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U.S. Federal Communications Commission Levies Stiff Fine Against Telmex For Anti-competitive Policies

by LADB Staff
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The US Federal Communications Commission (FCC) has taken bold steps against Mexico's telecommunications giant TELMEX for failing to provide competitors with equal access to its infrastructure in Mexico. In mid-January, the FCC announced a US$100,000 fine against TELMEX's US subsidiary Telmex International Ventures USA. The FCC said the action against the US subsidiary was justified because parent company TELMEX had committed a "very serious violation" of the terms of the agreement to operate in the US. Under that agreement, TELMEX said it would furnish competing carriers with private lines and telephone circuits to provide service between the US and Mexico. TELMEX's principal rivals for long-distance telephone service in Mexico are Alestra and Avantel, affiliates of US companies MCI WorldCom and AT&T. The FCC originally awarded TELMEX a permit to operate in the US in 1997, but the Mexican company did not gain formal access to the US telecommunications market immediately because US rivals challenged the ruling. The FCC eventually upheld its original ruling after determining that the complaints by the US companies had no basis (see SourceMex, August 12, 1998). As part of the ruling, reaffirmed in 1999, the FCC said TELMEX would be required to offer access to its infrastructure to US rivals in a timely and nondiscriminatory manner. "In approving Telmex USA's authorizations in 1998 and 1999, the [FCC's] International Bureau warned that if it found evidence of anti-competitive conduct by TELMEX, it reserved the right to impose substantial forfeitures for failure to comply with the terms and conditions of the authorizations," the FCC said in its recent decision to fine TELMEX's US subsidiary.

TELMEX plans to appeal ruling

Under the FCC ruling, TELMEX has until mid-February to pay the fine or present convincing arguments why the penalty should be reduced or withdrawn. A TELMEX statement defending its policies said nothing prevented competitors from developing their own infrastructure. "There are other private telephone companies in the Mexican market that can provide services, and Alestra and Avantel can develop their own telephone links," TELMEX said. The company also criticized its two US competitors for turning to the FCC to cover their shortcomings in the Mexican market. "AT&T and MCI WorldCom have once again sought the protection of US authorities to avoid complying with their obligations in Mexico," the company said. The FCC fines against TELMEX were a main topic during meetings between officials of Mexico's Comision Federal de Telecomunicaciones (COFETEL) and the FCC in mid-January. COFETEL director Jorge Nicolin said he used the meeting with FCC Commissioner William Kennard to defend TELMEX's position. "TELmEX has the possibility of winning an appeal of the FCC decision," Nicolin told reporters after a meeting with Kennard. COFETEL's defense of TELMEX in recent months, however, has been lukewarm. In a recent interview in Mexico, Nicolin expressed frustration at a Mexican court ruling in November, which is expected to block his agency's efforts to comply with a directive from the anti-monopoly commission (Comision Federal de Competencia, CFC) to curb TELMEX's dominance of the Mexican telecommunications market. In 1997, the CFC announced restrictions to ensure that

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TELLEX does not engage in unfair practices against competitors (see SourceMex, December 17, 1997). Enforcement of these regulations was left up to COFETEL. However, the November decision by a Mexican court is preventing COFETEL from cracking down on TELMEX. "We are facing the legal impossibility of issuing these orders, without expressly violating the judge's sentence and the stay granted on behalf of TELMEX," Nicolin told reporters.

**Anti-monopoly agency launches new TELMEX probe**

The CFC, meanwhile, has initiated a new anti-trust investigation of TELMEX. The investigation centers on complaints that TELMEX failed to follow directives from COFETEL in 1997 and 1999 to bring its rates closer to those charged by competitors. The CFC said TELMEX is using an unfair pricing advantage to "squeeze competitors" out of the telephone market. TELMEX had defended its decision not to boost rates by pointing out contractual obligations to users through October 1999. But the CFC intervened when TELMEX decided not to increase its rates in 2000, a move no longer covered by its previous contracts, the CFC said. Other complaints against TELMEX have been filed outside Mexico. In October 1999, the nongovernmental organization Mujeres por Mexico filed a complaint with the Organization of American States (OAS) Inter-American Commission on Human Rights (IACHR), charging TELMEX with violating its commitments under the 1998 San Salvador Protocol. Mujeres por Mexico coordinator Graciela Ramos said TELMEX has failed to provide service to the most disadvantaged sectors of the population. The organization, which has organized hunger strikes and other actions to protest TELMEX policies, has gained the support of groups in seven states. The groups have formed a coalition called Alianza Nacional por un Pago Justo a TELMEX. Telecommunications consultant Mario Rechy, who helped prepare an analysis to accompany the complaint before the IACHR, said TELMEX’s shortcomings are especially evident in rural areas, where access to telephone service remains marginal. (Sources: El Universal, 10/13/99; The News, 01/14/00; Reuters, 01/11/00, 01/13/00, 01/14/00; The Dallas Morning News, Bloomberg News, 01/15/00; El Economista, 01/14/00, 01/18/00; Excelsior, 01/14/00, 01/19/00; La Jornada, 01/24/00)

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