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Chamber of Deputies Approves Comprehensive Reforms to Telecommunications Sector

by Carlos Navarro
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The Chamber of Deputies set in motion major reforms to Mexico’s telecommunications and media industries with the overwhelming approval of a version of the Telecommunications Reform Law proposed by President Enrique Peña Nieto. The measure, approved by a 393-98 vote, still requires approval by two-thirds of the Senate because at least part of the initiative requires amendments to Mexico’s Constitution. The Senate, which will consider the measure after the Mexican Congress returns from the Easter recess, is likely to approve the reforms, but only after extensive debate.

The telecommunications-reform bill, which proposed reforms to seven articles of the Mexican Constitution, sailed through the Chamber of Deputies because of broad support, including from the three major parties in Congress: the governing Partido Revolucionario Institucional (PRI), the center-left Partido de la Revolución Democrática (PRD), and the conservative Partido Acción Nacional (PAN).

Supporters said the proposal to reform the broadcast industry is the most comprehensive in decades. "We have not had substantial legislation to reform this sector since 1960," said Deputy Julio César Moreno, chair of the constitutional affairs committee (Comisión de Puntos Constitucionales) and a member of the governing PRI. "These constitutional reforms will promote a true technological, social, and political transformation in our country’s telecommunications industry."

Even though many center-left legislators voted against the measure, PRD Deputy Purificación Carpinterio, secretary of the communications committee (Comisión de Comunicaciones) in the lower house, remarked, "This reform looks too good to be true."

And leaders from all three parties emphasized that there was input from all sides. "This reform has broad consensus," said PAN Deputy Marcos Aguilar Vega. "We reached an agreement despite our differences."

But there was extensive debate and some revisions before the measure was brought to the floor of the lower house for a vote. The floor leaders made some changes in the language of the bill, which, among other things, set conditions for foreign investors to participate in the Mexican broadcast industry and changed some conditions for "must carry" and "must offer," referring to requirements for services and programming that the cable and satellite companies are obligated to offer.

Previous effort at reform fell short

This is the second time in a decade that the Mexican Congress has attempted to make major reforms to Mexico’s broadcast sector to make the industry more democratic. In a previous attempt, the Congress approved the Ley Federal de Radio y Televisión (LEFERYT). But, rather than make the system more open to civil society, the reforms consolidated the control that Grupo Televisa and Grupo Azteca have over the television broadcast airwaves (SourceMex, April 5, 2006). Under that
legislation, holders of concessions would have received almost exclusive rights to digital broadcasts at a time when the government was converting the old analog system to a digital spectrum.

Nongovernmental organizations and former members of Congress challenged the law before Mexico’s high court (Suprema Corte de Justicia de la Nación, SCJN) in 2007 (SourceMex, May 16, 2007), and the court ruled in favor of the plaintiffs by rejecting a provision that made license renewal automatic and grandfathered rights and terms of previous concessions regardless of how laws changed.

But the court’s decision did not invalidate LEFERYT, instead allowing Congress to make necessary revisions to ensure that LEFERYT was in compliance with the Mexican Constitution (SourceMex June 20, 2007). Even though LEFERYT never fully took hold, the initiative promoted efforts to create new television networks to create competition against the two major giants Grupo Televisa and Grupo Azteca (SourceMex, Jan. 10, 2007, March 2, 2011, and June 13, 2012).

New reforms would promote competition
The new reforms appear to take significant and intentional steps to promote competition and reduce the power of the Televisa-Azteca duopoly by both encouraging the creation of new television networks and eliminating restrictions for foreigners to invest in Mexico’s broadcast industry. The Peña Nieto government sees the telecommunications reform as another step in helping stimulate economic growth in Mexico. A report published by the Organization for Economic Development and Cooperation (OECD) said a lack of competition in the broadcast sector has resulted in higher prices and relatively poor service, which cost Mexican consumers the equivalent of about 1.8% of GDP.

The measure reinforces existing policies to accelerate spectrum bids in the next months to create at least two additional nationwide television chains, as part of the digitalization of radio and television in the country. An important safeguard was put in place to prevent current networks from participating in the new auctions. Broadcast companies already holding more than 12 megahertz of spectrum would be barred from participating in the upcoming bids.

The anti-monopoly provisions also address telephone service, likely affecting the big empire that billionaire Carlos Slim built through his Telmex and América Móvil companies. Slim controls 70% of cellular telephone service in Mexico and 80% of landlines.

"This is one of the bigger threats we’ve seen for América Móvil from a regulatory standpoint," analyst Chris King of Stifel Nicolaus & Co. in Baltimore said in an interview with Bloomberg news service. "It certainly could be the beginning of some type of significant change for the industry itself, particularly if you get regulators with real teeth."

Others agreed that the measure has strong potential to create more competition in the telecommunications sector. "These reforms would be a positive step toward creating a telecom industry that puts the public interest ahead of (or at least on par with) private interests," Daniel Castro, senior analyst at the Information Technology & Innovation Foundation, said in an interview with the Inter-American Dialogue’s Latin America Advisor.

"The telecom reforms would promote access to information and communication technologies, which are critical for achieving economic growth and improving productivity," added Castro.
One major change promoted by the initiative is expanded participation by foreign investors in Mexico’s telecommunications market. Under the bill approved by the lower house, foreign entities would be allowed to acquire full ownership of a Mexican satellite or company, compared with the previous restriction of 49%. More importantly, foreigners would be permitted to obtain as much as 49% of voting stock in a radio or television broadcast company, compared with the total restriction currently in place.

The Chamber of Deputies, however, added a reciprocity provision requiring outside investors to come from countries that also allow stakes of that size in their media industries. This restriction could reduce investment from investors in the US, which stipulates that in most cases foreigners can only own a 25% stake in a US broadcast entity.

The restriction no doubt was added at the prompting of the Mexican broadcast giants, which promised not to block foreign competitors as long as they were afforded entry into the home markets of potential overseas investors. "We would also not challenge an attempt for a new television network backed by a US partner, so long as we receive reciprocal treatment in the US," Grupo Televisa chairman Emilio Azcárraga said in an editorial published in The Wall Street Journal in March 2012. Televisa owns a 6% share in US Spanish-language network Univisión.

New regulator

The telecommunications reform approved by the lower house also made a significant change by creating the Instituto Federal de Telecomunicaciones (IFETEL) as a powerful independent regulatory body with authority vested in the Mexican Constitution. The institute would have an anti-trust mandate on matters related to telecommunications, in addition to assuming the regulatory functions of the Comisión Federal de Telecomunicaciones (COFETEL), which would cease to exist.

Under the bill approved by the lower house, IFETEL would have the power to break up dominant firms that control more than 50% of their respective markets, apply asymmetric regulation, and order the unbundling of services.

IFETEL would consist of seven commissioners chosen by the Mexican president from a list of candidates proposed by an evaluation committee. The candidates would then have to be ratified by the Senate. There are safeguards to prevent the evaluation from making the appointments political. For example, appointees cannot have served as directors or officials of companies involved in the telecommunications sector during the five-year period prior to the nomination.

"Equally, appointees cannot have served as Cabinet secretaries or federal deputies or senators in the five years prior to nomination," said Irene Levy, director of the nonprofit telecommunications industry-analysis organization Observatel. "This is a way to safeguard the institute from improper influence from companies or political parties.

While some analysts believe the new IFETEL would not be as political as COFETEL, some skeptics believe that politics could also enter into the decision-making process of the new institute despite the safeguards. "Why this euphoria about IFETEL without knowing who will be named to the institute?" columnist Ciro Gómez Leyva wrote in the Mexico City daily newspaper Milenio.

Others raised questions about the powers proposed for the institute. "IFETEL as proposed would be a Frankenstein with overarching faculties that in the end would have to rely on decisions made by Mexico’s president," said Salomón Padilla, vice president of the industry group Asociación de
Redes de Telecomunicaciones de México. "It is true that Article 28 stipulates that the opinion of the Mexican president will ‘not be binding,’ but who is going to say ‘no’ to the president?"

Syndicated columnist Sergio Sarmiento alluded to the experience of the federal electoral institute (Instituto Federal Electoral, IFE) in trying to remain autonomous from the executive branch. "The problems that IFE has encountered demonstrate to us that autonomy is no guarantee of efficiency or real independence before powerful groups in Mexico," said Sarmiento. "I am also worried that an IFETEL that is overly powerful could violate freedom of expression in our country."

Still, some analysts believe that a strong regulator like IFETEL is needed to oversee the increased foreign participation in the sector. Telecommunications analyst Gabriel Sosa Plata said the new institute would be empowered not only to make technical decisions but also to address political matters. "Foreign investment was not viable previously because Mexico lacked a strong regulator," Sosa Plata said in an interview with the online news site Animal Político.

Other competition-related provisions in the bill deal with refinements to the "must carry" and "must offer" mandates, which require that open-air television content be offered to subscription-based television users at no additional cost. Legislators agreed that only satellite companies that have more than 50% national coverage will be required to carry local over-the-air channels.

Despite the strong consensus in the Chamber of Deputies and strong support for the measure in the Senate, some senators pointed out that the upper house will not simply rubber-stamp the telecommunications initiative. PAN Sen. Javier Lozano promised that there would be careful and extensive review of the proposal, and some provisions would probably be changed. "We are suspicious when there is so much applause for a legislative measure," Lozano said in a radio interview.

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