

5-16-2007

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Recommended Citation

LADB Staff. "High Court to Review Constitutionality of Broadcast Law Approved in 2006." (2007).
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High Court to Review Constitutionality of Broadcast Law Approved in 2006

by LADB Staff

Category/Department: Mexico

Published: 2007-05-16

Mexico's high court (Suprema Corte de Justicia de la Nacion, SCJN) is planning to review several sections of the controversial broadcast law that Congress approved last year, creating the possibility that the measure could be changed significantly after only one year of existence.

The court's decision to conduct the review, which some are billing as one of the most important legal decisions in recent years, is supported by key members of the Senate who took office in late 2006, including the leader of the governing Partido Accion Nacional (PAN), Sen. Santiago Creel. This has put them at odds with former members of the Senate, who approved the legislation last year. In addition, the two powerful networks, Televisa and TV Azteca, are pulling out all the stops in an effort to halt any revisions to the existing law.

The telecommunications legislation, known as the Ley Televisa because of the influence of Mexico's largest network in its creation, was approved overwhelmingly in the Senate in April 2006 after months of debate. The measure was then sent to the Chamber of Deputies, where it was ratified almost immediately. The purpose of the legislation originally was to overhaul the country's archaic media laws and create transparency and competition. Instead, the bill ended up consolidating power in the major television and radio networks, partly by granting them additional broadcast spectrum (see SourceMex, 2006-04-05).

Most members of the PAN and the Partido Revolucionario Institucional (PRI) supported the initiative in both chambers of Congress, thereby ensuring its easy approval. Some dissenting members of the PAN and the PRI, along with the center-left Partido de la Revolucion Democratica (PRD), vowed to overturn the initiative on the grounds that the measure violated the Constitution by facilitating the concentration of the broadcast industry in the hands of a few operators, namely Televisa, TV Azteca, and Radio Centro.

Former PAN, PRI senators filed constitutional challenge

Two dissenters who completed their six-year terms in 2006, Sens. Javier Corral of the PAN and Manuel Bartlett Diaz of the PRI, led the effort to legally challenge the legislation. The former senators convinced the high court to review the constitutional challenge to the law. The court then assigned the case to Justice Sergio Salvador Aguirre Anguiano, who studied the issue for several months. In May of this year, Aguirre presented a report to the court that indicated that four provisions of the law might violate the Constitution.

The provisions in question give unfair renewal preferences to companies that have already gained concessions and generally inhibit competition from smaller operators. Corral and Bartlett singled out Article 17 of the law, which used the auction process to allocate concessions rather than considering other factors such as community needs. "Our argument was that this process would

benefit the highest bidder, which would mean that money would be the dominating factor," said the two ex-senators.

Eduardo Perez Motta, president of the government's anti-monopoly commission (Comision Federal de Competencia, CFC), has come out in support of the constitutional challenge and has called the law a "major obstacle" in the development of a competitive environment in the telecommunications industry. "The law promotes an uneven regulatory system," said Perez Motta. He said the situation is made even more difficult by the CFC's lack of autonomy, which means the agency has little power to act against the huge telecommunications companies.

The SCJN has agreed to televise some of its deliberations on the telecommunications law on cable television, which Corral said was the idea of Chief Justice Guillermo Ortiz Mayagoitia. "We must recognize that the chief justice has adopted a very flexible position regarding this issue by opening the discussion and hearing all sides of the debate," said Corral.

Ortiz Mayagoitia scheduled several hearings in mid-May to hear all sides of the issue. Representatives of the major networks and the Camara Nacional de la Industria de Radio y Television (CIRT) were invited to one session. He held another session for a coalition of groups seeking to overturn the law, including Corral, Bartlett, and several former senators who voted against the measure in 2006.

Additionally, the court will summon its own list of expert witnesses to explain and clarify technical questions related to the broadcast industry. "It could be a way of protecting themselves from the pressures that we know have been coming at them hard," said Alberto Aziz Nassif, a political researcher at the Centro de Investigacion y Docencia Economica (CIDE).

Reversal could have far-reaching effect on monopolies

Some political analysts say a decision by the court to overturn any portion of the telecommunications law could have far-reaching effects beyond the broadcast industry. The ruling could set an important precedent on how the Mexican government deals with monopolies. "This is really about who governs Mexico," political analyst Denise Dresser of the Instituto Tecnologico Autonomo de Mexico (ITAM) said in a column published in the Mexico City daily newspaper Reforma. "Is it the government, through effective regulation in the name of the public interest? Or is it the vested interests...the de facto powers that have become more powerful than the government itself?"

Still, the chances that the law will be overturned are extremely remote, since Mexico's legal system requires that an overwhelming majority of the SCJN justices eight of 10 in this case would have to agree to overturn any issue on constitutional grounds. Attorney Alejandro Madrazo Lajous, who helped Corral and Bartlett with the legal challenge, said Aguirre's recommendations would not necessarily sway the other members of the court. "We cannot claim victory yet," said Madrazo, in reference to the court's decision to review the law.

CIRT representatives are trying to convince that court that the proposed changes to the law would set back Mexico's efforts to modernize the industry. "The fundamental objective was to introduce

into Mexico the latest digital technologies," said CIRT president Jose Leonardo Ramos Mateos, following the mid-May meeting with Ortiz Mayagoitia.

Current Senate supports proposed changes

Mexican senators, most of whom came into office since the law was approved, have come out in support of Corral and Bartlett. Leaders said all the parties in the Senate were willing to take action if the court failed to make the necessary changes. "There are two options," Creel said at a forum in Washington sponsored by the Center for Strategic and International Studies (CSIS). "Either the court will take action or we will make the changes."

Other leaders agreed. "We don't believe that we will have much credibility in the eyes of the international community unless we have a transparent telecommunications law," said Sen. Carlos Navarrete, the PRD's floor leader in the upper house. Creel said Congress approved the legislation hastily and under unfavorable circumstances last year, which is why the changes are needed. "The deliberations on the law were carried out in the midst of a heated presidential campaign, putting pressure on many legislators to approve the initiative," said the PAN leader. Several current and former senators took issue with Creel's stance, including members of his party like Sen. Federico Dorring.

The strongest comments came from PRI Sen. Enrique Jackson Ramirez, who argued that the Senate vote came after four months of debate. "We debated this law with a great sense of responsibility and seriousness," said Jackson, who denied that the Congress succumbed to special interests. "There is no reason for us to be ashamed."

Observers say the Senate may have difficulty passing legislation to make the proposed changes in the telecommunications law. "It is going to be a difficult task," said Clara Luz Alvarez, a former member of the semi-independent telecommunications regulating agency, the Comision Federal de Telecomunicaciones (COFETEL). "There are many interests in opposition to the measure."

Corral raised concerns that the major broadcast companies will continue to put pressure through the media on the justices to rule in their favor. "They are subject to the same media pressures in much the same manner as the members of Congress were before the [2006] vote," he said. But, Corral added, "The court has an opportunity to serve as an example to the executive and legislative branches and not succumb to the pressures of the giant television companies."

Bartlett said changes to the law should be a matter of fairness. "It benefits two families at the expense of 110 million Mexicans," he said in an interview with the Mexico City daily newspaper El Universal. Among proposals offered by Corral and Bartlett during a meeting with Ortiz Mayagoitia was disbanding COFETEL. "The state should regain regulatory powers over the broadcast industry," they said. "It is essential to bring democracy to the air waves."

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