

6-20-2007

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Recommended Citation

LADB Staff. "Supreme Court Declares Key Provisions of Broadcast Law Unconstitutional." (2007).
<https://digitalrepository.unm.edu/sourcemex/5117>

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Supreme Court Declares Key Provisions of Broadcast Law Unconstitutional

by LADB Staff

Category/Department: Mexico

Published: 2007-06-20

In a landmark ruling, Mexico's high court (Suprema Corte de Justicia de la Nacion, SCJN) voted to strike down several important provisions of the controversial broadcast law (Ley Federal de Radio y Television, LEFERYT), approved by Congress in April 2006. The decision does not invalidate the law, but opens the door for Congress to make necessary revisions to ensure that LEFERYT is in compliance with the Mexican Constitution.

The decision comes only a few weeks after the SCJN agreed to review complaints about the LEFERYT from nongovernmental organizations and former members of Congress (see SourceMex, 2007-05-16). One of the SCJN's most important decisions was to reject a provision in the LEFERYT that would have granted current holders of concessions almost exclusive rights to digital broadcasts. The government is in the process of converting the old analog system to a digital spectrum.

Many critics said the law, as written, would have allowed the two major television networks, Televisa and TV Azteca, to continue their dominance of the air waves, effectively shutting out any competition (see SourceMex, 2006-04-05). The court took other important steps to ensure competition, such as rejecting a provision that made license renewal automatic and grandfathered rights and terms of previous concessions regardless of how laws changed.

The court also ruled that bidders that want to participate in radio and television spectrum auctions must first receive a favorable ruling from the government's antimonopoly agency, the Comision Federal de Competencia (CFC). Finally, the court rejected a provision in the law that would have granted new television concessions to the highest bidder.

Decision linked in part to 2002 indigenous-rights law

Justices said a major consideration in their ruling was the lack of provisions to encourage and facilitate developing broadcast operations in indigenous communities. This, they said, was a major violation of the indigenous rights law, which Congress approved in 2001 (see SourceMex, 2001-05-01, 2001-07-18, and 2002-09-18). "Let us make it clearly evident that the legislature has been in violation of the Mexican Constitution for six years," said Justice Genaro David Gongora Pimentel. Despite the court's ruling, the decision is merely interpretive and does not invalidate the 2006 law.

Justice Margarita Luna Ramos said the court merely intended to ensure that parties that were harmed by the first law have their rights protected. A handful of justices, including Genaro Gongora Pimentel and Sergio Aguirre Anguiano, wanted to include language that would have directed Congress to enact changes to comply with the Constitution, but they were overruled by their colleagues. "The majority of the members of the high court...concluded that the ruling on the constitutionality of certain provisions of the broadcast law...does not entitle the court to decide

whether the Congress should create a commission to deal with the matter," said the Mexico City daily newspaper El Universal.

Members of Congress who supported the original law said they would adhere to the court's decision and said they were ready to discuss modifications to the law. "I have nothing to be ashamed of," said Deputy Emilio Gamboa, who heads the delegation for the opposition Partido Revolucionario Institucional (PRI) in the lower house.

Congress to consider changes

The lower house has also started reviewing the court's decision in various committees, including indigenous affairs (Comision de Asuntos Indigenas), culture (Comision de Cultura), and radio, television and cinema (Comision de Radio, Television y Cinematografia). Senate president Manlio Fabio Beltrones, also a member of the PRI, urged President Felipe Calderon to prepare a proposal with modifications to the LEFRTY as soon as possible. "It is important that the executive not be absent from the discussion," said Beltrones.

This would be Calderon's first input into the LEFRTY, as the original legislation was approved with the support of former President Vicente Fox. Still, many legislators say the responsibility for the changes rests primarily in the Congress. "[The court decision] left a great responsibility in the hands of the legislative branch," said Deputy Marcos Matias Alonso, who chairs the constitutional issues committee (Comision de Puntos Constitucionales) in the lower house. Matias Alonso, a member of the center-left Partido de la Revolucion Democratica (PRD), is pushing for the Congress to address the changes as soon as possible, even in an extraordinary session.

The PRD and its allies in the center-left coalition (Frente Amplio Democratico, FAP) in Congress said they would readily support a request from President Calderon for a session dealing with fiscal and tax reforms, as long as changes to the LEFRTY were also discussed. Some legislators are proposing that Congress scrap the old LEFRTY. Deputy Veronica Velasco Rodriguez of the Partido Verde Ecologista Mexicano (PVEM) said it might be more difficult than anticipated to simply reform a few articles that were declared unconstitutional by the high court. "We have to start from scratch and create a new law," said Velasco.

Some observers said the SCJN's decision could have repercussions beyond the broadcast industry, as it sets a precedent for the government to begin to dismantle the hold that monopolies have on the Mexican economy. Calderon pledged before he took office that he would place a high priority on curbing monopolies and promoting competition as a way to boost the economy.

Despite the president's intentions, dismantling monopolies has not been easy, as evidenced by the obstacles presented to creating a third television network (see SourceMex, 2007-01-10). Even opening the telecommunications market has met strong resistance (see SourceMex, 2006-08-16). "The Supreme Court decision hasn't gotten a lot of attention outside Mexico but it could be one of the most important economic developments in the country in recent years," said Maria Anastasia O'Grady, who writes a column about Mexico in the Wall Street Journal. "That's because it represents a sea change in Mexican jurisprudence, which in turn reflects a change of similar magnitude in Mexican culture."

O'Grady said the court ruling could affect the monopolistic practices in sectors such as oil, electricity, telecommunications, transportation, and cement. "[The court decision]...does instruct Congress on the priority that the Constitution places on equal treatment under the law," said O'Grady. "By doing so, it raises the bar for lawmakers on issues related to fair competition and sets a precedent that is likely to have an impact on other segments of the economy not open to competition."

-- End --