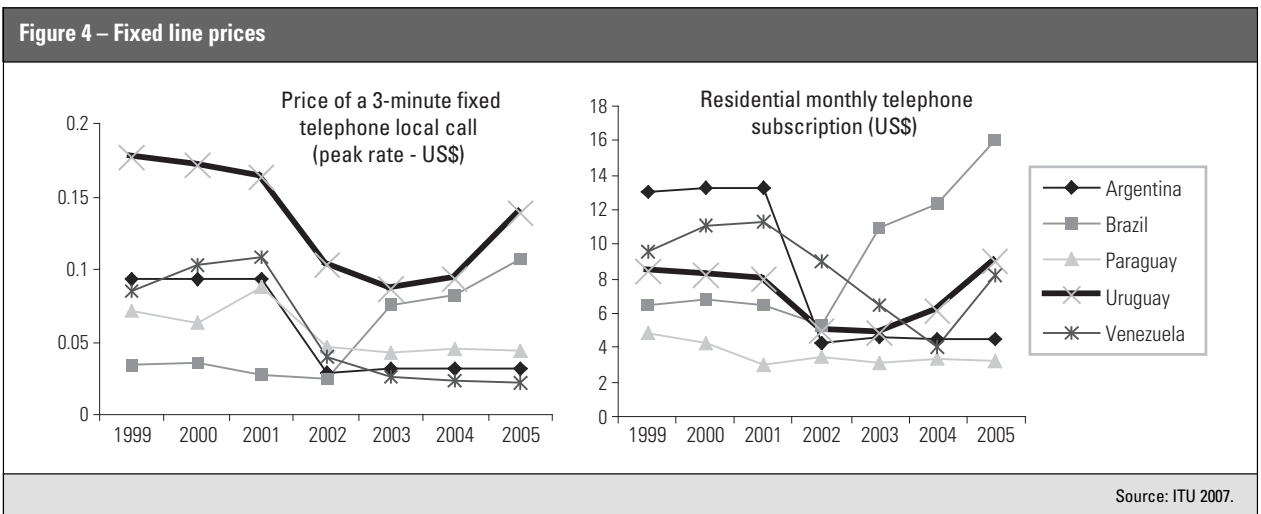
historically has had one of the highest rates of telecom penetration in Latin America with ANTEL being acknowledged as a reasonably efficient company.

The high teledensity rates, relative to the region, are shown in Figures 1 and 2. Across the region there has been stagnation in the fixed line segment of the market, with overall increase in teledensity being driven by mobile connections. Given the fixed line stagnation, the growth shown in Figure 2 is of course due to growth in the mobile sector – growth that continued during 2006 (see Figure 3) resulting in almost half of the population currently having a mobile phone. Hence, there occurred the now commonplace crossing of lines in Figure 3, of mobile connections surpassing fixed line ones. Prepaid mobile accounts for about 80% of subscriptions.

As shown in Figure 4, the cost of ubiquitous service provision and the fact of not introducing privatisation into the fixed line sector has been significantly higher prices for ANTEL subscribers. Rates were scheduled to be adjusted during 2007 with the introduction of a flat calling fee for the entire country, significantly reducing costs for subscribers outside of the capital city.

For the future, high fixed line penetration could explain in part higher rates of Internet access for Uruguay much before broadband connections were available (see Figure 5). This fixed line advantage could be significant as the country moves toward information society goals.

The point of this paper is not to argue for or against privatisation. However, there may be an argument that Uruguay's particular configuration of monopoly fixed line service provision with competition in mobile, will be a beneficial arrangement as the country moves toward information society goals and enjoys the advantages of previous investment in fixed line infrastructure. As shown in Figure 6, Uruguay already enjoys a strong regional ranking across information society indices.



The telecom terrain has been evolving into an ICT terrain, and ICTs offer a new level of opportunity for the country and they also engender new forms of participation in the market and social/political life. The next section considers the regulator's evolving role in this context.

3. Regulatory information practices

When regulatory authorities began to be established around the world during the 1990s, they were mandated with creating the conditions for a newly privatised telecom sector. This meant establishing market rules and technical frameworks. To a certain extent regulation, at that time, was seen as a goal – and once obtained would no longer be needed.

To achieve this goal of regulation, the regulator needed to establish conditions for interconnection, licensing, pricing, and so forth, which were transparent and fair. Because of the previous connection between government and the sector's service provisions by the incumbent, the regulatory authority needed to be autonomous from government and seen as also free from any suspicion of regulatory capture by any of the market players. In this context, the (good) regulatory authority's information practices during the 1990s and early 21st century, were concerned with providing basic information around the laws and regulations governing the sector, technical specifications and equipment certification, terms of agreements and so forth.

After more than a decade of experience, it has become clear, however, that this understanding of regulation is no longer accurate, if it ever was. More appropriately, we can now view regulation as an ongoing process of negotiation between different sector stakeholders. This is because markets do not always work as they are supposed to and because technology continues to evolve and elude the specificities of previous regulation.

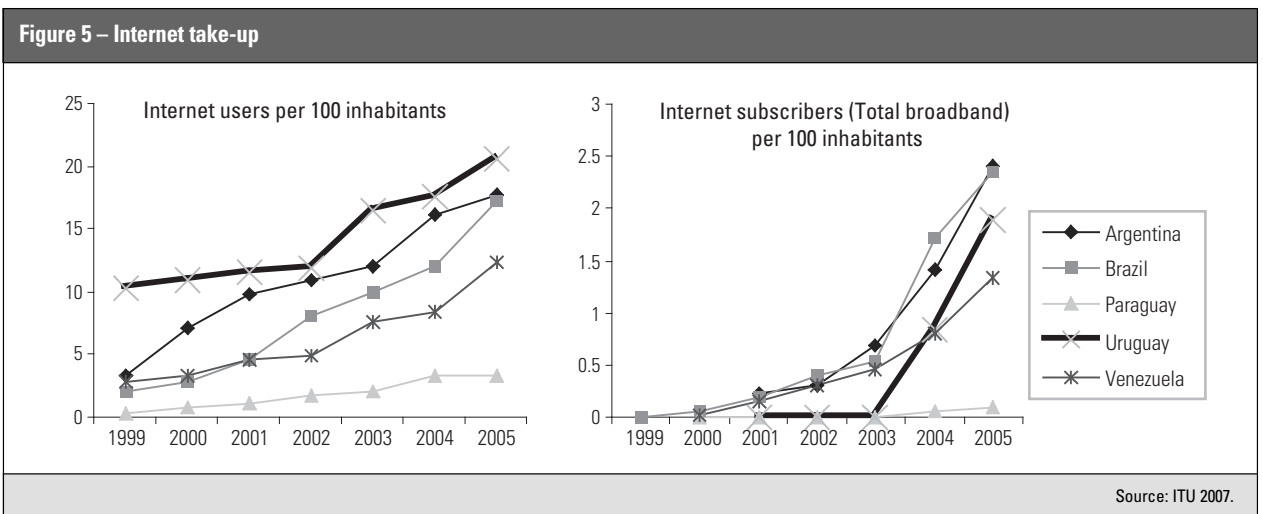
Private sector stakeholders have historically had the most clear relationship with the regulator, simply because ongoing private sector activities are the primary object of regulatory scrutiny and oversight. Thus, it is not surprising that regulators tend to offer a good range of information, services and applications to facilitate conducting telecom business in the country.

It is increasingly clear that regulators should strive to serve all stakeholders equitably. Consumers who are armed with adequate information about the services on offer can make informed choices about which provider will best meet their needs in terms of price, quality and type of service. And consequently, the ability to choose between different offerings encourages competition on these different levels. Likewise, users and citizens who are aware of their rights and understand regulatory processes can participate in decision-making about the sector and ultimately about the conditions for their children, families and communities being able to access the network and benefit from the information society in Uruguay.

4. Information diffusion and access

At the time of this study, URSEC's information and communication tools and mechanisms for communicating with its citizens were largely insufficient. The number of people and financial resources dedicated to the management of information and external communication demonstrate the level of importance given to it until now. Only two staff people have been assigned these tasks – one manager who is also the Director of Institutional Relations and who works closely with URSEC's upper echelon; and a functionary responsible for URSEC website content.

Graziano Pascale, Director of Institutional Relations, maintains contact with the press, sporadically prepares and issues press releases and makes decisions concerning website con-



tent, among other tasks. He is also partially dedicated to other matters not related to this primary area of responsibility.

An example of the limitations encountered during our investigation, during the months preceding the finalisation of this study no resources were available to maintain a third-party contract for press clippings to allow URSEC to observe how it is treated in the Uruguayan written press and what subjects are addressed that relate to its competency as a regulator. Pascale mentions this himself, affirming that: *“we have very severe financial limitations, very severe. To give you an example, we are hosting a seminar here next week and I need to go rent a projector in order to give the presentation. You can see it clearly in small details such as these. Although I am on staff, I don’t have access to the press everyday. I have to resort to accessing it online. Sometimes somebody clips articles and sends them to me, sometimes I buy it out of my own pocket. These are minor details, but budgetary limitations all the same. Sometimes these are due to an organisational problem, hierarchy of tasks, budgetary or administrative problems or internal controls. There are a variety of circumstances,”* he reaffirmed, *“but one is not always in an optimal situation to overcome such anxieties.”*

For this functionary, the basic tool used by URSEC *“is the website. Further, if there are certain issues of punctual importance and if the Director decides that they merit press releases or concrete actions, we also use the mass media.”*

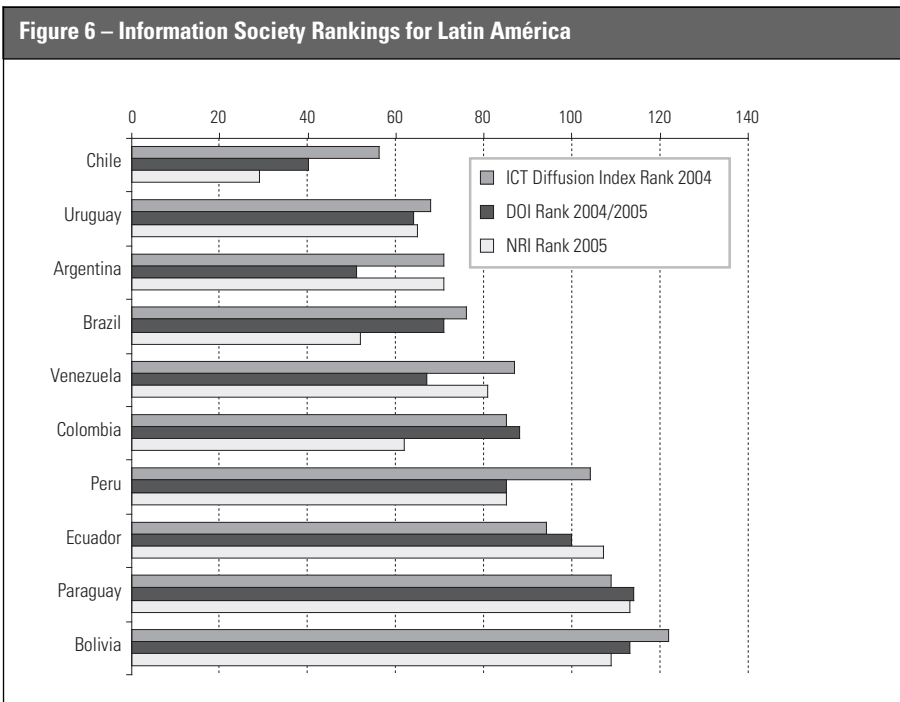
4.1 The website

An analysis of the URSEC website³ reveals that it is out of date and contains a number of deficiencies in terms of structure, provision of information and communication mechanisms for users and consumers.⁴

A quick review of the website’s content shows that available information is largely basic and atemporal. The online information is largely related to the regulator itself (objectives, legal responsibilities, integration, etc.), the current legal framework⁵ and guidelines for the most common procedures carried out with the regulator.

Information on spectrum use and the operational structure of certain services (especially broadcasting) is also made public to an acceptable degree. Information concerning subscriber-based television services is more limited. While there is information concerning who has been granted licences, this information is neither complete nor up-to-date.⁶ In many countries this information is private or not made public, broadcasting-related information being one such example. On the URSEC website, the activities of companies holding frequency licenses are clearly identified.

URSEC budgetary information is not up-to-date with only the 2001-2003 financial years having been published online. The site offers a limited number of publications and presentations and public statements by URSEC’s directors, but only up to November 2003. The “Events” page has more ample content thanks to the seminars held during 2006 and the inclusion of the papers that were presented at these seminars.



The website offers updated market information such as interconnection rates (February 2007), as well as studies such as on the evolution of telecom markets in Uruguay (August 2006) and evolution of telephone service markets in Uruguay (February 2005). Studies such as these, even without being kept up-to-date, are good contributions to the site but are inadequate in terms of the body of information needed by operators and citizens. This is the type of study that an organisation such as URSEC must engage in to further develop its work.

The latest applied operational rates (resolution of December 2005) as well as instructions and forms for service operators making payment of the Regulatory Framework Control Fee are available. However, there is no information pertaining to users and consumers (and their associations) that provides analysis such as price and service comparisons.⁷

The site offers up-to-date minutes of the MERCOSUR technical group meetings in which URSEC participates, as well as scanned copies of the original resolutions passed by this body and the office of the Presidency, such as changes in ownership, administrative sanctions, etc. Nevertheless, there is no space for publicizing information concerning other activities of the everyday management activities of URSEC, something the majority of regulators in the region make available on their front page. In addition, the “News” page promising that *“Here you can find the most recent actions of URSEC”* has only six entries, the last one being from December 2003.

Likewise, the “User’s” page is quite limited and not sufficiently emphasised on the front page of the website. Users are only cursorily informed of their rights,⁸ given access to a feedback form and a plan for evaluating the site. While it was beyond the possibility of this study to analyse its real impact, it

is important that the website provides a direct means for communicating with the directors of URSEC.

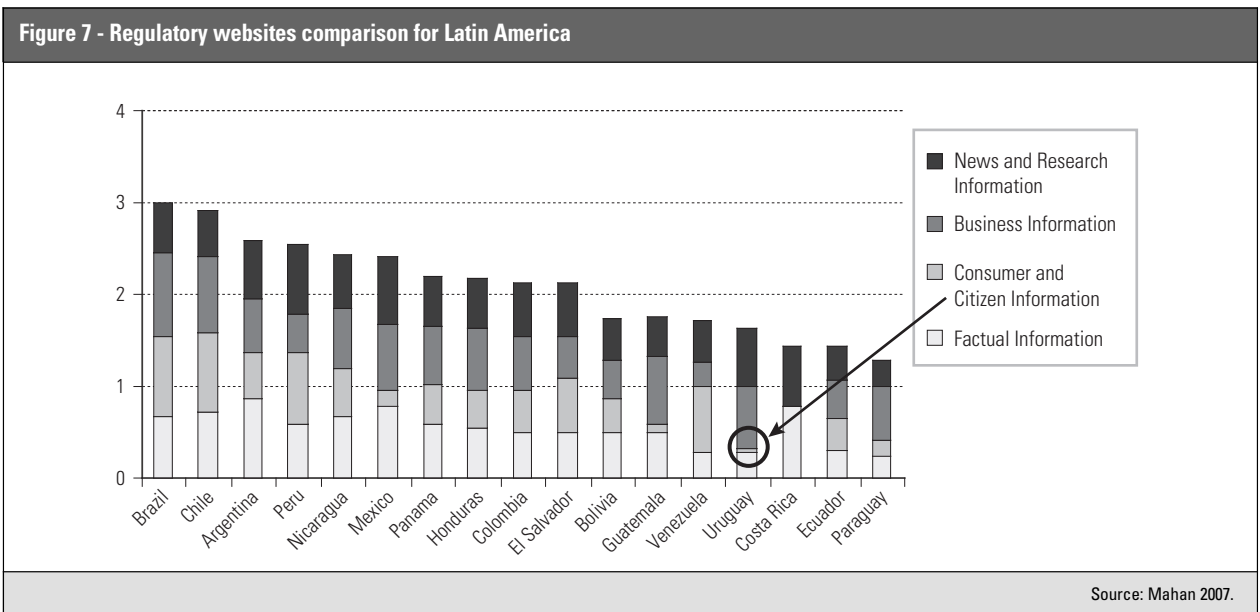
As the only practical means to orient consumers, it provides information on how one can rescind a mobile telephone contract.⁹ There is no other mention of procedures or mechanisms for complaints or contacting representatives of the officially recognised consumers associations.

Figure 7 summarises the findings of a regional assessment of regulatory websites across the region, looking at how well information is provided across general thematic categories of information.¹⁰ URSEC appears to not view their website as an important vehicle in this regard. Across the different rankings, the consumer and citizen information category was by far the most neglected, with the URSEC website being evaluated as providing little or no information about public participation in regulatory processes, universal service or consumer rights.

Multiple explanations for the state of URSEC’s website, a fundamental tool in the information and communication strategy of any telecom regulator, became apparent during the course of analysis and interviews. Among them are politico-communicational, structural, budgetary and personal capacity limitations.

It is important to note that during our investigation we did not encounter any demonstrated predisposition to hiding information. However, public information that various authorities within the organisation should and would like to make available in a transparent and public matter, cannot be found in an adequately complete and timely fashion.

At times, this is due to internal bureaucratic disorder or the product of poor working relationships between functionaries due to a generally poor level of internal functionality within the organisation, albeit as noted above, is currently in the midst of



revision. It was also commented that there were no clear and established procedures for updating website information, and this posed serious obstacles for its administration: *“the question that arises most often from the functionaries themselves is how to respond when users call asking whether information posted on the website is correct. This information is bound to change the image of the institution and the credibility of its actions,”* notes Mariela Machado (of URSEC).

Regulatory websites are rapidly becoming a significant vehicle of communication and information sharing with operators, consumers and the general public. Because there is high use of Internet in Uruguay, the URSEC institutional website could offer a transparent and accessible source of information and facilitate procedures.

4.2 Public consultations

Like the institutional website, public consultations are an important way for consumers and citizens to learn about and participate in regulatory processes. As shown in Table 1, there are different forms (and names for) public hearings or audiences. But their same intention is the goal of informing and obtaining input and feedback from stakeholders in the country's regulatory processes. Public consultations can address a range of themes such as technical decisions or policy proposals that need to be implemented. Such public events, especially if properly prepared with sufficient information circulated and sufficient time for discussion and response, contribute to the transparency of regulatory practices.

Table 1 – Regulatory Public Consultations					
Country	Consultations announced on regulatory authority websites during the past three years	Information about the topic online?	Information about how to participate online?	Can submissions be made online?	Are all submissions available for consultation via the website?
Argentina					
Bolivia					
Brazil	12 public calls, 2004-2006	yes	yes	yes	no
Colombia					
Costa Rica	219,* 2004-2006 (public audiences)	yes	yes	yes	no
Cuba					
Chile	7, 2004-2007(public consultations)	yes	no	no	yes
Ecuador	9, 2006-2007 (public audiences)	yes	yes	yes	yes
El Salvador					
Guatemala					
Honduras	2 public consultations, 2007	yes	yes	yes	no
México	1 public consultation, 2006	yes	yes	yes	yes
Nicaragua	1 public consultation, 2006	yes	yes	no	yes
Panama	2 public consultations 2005-2006 - 3 public audiences 2005-2006	yes	yes	yes	yes
Paraguay					
Peru	8 public hearing, 2004-2006	yes	yes	yes	no
Dominican Republic	1 public hearing, 2005 – 3 public consultations, 2005-2006	yes	yes for public hearing - no for public consultations		
Uruguay**	5 public consultations, 2004-2006	yes	yes	yes	2005-6 yes 2004 no
Venezuela	27 public consultations, 2004-2006	yes	yes	yes	no

* This includes themes for all public services (not just telecom). The Costa Rican regulator, ARESEP, has the broad mandate of regulating a range of public services. Also, in some of the provinces, public audiences were held but there were no participants.
Source: NRA websites.

** Public Consultation for Selection of International Long-Distance Multi-Service System for SMS Message Marking (April 2006), Public Consultation on Indicators of Telecommunications Services (June 2005), Public Consultation on Multi-Service Long Distance Service (February 2005), Database for regulatory use (September 2004), Fundamental Plans for Numbers and Signals and for Pre-subscription Regulation (January 2004)
Source: URSEC website

Not the same as public consultations, but with similar intention to inform stakeholders, URSEC has held a number of public seminars on regulatory issues – and as noted in the previous section, the presentations from these are available on the URSEC website. Public consultations – an open call for public opinions on decisions and new regulations – are denoted as a regulatory best practice and are used in other countries, but until recently have been employed rarely, in Uruguay. *“Public consultations are an example of how stakeholders are given space and listened to,”* affirms Graziano Pascale. *“The public consultation is an established mechanism, there have been several, I believe more than ten public consultations on different subjects, technical in the majority of cases, but public consultations all the same. Anybody that is interested can submit their opinion through the website and this has indeed occurred.”*

Since 2003, public consultations have been carried out by URSEC on new spectrum management regulation, a new telecom licensing regulation, telephone channels and signals, databases for regulatory use, draft legislation for low-power broadcasters and more.¹¹ According to available information, actors who participate generally are directly interested service operators and enterprises, academics on occasion and, very rarely, social organisations or citizens.¹² For Pascale, the ‘directly involved’ form 99.9% of those who respond to the consultation.¹³

In several of these consultations, *“I remember an announcement being published in the press, above all when there is a subject that will have considerable direct impact upon service operators”*, reaffirmed Graziano Pascale, *“moreover, press releases were sent to journalists.”* However, *“when they concern very technical matters, questions regarding telephony or signalling, the reality is that interested parties are notified so that they read the document and make contributions.”*

4.3 Print media

Shortcomings observed in the online environment are reproduced in the print media. It has been more than two years since URSEC has published an institutional pamphlet. Nor has URSEC issued press releases, published studies or information relevant to users, consumers or service operators.

Since its creation in 2001, URSEC has published only two pamphlets on the characteristics and actions of the organisation including a budgetary resume. The first, referring to the period 2001-2002, is entitled *“The regulation of communication in Uruguay: first steps”* and the second from the period 2002-2003, entitled *“Towards the consolidation of a new communications framework,”* was published in 2004.

4.4 Mass media and the public interest

The use of radio and television and their relation to URSEC have a special importance as media for diffusion and communication with the population, taking into account the weight of their impact on the formation of opinions and the creation of meanings. The current study confirms that URSEC has not employed a strategy with defined objectives to ensure its pres-

ence in the communications media. When recourse to mass media has occurred,¹⁴ it has generally manifested as notification to journalists of actions that URSEC has taken, and making these actions known to certain media interested in the subject or in a reactive and defensive manner.

Often this form of communication is employed to contest opinions of opposition party leaders or of business persons affected by URSEC’s decisions (lack of thereof). Hence, the importance or relevancy of these decisions is signalled by the reactions of those directly involved (either directly or through sector lobbying targeting political party members sensitive to their demands).

Notably, not even positive news, in the sense of actions or decisions taken by URSEC for the benefit of its image with regard to the public and stakeholders, has been given proper media diffusion.¹⁵

This issue has already been raised during the internal revision process of the organisation. Machado observes, *“we must anticipate rather than working reactively. It is URSEC that must define its direction and develop areas of thematic importance, or at least interest. And this must happen first, providing information and educating the people. [...] It has to do with giving positive signals, explaining this to society, having quality information for conceptualising decisions, the primary objective being the rights of citizens. Add to this other concepts such as interests created between service operators and license holders, or the public not being prepared, lacking information and not having a culture of complaining, it is much easier to take into account pre-existing interests. These are the interests to which the people are most accustomed and which more easily gain credibility in their discourse.”*

Responsibility for presenting the official voice of URSEC has been assumed, almost in exclusivity, by president, León Lev. Through interviews he has presented the position and arguments of URSEC with regard to all polemic themes that the administration has encountered; or an explanation of the objectives and authority of the organisation. He is treated as a political leader who had been a Frente Amplio deputy, with ample experience both within the party and with the media, allowing him to fluidly carry out his work.

The role played by the regulator with respect to television and radio service operators makes the identification of these deficiencies regarding actions, resources and communication strategies quite worrisome. In addition, the managers of these media and telecom enterprises greatly influence the public agenda while being concerned with corporate interests affected by the actions of the regulatory body.

If we take into account the strong vested interests of this environment, we cannot ignore the fact that these interests will not always be in accord with the general public interest nor with the rights of users, citizens and consumers, if not the corporate interests of these groups. The context deteriorates further in assessing levels concentration in television media and the weight of the corporate image, as well as the economic

weight these telecom enterprises have in accessing these same media through paid advertising.

The public agenda does not so much refer to a list of established subjects as to the manner in which the priority, extent and relevancy of what appears in the media affects the public opinion. Thus, the priority, extent and relevancy of these issues are not defined through public policy or the regulator's communication strategy but by other interests such as political parties, journalists or corporations. Ultimately, this situation greatly affects the image of the regulator as a body working with the population with concern for their rights and other related issues that are at play.

This environment is complex and generally unfavourable to the objectives that URSEC must defend and promote. These require conscious, vested and organised action in order to succeed in the role of effectively defending the rights of consumers and users.

This situation, well known to Uruguayan authorities and to the regulator itself, is all the more paradoxical due to the lack of use of a legislative tool which allows URSEC to use radio and television free of charge. The measure provides URSEC with up to thirty minutes per day of free media space for regulatory messages or campaigns, but this has been used on only a few occasions.¹⁶

For Pascale, part of the explanation has to do with the origin of the regulation which permits this use of the media, passed during the military dictatorship:¹⁷ *"it is a law that has always been questioned due to its origin, in an authoritarian government. It has been used on occasion – never in excess of the thirty minutes – when there have been very brief campaigns, but always in a friendly manner. It was less of an imposition and more the fruit of a dialogue with the media that accepted (to run the campaign)."*

5. Defence of user and consumer rights

The principal relationship between URSEC and citizens is via feedback mechanisms or consultation with users and consumers (clients, in the terminology of the regulator). Clients are treated equally to public and private service operators with regards to their proper activities.

5.1 The legal framework

Legal capacity concerning the defence of user and consumer rights regarding telecommunication and broadcasting are detailed in the founding law of the regulatory authority.¹⁸ Accordingly, URSEC has been given the following responsibilities and powers:¹⁹

e. control the installation and functioning, as well as the quality, regularity and range of telecommunications services, be they rendered by public or private operators.

p. ensure the rendering of promised services by public and private service operators according to their ability, applicable juridical and

technical norms, (and) requiring the provision of any and all information by these operators.

q. to the best of their ability, receive, guide and resolve all official user and consumer complaints regarding promised services that have not been resolved by service operators.

r. protect the rights of users and consumers, thus permitting for the exertion of powers attributed to the administrative authorities in Law N° 17.250, August 11 2000.

Law 17.250²⁰ regulates the country's consumer relations. URSEC has exclusive responsibility for its application in matters concerning telecommunications. This norm establishes possible actions that can be taken by consumers and users as well as sanctions that can be applied to companies. Defence of user and consumer rights has been taken on as a central task during the entire existence of URSEC²¹ and the current administration has spoken of it insistently. The president of URSEC, León Lev, has publicly described it as one of the regulatory authority's four priorities during his mandate. In order to facilitate and ensure that telecom and broadcasting operators satisfy their responsibilities and obligations to users and consumers, URSEC must accomplish objectives originating within this and other legal norms.

The prevailing legal framework establishes that individuals or companies licensed to operate telecom services are prohibited from "engaging in practices that limit, impede or distort the right of clients²² and users²³ to freely choose" such services.²⁴

In addition to requiring the satisfaction of contractual obligations, in order to obtain regulatory authorisation, service providers have the following obligations with respect to clients or users:

(i) Provide clients or users with adequate and truthful information with respect to conditions of service provision and contractual service agreement.

(ii) Make public the prices, promotions and service plans offered.

(iii) Do not include, in contracts, clauses that imply unjustified inequalities between the rights and obligations of the parties.

(iv) Design client invoices in a manner whereby the provided information will be easy to understand and wherein fees are clearly described as follows: services, hour segments, subscription, fixed charges, variable charges, supplementary services, tax, etc.

(v) Operate a telephone number through which clients can access information related to services and make complaints.

The manner in which clients' and users' rights are affected is considered an aggravating factor in the application of preventative measures.²⁵

The prevailing legislation concerning radio and terrestrial television is the Radio Broadcasting Law N°14.670 and Regulation N°734/78. Both were passed during the military dictatorship. The rights of radio broadcast users have been traditionally limited to problems of interference with reception

within the home. However, this is not always the case, one example being the assumption of programming agreements in order to obtain authorisation for the use of a radio frequency.²⁶

5.2 Dormant rights

Gabriel Barandiarán, former member of Parliament and current director of Causa Común,²⁷ a consumer association, agrees that there are “serious difficulties in accessing information. Even the most basic information found on the URSEC website is incredibly scarce. One can see who they are, what they are, their photos, the articles, all the basic information. However, one cannot make a complaint via the website. By way of a basic example, I do not have access to cable service operator contracts and I would like to have them before I approach the company, who will not provide me with these. Or, as a consumer organisation, it would interest me to see these contracts in order to ascertain that a certain contract should or should not be signed. I might advise that if you sign this contract you should be aware of Part Three, say because of particular obligations implied there. However, I cannot do this because I do not have the contract and if I ask the service operator, they will not provide me with one.”

But the capacity of citizens, users and consumers to exert pressure and make their presence known does not only depend on the opportunities and tools provided by a regulatory framework and the everyday management of URSEC. This capacity is also determined by the inherent characteristics and the development of social organisations, an awareness of their rights and the ability to exercise them.

In Uruguay, there is not a clear understanding of the rights that consumers, users and citizens have. This is not just the case for telecom related issues. People are not accustomed to complaining about a poorly provided service or something purchased in a poor state. This is the reality, even if the Uruguayan legislation concerning consumer relations was recently enacted.²⁸

Yandira Vega, representative of Consumidores y Usuarios Asociados (Associated Consumers and Users), is very critical of this situation: “Uruguayans are very comfortable, they are people who do not mobilise for anything and this has been proven many times over. For people here, there is a cost to walking five blocks and taking a bus to come here to exercise their rights. Thus, it is very difficult to improve this situation. If no social group can fully take responsibility and organise, nothing is going to happen.”

According to the associations consulted during this study, few inquiries and complaints related to telecommunications have ever been filed. However, this situation has improved in recent years due to the growing cellular telephone market.

According to Mario Bergara, Deputy Minister of Economy and Finance (MEF) and Director of URSEC from 2001 to the beginning of 2005, “there is no dynamic of systematic complaints.” Among other reasons, it is a cultural issue “insofar as Uruguayans do not have a sense of contributing to their rights and obligations. Nor do they feel like consumers with rights and

obligations. In terms of basic services, Uruguayans have always felt protected by the State.”

Barandiarán, in the same vein, asserts: “Uruguay is a country highly oriented towards provision. I’m 47 years old and I remember that the State – when I was young – provided you with basic goods as well as those that were not very necessary. This includes monitoring and establishing prices. There were public companies for urban transportation, a national slaughterhouse, not to mention the public enterprises that we have today, including recently established companies dedicated to the production of alcohol as a mechanism for protecting public health. In Uruguay, this has resulted in a situation whereby we have been born and raised in an environment directed by provision. The big issue was what we needed to produce and under what conditions production was possible, not the vision of the consumer participating and changing the rules of the game. Thus, in Uruguay we pay more attention to the subject because it costs us more to change these sorts of things than in other countries. We can clearly see this in the case of the communications regulators which are focused more on administering supply, rather than on understanding the rationale behind demand.”

5.3 The role of URSEC

A particular case concerning subscriber based television service contracts (cable, wireless cable and UHF) has served as precedent for URSEC’s role in guaranteeing defence of consumer rights and illustrates the challenges that can confront the organisation.

During the profound economic crisis that took place in Uruguay during 2002, families needed to eliminate unnecessary expenses. One of the first things they decided to eliminate was subscriber television. In massive numbers, people wanted to cancel their contracts, which the companies resisted. This conflict was rectified with the use of an article in the Consumer Defence Law prohibiting the inclusion of abusive clauses in contracts.

The contractual clause made service obligatory for one year, something ostensibly reasonable since it did not include installation charges. The problem, however, as Mario Bergara explains, was that “at the end of the year, if you had not notified the company during the previous two months that you planned to cancel your contract, the contract was automatically renewed for another year. Thus, if you want to cancel your contract after one month of service, you must still pay for the following eleven months.”

URSEC’s legal advisor confirmed that this was to be considered a case of abuse and began a negotiation process that resulted in a solution that was not acceptable to the consumer associations. The regulator decided to act in the collective interest and thanks to an agreement with the groups representing subscriber television operators, annulled the previously mentioned contractual article but permitted television operators to charge two months of indemnification.

For the Asociaciones de Consumidores “the law establishes that, in the case of an abusive clause, the contract continues to exist, but without the offending clause. Thus, the mere fact of the clause having been declared abusive meant that, from that moment onward, any consumer could cancel when they wanted,” observes Barandiarán. Nevertheless, “URSEC agreed with the cable companies upon an indemnification mechanism for cancellations, which is illegal.²⁹ It is absolutely illegal because the law already gave me the right to cancel my contract due to the exclusion of an abusive clause. What was the reason for indemnification? It doesn't make any sense to demand indemnification for exercising a right.”

Barandiarán, head of the Causa Común, observes that the explanation is simple: “remember the following – ‘the television channels are very powerful, an electoral campaign is coming’ – ... this is a typical situation. And this situation reveals the role that regulators ultimately fulfil as opposed to the true role they could play throughout the country. Here we have a conflict. The regulators administer supply or negotiate with suppliers more than achieving their role in defending consumers.”

Barandiarán notes that the regulators' role can be seen in two ways: “the regulators themselves assuming the defence of the public interest (as in this case) rather than being weakened by it, or empowering organisations that can do it properly such as Causa Común, CUA or 80 others, allowing them to act as arbitrators. Because in the previous case, rather than defending the public interest, the regulator forced us to say, ‘look here, at Causa Común we are pushing for this and our lawyers have something to say on the matter, come and all three of us will talk’. And this worked out better because the regulator acted as an arbitrator rather than as a party to the negotiations, although their actions were fairly weak.”

5.4 Promoting rights

To promote consumer rights, among other measures, URSEC issued a notice on television,³⁰ although according to the ex-director of URSEC, Mario Bergara, “in general, it was not an organised group of consumers who responded. Rather, they were all individual interventions from people who went to the company and were treated poorly or were told that they would not be able to end their contract for ten months.” Bergara affirmed that associations' participation was very minimal and that “URSEC was not prepared to receive a massive number of interventions, but I will tell you that it received around 500 of them.”

This had been one of the arguments advanced by Graziano Pascale in discussing creation of a mass media campaign on rights and the ways in which citizens can make claims: “the problem that we also see is that if one proceeds with this campaign without a system for interventions in place, it is useless. Because you carry out a campaign and say ‘come to URSEC, bring your complaint’, and somebody comes with a complaint and says ‘Now that I've come with my complaint, what do I do?’, ‘You need to go to the legal department and within five to ten days...’. So, a campaign that raises expectations – but which cannot satisfy these expectations – is one that is ultimately more

negative than positive, and that creates more biases than benefits.”

The interviews carried out during this study and the existence of a plan for profoundly modifying the internal structure of URSEC attest to this situation. “There are neither procedures nor filters for dealing with the diverse interventions we are presented with. Nor control,” affirms Machado.

Even if URSEC raises expectations of being consulted or able to make a claim for their rights, it does not possess the necessary conditions for responding to this demand. There are insufficient numbers of functionaries who are adequately trained, nor is there an adequate telephone system or other mechanisms and procedures for managing and responding efficiently to the population.

According to Pascale, the current URSEC administration has chosen to work in reverse: “first we are preparing to receive people instead of inviting people who come while we are not prepared to respond to them,” thus generating frustration and a loss of credibility for the institution. The only problem is the amount of time it will take for this system to become operational.

Except for isolated events, there has not been a permanent or systematic campaign to sensitise and educate citizens about their rights since the creation of URSEC.

Bergara acknowledges this while affirming that, in addition to a lack of consumer culture that “exercises their rights, URSEC has not offered any sort of institutional representative responsible for this. The administration is in a very preliminary stage in which actions are very much reactive, that is, they function if there is a problem with a corresponding intervention, but there is not an active policy to educate consumers and facilitate them to exercise their rights. This, I think, is the second step in the maturation of these regulatory organisations.”

6. Relations with civil society

Civil society participation exceeds the framework of users, consumers or clients when it transcends the limited relationship between an individual and a corporation. In this manner, citizen participation can play a significant role in the elaboration, definition and implementation of state policies and decisions concerning telecommunications and broadcasting.

This implies the existence of clear and concrete mechanisms concerning information, communication and participation. It also serves to identify current stakeholders in these processes and who should participate. In this respect, Machado inquires: “Is there a real discussion of who is involved? Who needs to be involved to achieve the objectives that I have been assigned? Does the institution have a policy to facilitate the involvement of all stakeholders? These definitions should not be absent.”

General practice has been to deal with service operators individually as well with their professional associations. There are various mechanisms and guidelines for facilitating these

relationships as well as functionaries and resources dedicated to them. This is largely thanks to the accumulated experience of the now defunct Dirección Nacional de Comunicaciones (National Communications Directorate).

The creation of URSEC and the growing recognition of user and consumer rights have been developing another area of attention for the organisation and its functionaries. This development of interest, however, is not yet accompanied by the resources, personnel and training needed to meet this challenge.

6.1 Consumer Associations

There are only four recognised consumers' associations in the country:³¹ the Liga Uruguaya de Defensa del Consumidor (LIUDECO – Uruguayan League for Consumer Defence), the Liga de Amas de Casa (Housekeepers' League), Consumidores y Usuarios (Consumers and Users), Causa Común (Common Cause) and Consumidores y Usuarios Asociados (Associated Consumers and Users). This recognition has strengthened the associations, resulting in various state responsibilities, due to voluntary effort and persistence. They have also won some important judgments. According to qualified observers, however, these organisations are still weak, with questionable representation and little (but increasing) legitimacy with respect to corporations and authorities within the sector.

For the president of URSEC, León Lev, *“there are no representative organisations. This is the reality in Uruguayan society; there are no organisations that have acquired a cumulative history of experience in order to play such a role,”* making reference to the various civil society organisations. Hence, *“one must be careful to guarantee a spectrum of plurality, democracy and representation to avoid claims that we are under the power of civil society.”*

According to Gabriel Barandiarán of Causa Común it is not easy to create and maintain a consumer defence organisation in Uruguay. *“We are the NGOs that people have the least confidence in institutionally. Consumer organisations cannot maintain corporate support and in Uruguay it is very difficult to maintain anything with citizen support simply due economic reasons. This situation – the disequilibria of power in society – will be resolved when the State itself stimulates the development of consumer organisations, assuring that they satisfy certain conditions – such as in Spain, for example. There they are required to have representatives from all the provinces, no less than five per region. They are required to be open to the public during set hours and are guaranteed equal resources. They are, however, subsidised.”* Without such aid and infrastructure, he affirms, consumer organisations will continue to be very weak.

Representation and legitimacy of consumer and user associations is not only a matter of composition and structure. Although it can be agreed that *“there is not much of a culture or tradition of consumer associations in Uruguay”* and that *“only now are they appearing at some level, with dubious representation.”* For Bergara, *“the representation of consumers is a very vague concept. It is not very clear that an organisation defends*

the rights of the consumers in a delimited sector. Because there can also be other groups that argue: ‘we also defend the rights of consumers’ or ‘no, we have our own representation’. Thus, while in a union environment there are certain rules to the game to say that a certain sector is represented by a certain guild, it is not very clear at the consumer level how to legitimise their representation.”

He adds, *“I envision a regulator that functions much better when vested interests are made explicit. It is a strategic player in a game of vested interests. Thus, when these interests are identified in a clear manner the regulator can function better, in a way that is more transparent and independent. The existence of consumer interest groups will help identify these interests, but it will be difficult for them to say what level of representation a certain organisation should have. The business sector either represents itself or their employee organisations operate as defenders of their interests. This level of clarity is more difficult in the case of users.”*

URSEC has not yet developed a fluid relationship with the consumer associations that exist today and which have been recognised by the State as valid actors under the scope of the Consumer Relations Law. The only meeting with these groups took place in 2006 and was organised by URSEC. For Yandira Vega, *“it was an innocuous meeting. It was a meeting in which the consumer associations were brought together, but was ultimately a presentation of little importance.”*

Asked why there had not been more of an established relationship – through regular meetings, for example – Vega admits, *“it is probably because we haven't requested them, that could be it.”* Upon further reflection, she adds: *“but they haven't requested meetings with the associations, either. We could do it. We already meet with URSEA,³² we've met many times with resulting actions. We have meetings, they listen to what we say, take care of the problems that we have. URSEA is completely different.”*

For the president of CUA, *“one of the things that URSEC needs to do is meet with us, the associations, and give us a bit of power like URSEA does. Our work is recognised by the State so what we're asking for is a response from the political actors. Note that I've now been invited to participate on a commission of the Oficina de Planeamiento y Presupuesto (OPP – Office of Planning and Budget) which reports directly to the President of the Republic so there has been strong state recognition in some instances. But not from URSEC.”*

6.2 Citizens and other social organisations

Another approach to regulatory inclusion, in which people (and their organisations) are considered as citizens and not as consumers, is incorporated into the analysis of many of our interviews. However, the everyday practice of the regulator seems to be very far from demonstrating effective forms of participation. If there are difficulties in the relationship between URSEC and consumers and their associations, these difficulties are even greater when the mechanisms, communication tools and participation of social groups and citizens are examined.

Two initiatives, used as tools for enabling the relationship and communication with different public sectors, have had little impact on citizens and their organisations. One is the hosting of seminars and other types of events, especially during 2006. These seminars address diverse subjects relevant to the functions of URSEC and are intended to inform, but also to receive opinions and interventions from the general public.

Seminars held during 2006 included *“the new challenges confronting the regulation of public services”*³³ (25 April), *“International seminar on the challenges of Digital Terrestrial Television (DTT) and its regulation in Uruguay”*³⁴ (17 May), and *“Working Day on Digital Terrestrial Television in Uruguay”* (9 August). For the latter, representatives from the digital television standards groups gave presentations to *“national authorities, broadcasters, university professors and students, accredited diplomats in Uruguay, NGO representatives, union leaders and the general public.”*³⁵

Although some people connected with social organisations participated as audience members, the cycle of lectures was shortened and there was not space for civil society and other actors to make their opinions known, although this had been the original plan.

6.3 Citizen participation other than complaint filing

Other interesting events were public activities entitled *“Regulatory Authorities Settling Accounts”* held in 2002³⁶ and 2004,³⁷ in which the directors of the regulatory authorities presented budgets, information on management and explained their objectives and characteristics at a time when the very idea of a regulator was neither understood or directly called into question.

Sessions were held, such as: *“Service regulation for the well-being of consumers”*, the legal perspective on *“Service regulation for the well-being of consumers”* and *“Institutional design and regulatory frameworks.”* On a negative note, it should be observed that these events were fundamentally organised from within the political system, with only the leaders of the three major political parties given space to voice their opinions.³⁸ Unfortunately, no opportunity was made available for other opinions to be taken into account until the final activity.

There are not many precedents of civil society participation in elaboration processes or strategy decisions. Nevertheless, despite the dilemma of identifying who will be representative, many of our interview subjects support the idea of greater participation on the part of these sectors.

Former Director of URSEC, Mario Bergara, in addition to the consumer perspective, thinks that the regulator must also include a citizens’ perspective *“in the assessment of policies and guaranteeing the rules of the game. I don’t think these two elements are in opposition to each other. I believe in understanding consumer relations and that the regulator in this case is the authority, applying a determined consumer relations regulation. Thus, the regulator is obligated to consider the individual as a consumer, but when it comes to actions as a regulator, you must try to defend the rights of citizens.”*

In terms of representation, Lev commented: *“As a regulator today, we cannot formally identify which civil society institutions are most representative for playing this role. We need to call for the involvement of interest groups, guaranteeing that all interested individuals have the opportunity to participate, after which the groups that are truly representative will come to have a place in decision-making bodies.”*

URSEC assures that when it broadens the composition of its regulatory committees, it will also open them up to *“civil society, to offer the opportunity to participate.”* According to León Lev, *“this is an innovative element tied to the concept of democratisation in that we need to assure that we effectively facilitate broad participation rather than favouring the interests of which we are in favour.”*

Civil society groups do, indeed, continue to have capacity-related difficulties that affect their abilities to fully participate in these processes. The present development of consumer associations has already been cited as an example of this situation.

URSEC understands that: *“there is no historical relationship between telecom companies, civil society organisations and the state. Corporate organisations have much more history, in this respect, than civil society organisations.”*

Nevertheless, the president of URSEC stated at the Foro de Comunicación y Participación Ciudadana (Communication and Citizen Participation Forum), *“as a representative organisation, with some fifteen civil organisations including those representing journalists, community radio stations, content producers, consumer defence leagues...”*³⁹ [...] *Civil society, after many years, encountered a state that was passive, a state that was not looking for a participatory civil society”,* says Lev. *“The state did not educate citizens and civil society to defend their rights and I think that this is a responsibility of the state in that the state communicates with society and can facilitate the participation of civil society.”*

“This is the path to take”, he affirms, advocating an advisory role for civil society while not ruling out that *“later, they will be able to play a more active role.”*

6.4 Policies for strengthening participation

The State, and URSEC in particular, could proactively promote this third sector as a well-developed and strong intervener. This is something mentioned by several of our interview subjects, although there were doubts as to how to do so.

The Consumer Defence Law,⁴⁰ includes the following as responsibilities of the Dirección del Área de Defensa Consumidor (Directorship of the Consumer Defence Section):

“(D) To cultivate, organise as well as integrate advisory committees composed of representatives of various industrial and commercial sectors, consumer cooperatives and associations, or composed of representatives of organisations or public bodies. These representatives will be responsible for contributing information and will be able to propose corrective measures regarding consumer defence.

E) Encourage the formation of consumer associations, the express intent of these groups being consumer defence. The Dirección del Área de Defensa Consumidor will maintain a register of these associations and they will be constituted as civil associations.”

Speaking from his experience in the organisation, Bergara asserts that *“as detailed in its legal mandate, URSEC can have active regulatory policies”*, casting aside the reactive connotation often given to the concept of defence, something generally associated with reaction to an attack. This should be interpreted by URSEC in the sense of *“watching over the rights of consumers. This concerns not only actions related to complaints, to concrete problems, but the fundamental broadening of consumer rights.”*

However, concrete support for strengthening the organisational capacity and impact of consumer and user groups is considered to be complicated, although nobody will officially say so. *“It would imply somehow that the State says: these are representatives of consumer interests. It is already difficult when dealing with union, guild or corporate matters, where the relationship is more direct. To me, it’s a complicated issue.”* In spite of this, there are working examples in Uruguay such as support from the Dirección del Área de Defensa Consumidor which disburses and coordinates funds from the Inter-American Development Bank (IDB) for strengthening social organisations working for the defence of consumers and users.⁴¹

Another interesting precedent, although an isolated one, was the formation of a working group on the situation of unlicensed and community radio broadcasters. In 2001, URSEC called together representatives from commercial radio and TV broadcasters⁴² and one of the country’s community radio associations.⁴³ Even if it was no more than a meeting with a subsequent process of informational exchange, this was an innovative attempt by the regulator to solve the problem of consumer representation through dialogue and negotiation. URSEC was not responsible for the continuity of this committee. Rather, its discontinuation was the fault of the commercial broadcasters who refused to continue even speaking with the delinquents (from the unlicensed and community broadcasters).

The last URSEC administration also invited AMARC delegates in Uruguay to participate as observers in meetings of MERCOSUR Broadcasting Working Sub-group #1 which took place in Montevideo while Uruguay held the rotating presidency of the trade bloc.

The president of URSEC participated, although in a personal capacity, in various press conferences with organisations from the Foro de Comunicación y Participación Ciudadana, a grouping of multiple Civil Society organisations working to influence communication and information related public policy. At the prompting of the Foro, León Lev participated in three working meetings, making presentations with delegates from member organisations of the Foro. In this way, it became a privileged space in which the URSEC president explained the principal strategies and actions of the regulator and listened to

questions and proposals from Civil Society members working on these subjects.

While its scope is much broader than the work of the regulator, the Foro found URSEC to be open to considering it as an actor with which, at the very least, to listen to and exchange information with. Even so, the response of URSEC to the concerns of the Foro was ultimately biased. The group not only requested the organisation of *“information and discussion groups for informally analysing subjects related to the areas of focus and specific tasks of this organisation”* with the president as well as members of the Steering Committee but also *“the creation of working groups, on various subjects, composed of organisations/individuals from the Foro.”*⁴⁴

It was initially proposed that two spaces be created – one for broadcasting and the other for digital inclusion strategies, reflecting priorities discussed within the Foro. It was also suggested that each subject be divided into multiple sub-topics, that each working group prepare their own agenda and that the best way to organise themselves would be to work in a plenary and/or preliminary sub-groups.

Exhibiting an intense level of intent, the Foro issued a mis- sive, tentatively proposing the subject of broadcasting and suggesting that analysis be broken down into the following themes: a comprehensive review of broadcasting regulation (national system and models to adopt), the public service or public interests, new radio and TV legislation, inclusion of gender perspectives, national and local production criteria and minimum standards, effective control of the conditions of use of service operators and others, community broadcasting law (regulatory and technical aspects for adoption and implementation, regularisation of existing community media and others), digital TV and radio (technical standard to adopt, regulatory framework and transition model), spectrum management (FM regulation, terrestrial TV channels, spare bandwidth use and frequency planning for digital TV, among others), advertising (regulation and control) and international broadcasting policy (shortwave and other technologies).

This proposal was not positively received, even though members of the Foro had assured that these working groups would incorporate both industry and academic representatives.

7. Institutional context

There are various possibilities for the lack of social participation in regulation. One is the lack of policy definitions, both on the part of the Uruguayan government and the regulator itself who, while not ruling out such participation, has not made this challenge a management priority.

We have also noted weaknesses – cultural, political and organisational – in certain civil society sectors and within the general population with respect to an overall understanding of rights and the defence of these rights

The context and particular characteristics of URSEC have become major themes of our work. We must note that, while not justifying its deficiencies, we are examining a regulator that is under construction internally as well as socially and industrially. With scarcely five years of existence, it is not clear yet to the Uruguayan regulatory and institutional system itself what is regulatory and should be carried out by URSEC.

According to URSEC's own president, this is its principal challenge and most important task for the immediate future: "URSEC is a very new institution that has still not managed to structure itself and gain real social authority."

Further extensions of this current study will need to take into account how this evaluation influenced other aspects of the regulator: Does URSEC have the independence, resources and authority needed to take the actions necessary for self-improvement? The demonstrated difficulties in accessing commercial economic information as a case for better regulatory financial control is a good example of the situation at hand.

In this regard, Gabriel Barandiarán noted during our interview, "regulatory organisations in Uruguay are weak. URSEC is weak compared to Telefónica or Telmex; (but) the Central Bank of Uruguay is [also] weak... If the Central Bank itself cannot maintain a strong grip on the banks, imagine what could happen with a company like Movistar or CTL..."

Speaking of the case of abusive subscriber-based television contracts, Mario Bergara admits that the solution was not perfect but thinks that it is exemplary as it obliged other companies to modify their contracts. One of the difficulties that the regulator is faced with is "the weakness of the regulations", wherein "the regulator or authority empowered by the Minister functions almost as a judge, but does not have the power to modify a contract."

In the case discussed above, the regulator could impose sanctions on the corporation individually, "but could not tell them to remove this clause", confirmed the Deputy Minister of the Economy and Finance. "What URSEC did was to say: this clause is abusive and according to consumer relations, we will either sanction you or compel you to change it; but URSEC does not have the jurisdictional capacity, only a judge can say 'this clause is not valid', the administration cannot do so. There's the problem: I can say that the clause is abusive, but I cannot declare it null and void. I can penalise the company, I could punish them for the rest of my life but I cannot revoke anything from the contract."

Likewise, URSEC operates within a regulatory framework that is missing a fundamental point of support: there is no Poder Ejecutivo (Executive Branch) body to develop and define telecommunications public policy.⁴⁵ This situation forces the regulatory authority, at times, to assume the task of defining policies when it should not and, at other times, to not act at all due to a fundamental lack of definition of its managerial jurisdiction.

Basic questions relating to structure and internal organisation of URSEC still need to be resolved or are currently in the

midst of revision. León Lev comments that "today the main concern is successfully defining the structure. Although seemingly unreal, we have not defined the structure based on budgetary resources. To successfully organise responsibilities is the first task and later we will accommodate new responsibilities."

Lev adds: "the structure inherits policies. Proactively changing the structure with new policies is going to take us some time, this is a real and impartial problem. The structure is the foundation of the functions that URSEC occupies today in terms of human and technical resources. This is no minor subject."

8. Plans for the short term

In 2006, in order to confront some of these challenges, URSEC undertook two consultative projects within the framework of an initiative with the Inter-American Development Bank (IDB) in support of regional regulatory bodies. One component of this project was a study on their communication strategies and another on their internal structures.

The first – that is closely related to our current study – was carried out by the Uruguayan company Equipos Consultores, culminating in the preparation of two documents directed at URSEC's 'external and internal publics'. The first "URSEC Communication Strategy" was presented in November 2006, the second, "URSEC Action Plan" in December 2006.⁴⁶

These documents were the result of a process that included a workshop in February 2006 and various working sessions with URSEC's Board of Directors. These meetings not only resulted in the exchange of ideas, but also in forming of decisions incorporated into final documents as a way of organizing, synthesizing and systemizing strategic information related to the regulator's communication.

The objectives of the study were to:

- evaluate and propose communication strategies for defined publics, propose changes and suggestions in order to better define the functions, services and domains fulfilled by URSEC;
- generate proposals and contribute to the planning and execution of communication activities and distribution;
- generate proposals and external and internal communication actions that reinforce the corporate image and effectively orient the public who come to the offices of URSEC.

Many of the situations observed during our study have been confirmed by this consultation and potential mechanisms for improvement have been incorporated into the above-mentioned documents.

Thus, mechanisms for improvement directed towards citizens, users and consumers are of particular interest. These include: "information pertaining to the existence, assignments and prerogatives of URSEC", "information on communication channels available to URSEC", "systemise information and make available information such as legal frameworks, resolu-

tions and public calls of interest and public consultations” and “augment levels of institutional knowledge.” These mechanisms will be useful when, for example, users want to make complaints or interventions.

It is hoped that the Action Plan during 2007 will become successful in making citizens’ rights known to them, as well as the abilities of URSEC and, in particular, the ways in which it can protect and ensure these rights. The Action Plan should also facilitate citizens’ knowledge of “the media and adequate mechanisms for exercising their rights as consumers and users of telecommunications services” and make available information pertaining to the various operators’ service packages and pricing options in order to promote a better knowledge of the options available in the market.

The strategy and action plan address deficiencies and limitations in making more information available, developing campaigns for sensitising the general population to their rights as users and consumers. These will also improve and develop mechanisms for facilitating and organizing incoming complaints and interventions.

These highly positive element of the regulator’s plans for reform are however accompanied by some notable and omissions, indicating that they have not been established as priorities in the development of strategies for improving participation and inclusion in regulatory processes. These omitted aspects, noted in all of our interviews as key themes to be considered in earnest, have not been sufficiently included in the conclusions of these consultative projects.

Mentions of any form of participation refer to individual actions more than those of organisations and the holding of regular public consultations. What is not addressed are mechanisms such as holding public seminars or meetings with social groups from the ‘general public’ – despite the fact that these groups are defined in the consultation documents as ‘leaders of public opinion’ and comprise journalists, academics, social organisations and national government representatives – who are well-positioned to pay special heed to the task of positioning URSEC’s corporate image and making better known its actions and policies.

9. Recommendations

9.1 To URSEC and other states bodies

- Develop mechanisms for encouraging effective participation in regulatory processes.
- The website needs to be reconceptualised as an interactive environment; this will help create better conditions for participation.
- Produce a public annual report (published and presented publicly).
- Maintain mechanisms for public hearings and consultations while broadening participation.

- Create consumer awareness campaign on rights.
- Mediation of consumer complaints: develop working guidelines and put them into practice.
- Industry information needs to be collected and made publicly available, including statistical information on pricing, investment, private sector revenues, etc.
- Better diffusion of information via the press and other public interest groups.
- Develop effective means for empowering consumer groups and other civil society organisation.

9.2 Future Research

TRE Evaluation

A telecommunication regulatory environment (TRE) study in Uruguay will be undertaken by LIRNE.NET in late 2007. The TRE methodology assesses the relationship between perception of regulatory risk and investment in the telecom sector. The six categories of analysis are:

- Market entry
- Allocation of scarce resources
- Interconnection
- Regulation of anti-competitive practices
- Universal service obligation
- Tariff regulation

TRE studies are being undertaken in other Latin American countries (in addition to TRE evaluations in Asia and Africa) during 2007, which will permit regional comparison of findings.

URSEC / URSEA and other comparative analyses

Benchmarking and comparing URSEC’s practices with other national regulators as well as other regional regulators may help further identify paths toward effective regulatory communicative practices with consumers, users and citizens. An evolving and open perspective is particularly demanded as ICT convergence creates new sector conditions for all stakeholders.

Process monitoring

Another evaluation of URSEC will need to be undertaken in 2008 to allow for an analysis of the organisation’s revision plan, particularly the obligations assumed by URSEC within the Action Plan adopted at the end of 2006.

Notes

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² World Dialogue on Regulation (WDR) <www.regulateonline.org>. WDR is a project of LIRNE.NET <www.lirne.net>.

³ <<http://www.ursec.gub.uy>>

⁴ During the interview, Pascale mentions that the site “*is technologically antiquated*” in that “*it is not a very flexible site. It has been designed in a manner that does not permit it to be altered very much and it is very difficult to add new things. The site is in such a state not because we don't want to update it or because we don't know it is outdated, rather it is because it is too difficult for us to update.*”

⁵ With irregularities. For example, under “News” there are notices of two important decrees that have been passed (regulation of licenses and spectrum management), but these cannot be found on the legal framework pages.

⁶ Initial licensees are noted, but corporations which have merged or exist as the sole service provider are not. There is no reference made to successive increases in service areas, commercial data or other relevant data such as number of subscribers (for which there is only data through 2004.)

⁷ URSEC is working intensely on the creation of a database of the telecommunications sector in order to improve regulatory accountability, (with information on minutes of traffic, quantity of subscribers, cost structures for final operator charges, and more). The private sector, however, has “been a bit remiss in sending its information.”

⁸ Citing two articles of Law 17.296.

⁹ One of the principal problems concerning consumer rights.

¹⁰ The different information categories were ranked on a scale of 4 with (1) denoting that basic and largely static information is available; (2) content and information is updated regularly, and information is available not only in its original format (such as acts and legislation) but is also explained; (3) Users can download forms, contact officials and make requests. Available information has further value-added, such as being hyper-linked to relevant legislation; and (4) users can submit forms online – for example to request information, for a bureaucratic procedure, or to participate in a public hearing.

¹¹ In February 2007, a public consultation was carried out concerning the competitive procedure for assigning radio spectrum within the 3.300 MHz to 3.700 Mhz bandwidth.

¹² With the exception of the consultation concerning community radio broadcasters.

¹³ We were unable to obtain objective data to analyze as there is no systemised data with respect to received requests, their quantity, type, origin and other data, nor were they available on the website.

¹⁴ Above all, during the second administration of the organization.

¹⁵ For example, the recovery of millions of dollars from telecom companies, between 2006 and the beginning of 2007.

¹⁶ A campaign presenting URSEC, a call for expressions of interest by the Montevideo cable company, a small campaign promoting the defence of

consumer rights and communications for the license of the 3rd cellular telephone band.

¹⁷ This argument was also brandished by other actors and has heavy “ethical” weight, especially among left-wing governments. However, we must point out that the entirety of the Radio Broadcasting Law and its Regulations were passed in 1977 and 1978, respectively. When it was revised by various subsequent democratic governments, this article was never modified while others had been considered anti-democratic.

¹⁸ Budgetary Law N°17.296, February 2001 (Articles. 70 a 99), <<http://www.parlamento.gub.uy/leyes/ley17296.htm>>.

¹⁹ NB: the following does not constitute a certified translation of the Law.

²⁰ Consumer Defence Law N°17.250, August 2000, <<http://www.parlamento.gub.uy/leyes/ley17250.htm>>.

²¹ “*The well-being of the consumer is one of the principal foci of the Communications Services Regulatory Unit (URSEC) and, moreover, is at the centre the defined actions of the organization.*” 2001 – 2002 Communications regulation in Uruguay : first steps, URSEC.

²² Client – a physical or juridical person that has engaged in a contract for the provision of telecommunications services with the holder of a License. Telecommunications Licenses Regulation, Decree 115/2003, March 25 2003, Article. 3° “Definitions.”

²³ User – is a physical or juridical person that has access to a telecommunications service in either a temporary or permanent manner. Telecommunications Licenses Regulation, Decree 115/2003, Article. 3° “Definitions.”

²⁴ Telecommunications Licenses Regulation, Decree 115/2003, Article. 4° “Rights of the clients and users.”

²⁵ Telecommunications Licenses Regulation, Decree 115/2003, Article 24° “Graduation of sanctions.”

²⁶ In the current government, there have been a few attempts made by the Instituto del Niño y el Adolescente del Uruguay (Child and Adolescent Institute of Uruguay) concerning the effects of television on the childhood rights.

²⁷ Barandiarán actively participated in the elaboration of the Consumer Relations Law and, subsequently dedicated himself to these subjects within civil society.

²⁸ August 2000.

²⁹ If somebody wants to cancel, they must pay for the current month plus one additional month.

³⁰ Using the 30 free minutes.

³¹ The Consumer Relations Law establishes a series of conditions for assuring consumer representation.

³² Regulatory Unit of Energy and Water Services, created at the same time as URSEC.

³³ <http://www.ursec.gub.uy/Publicaciones/seminario_regulacion/seminario_regulacion.htm>

³⁴ <http://www.ursec.gub.uy/Publicaciones/seminario_tdt/seminario_tdt.htm>

³⁵ <http://www.ursec.gub.uy/Publicaciones/jornada_tdt/jornada_tdt.htm>

³⁶ In this case, URSEC and the former UREE (Regulatory Unit of Electrical Energy)

<http://www.ursec.gub.uy/Publicaciones/rinden_cuenta/rinden_cuenta.htm>.

³⁷ URSEC and URSEA, which took the place of UREE

<http://www.ursec.gub.uy/Publicaciones/rinden_cuenta_2004/rinden_cuenta_2004.htm>.

³⁸ Martín Ponce de León (Encuentro Progresista - Frente Amplio), Julio Herrera (Colorado Party) and Francisco Gallinal (National Party, in the first; and Sergio Abreu (Nacional Party), Danilo Astori (Encuentro Progresista - Frente Amplio) and Ariel Davrieux (Colorado Party).

³⁹ Formed in August 2004, it includes the Agrupación Trabajadores de Tevé Ciudad (ATTC), Asociación de Bibliotecólogos del Uruguay (ABU), Asociación de la Prensa Uruguaya (APU), World Association of Community Radios (AMARC-Uruguay), BICE - AL (Bureau International Catholique de l'Enfance - América Latina), Comisión Nacional de Seguimiento: Mujeres por Democracia, Equidad y Ciudadanía, Consumidores y Usuarios Asociados del Uruguay (CUA), Cotidiano Mujer, Instituto de Estudios Legales y Sociales del Uruguay (IELSUR), Instituto del Tercer Mundo (ITeM), Instituto de Solidaridad y Desarrollo (ISODE), Licenciatura en Ciencias de la Comunicación (UDELAR), REDES - Amigos de la Tierra, Servicio Paz y Justicia (SERPAJ), Sociedad Amigos del Viento, Meteorología, Ambiente y Desarrollo, Sindicato Único de Telecomunicaciones (SUTEL /PIT-CNT), Tevé Ciudad and Vecinet – Autogestión vecinal. More information online : <<http://www.forocom.org.uy>>.

⁴⁰ N°17.250, previously cited.

⁴¹ Thanks to funds from the IDB, consumer associations receive a computer, photocopier, printer and fax machine and travel to the MERCOSUR Consumers Forum.

⁴² ANDEBU (Asociación Nacional de Broadcasters del Uruguay), which is composed of the owners of all commercial radio and television broadcasters in the country, and RAMI (Asociación de Radios del Interior), which is made up of commercial radio owners from the interior of the country.

⁴³ AMARC (World Association of Community Radios). La Coordinadora ECOS, another community radio association was not invited due to ANDEBU vetoing their participation.

⁴⁴ Publication entitled “*Proposal for Mr. León Lev, president of URSEC, from the Foro de Comunicación y Participación Ciudadana (Communication and Citizen Participation Forum)*” dated March 10, 2006.

⁴⁵ The Budgetary Law passed in 2005 includes the creation of a Dirección Nacional de Telecomunicaciones (National Telecommunications Directorate) that will be charged with defining the policies for this sector. The only resource it was given was the post of a director. Almost two years later, nobody has been named to the post.

⁴⁶ Although these documents were made available for our consultation, at the time of writing, these were both still internal documents and not yet public.

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Annex 1 – List of Interviews

León Lev – *URSEC* – President

Graziano Pascale – *URSEC* – Representative of Institutional Relations

Mario Bergara – *Ministry of Economy and Finance* – Deputy Minister

Yandira Vega – *Consumidores Unidos y Asociados* – Director

Gabriel Barandiarán – *Causa Común* – Director

Annex 2 – Interview Questionnaire

I. Questions for URSEC

A. Identification of key actors

1. Who do you consider to be the principal civil society actors interested in playing a role in the regulatory process?
2. Are there civil society actors with no relation with or a cursory relationship with URSEC today? Why?
3. What role is currently played by users, consumers and citizens in the development and implementation of regulations and subsequent compliance monitoring? What role should they play?

B. Communication with all interested civil society actors

4. What are the strategies, instruments and procedures that URSEC employs for communicating with or informing civil society? Is there an evaluation process to rate citizen satisfaction with these communication and information mechanisms? What is the value of these mechanisms for URSEC?
5. How does the poor or complete lack of organization of these sectors affect URSEC? Are you considering initiatives to address this weakness in Uruguay's regulatory system (education and sensitisation campaigns, promoting the formation of users groups, etc)?
6. Within URSEC's current plan, are there alternatives such as those posed by the URSEA to create a permanent Users Committee?
7. Some sections of your website are regularly updated (for example, the section on new legislation). However the sections normally consulted by general public, such as Events, News and Presentations, are very out of date. The last update to the Presentations section was made in 2004 while the Events and News areas were last updated in 2003. Do you consider this site to be a good tool for diffusing this type of information?

8. Researchers and the media generally use websites to obtain information that will later be used to inform and strengthen civil society. How can information related to URSEC and the entire regulatory environment be successfully made available to these people?

C. Consultations and public participation

9. URSEC has carried out various public consultations. What subjects have they addressed (regular citizen participation, technical aspects, revision or introduction of regulation, etc)? How does URSEC evaluate the effectiveness of these tools? How does URSEC rate the participation of actors and citizens in these consultations (quantity, quality)?
10. Will public consultations be maintained as a mechanism for regular participation? Have other complementary mechanisms been considered? Which ones?

II. Questions for groups that seek to influence decision-making in the regulatory process

1. What is your organisation/institution interested in and what actions has it undertaken relating to broadcasting and telecommunications? Are you interested in somehow influencing regulatory policies? How do you plan to do so?
2. To what degree do citizens make their voices heard concerning these matters (how many interventions received, what type of interventions, etc)?
3. What kind of experience has your organization/institution had with URSEC? What is your opinion of this experience? Describe the opportunities and difficulties, positive and negative, that you have experienced or understood to have been encountered by other social actors.
4. Suggest institutional procedures and mechanisms that can be created and improved to make regulatory processes more inclusive and participatory.
5. What sort of information should be made available to facilitate civil society participation in regulatory processes and to make this participation more efficient?
6. Do you have access to this kind of information? How?
7. Do you believe you have access to the proper URSEC staff members?
8. Has your organization/institution participated in public consultation processes initiated by URSEC?
9. How can they be improved?
10. Does your organisation receive funding or some other type of support to facilitate your participation?

Appendix 3 – URSEC Mission, Objectives and Principal Functions

Mission

The Unidad Reguladora de los Servicios en Comunicaciones (URSEC) is vested with the authority to regulate and control activities related to telecommunications, including all transmission or reception of signs, signals, writings, images, sounds and information of any nature, by cable, optical media and other electromagnetic systems and, likewise, all that is related to the admission, processing, transport and distribution of correspondence carried out by postal operators.

Objectives

The principal objectives of URSEC are the following:

- extension and universal access of services;
- promotion of knowledge;
- control of pertinent monopolistic activities;
- application of tariffs based on economic costs;
- cultivate optimal levels of investment;
- protection of users rights.

Principale functions

- to advise the Poder Ejecutivo (Executive Branch) on the development, instrumentation and application of communications policy;
- ensure the satisfaction of specific sectoral regulations;
- administer, defend and control the national radio spectrum;
- grant licenses for the use of frequencies within the national radio spectrum;
- control the installation and function, as well as the quality, regularity and range of all telecommunications services, be they public or private service providers;
- formulate regulations for the technical control and adequate management of telecommunications, as well as control their implementation;
- implement rules and industry standards that assure the compatibility, interconnection and interoperability of networks, including the public network, as well as the correct and secure function of the equipment that connects to them, thus controlling their application;
- present draft regulation and a unique explanation of criteria and conditions for the licensing of radio frequencies;
- engage in technical and operational supervision of radio and television emissions whatever the modality;

- maintain international relations with communications organizations;
- advise the Poder Ejecutivo (Executive Branch) with respect to the requirements that must be satisfied by whatever actors fall under its jurisdiction;
- consider, within the procedures of concession and licensing, that the provision of services be based on principals of public availability, equality and concurrence;
- ensure the satisfaction of juridical and technical norms by public and private service operators;
- protect the rights of users and consumers;
- determine tariffs and prices;
- promote arbitrational solutions for differences encountered between market bodies;
- apply prescribed penalties.