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U.S. Cellular Telephone Firm Sues Costa Rica Over Loss of Contract

by LADB Staff
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The Costa Rican government is facing a lawsuit brought by the US-based telecommunications company Millicom, which was forced to abandon a potentially lucrative cellular telephone operation in Costa Rica in 1995. In response, Costa Rican officials have reopened an investigation begun last year into possible high-level corruption in the awarding of the Millicom contract.

Aside from the substantial financial damages a successful suit could do to the government, the threat of US trade sanctions hangs over the already difficult commercial relations between the two countries. In 1987, the state electric power and telephone monopoly, Instituto Costarricense de Electricidad (ICE), awarded Millicom de Costa Rica, a subsidiary of Millicom International Cellular, a contract to develop cellular telephone service in Costa Rica. The market potential was enormous because ICE was at the time unable to meet demand for ordinary telephone lines and did not have the capital to start up cellular service.

According to information from ICE, Millicom paid nothing for the rights, although the value of the concession was estimated at US$120 million. Despite opinions from the comptroller general and the Attorney General that a private company could not legally operate cellular service without authorization from the Legislative Assembly, the concession went through, and Millicom began operations in April 1988. By 1993, the company had invested US$12 million in the development of a national cellular network to serve an initial 4,000 customers.

In 1995, however, the Supreme Court ruled that the original concession violated the constitutional provision that reserves for the state the exclusive right to operate telecommunications services. The contract with Millicom was therefore nullified, and the company was forced out of business in Costa Rica in May 1995. The government immediately offered Millicom a contract to rent cellular equipment from, and act as a consultant to, the state-run telecommunications company (Radiografica Costarricense, RACSA), which is a subsidiary of ICE. The contract would have permitted Millicom to continue operations in Costa Rica while at the same time withdrawing as a direct competitor of the state monopoly.

But this plan, as well as a plan to ask for legislation to modify the Constitution and permit a new contract with Millicom, were halted by a 10-day protest strike by the ICE electrical workers union. The workers saw any renewal of Millicom operations as a backdoor to begin the privatization of ICE, which would lead to payroll cutbacks (see NotiSur, 05/25/95). In February, Millicom filed a US$400 million suit in a federal district court in Washington, DC, against the Costa Rican government, ICE, and RACSA, charging them with monopoly practices in violation of US anti-trust laws, breach of contract, and expropriation of property.

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Although President Jose Maria Figueres dismissed the suit as a purely business matter that has nothing to do with the US government, the lawsuit presents a serious problem for Costa Rica, which is already locked in a trade dispute with the US over a US-imposed quota on the export of undergarments to the US market (see NotiSur, 01/01/96). First Vice President Rodrigo Oreamuno said he was "very worried" that Millicom might persuade the US government to exclude Costa Rica from participation in the favorable trade arrangements under the Caribbean Basin Initiative.

Likewise, Humberto Pacheco, president of the Costa Rican-North American Chamber of Commerce, said that Millicom could win the suit. Worse, he said that if the case goes to trial in Washington, DC, conservative Sen. Jesse Helms (R-NC)- -the powerful chairman of the Senate Foreign Relations Committee might intervene to the detriment of Costa Rican economic interests. In the past, Helms and other US politicians have urged the US government to cancel Costa Rica's trade advantages with the US and to vote against multilateral loans to Costa Rica unless compensation is paid to US citizens and companies, such as Millicom, for expropriation of their property. Oreamuno said that Costa Rica's defense in the suit would be based on a challenge to the US court's claim of jurisdiction over events that took place in Costa Rica.

At the same time, the government is attempting to pass the blame for the Millicom contract on to the previous officials who originally approved the concession despite its obvious lack of constitutional legitimacy. Last year, the Legislative Assembly set up a committee to investigate the matter, but it was unable to find out who had authorized the concession to Millicom. The Attorney General mounted an investigation based on the legislature's report but in the end had no evidence on which to base charges. Charges were considered but dropped against Rolando Ramirez, minister of the interior during the presidency of Oscar Arias (1986-1990), who along with Arias signed an executive agreement that eventually resulted in the Millicom contract.

Ramirez, however, said that the agreement was only for high-frequency radiotelephone service, not for cellular service, and that the concession was made to another company, Comunicaciones Celulares (COMCEL). "The concession that ICE gave to Millicom to operate cellular telephone service was awarded 15 months after I authorized the radio communication frequency to COMCEL," said Ramirez. Following the announcement that Millicom had filed suit, the Attorney General reopened the case and designated Silvia Carmona Rivas, a specialist in economic crimes, to head the investigation. The list of officials who may have been involved in the illegal concession is long and spans the administrations of Arias, Rafael Calderon (1990-1994), and President Figueres, who took office in 1994. Current and former government officials of both major political parties, the Partido de Liberacion Nacional (PLN) and Partido Unidad Social Cristiana (PUSC), have been implicated. (Sources: Notimex, 05/06/95; Agence France-Presse, 05/14/95, 05/18/95, 05/23/95, 05/24/95, 02/25/96; Tico Times, 03/02/96; La Nacion, 02/24/96, 02/29/96, 03/01/96, 03/22/96)

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