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Mexican Congress Approves Secondary Laws to Implement Telecommunications Reforms

by Carlos Navarro

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After several delays and legal challenges, the Mexican Congress has approved the secondary laws that allow the government to implement reforms to the telecommunications sector. The purpose of the reforms was to create more competition, which would reduce the cost of telephone and media services and bring new technology into the telecommunications sector (SourceMex, March 27, 2013). While there is agreement that some transformation has taken place, there is debate on whether the changes are actually serving the best interest of the public. Critics contend that the changes are cosmetic and that corporate interests like Televisa and Grupo Telmex are still in a dominant position. This situation is of great benefit to President Enrique Peña Nieto and the governing Partido Revolucionario Institucional (PRI), the critics say.

Critics say laws do not comply with original reforms

"The technical and legal complexities of the reforms should not mask the fundamental issue: the structures of the communications media have not been made more democratic, there won’t be diversity and plurality of content, and there is no effort to control the creation of monopolies," columnist Jenaro Villamil wrote in the weekly news magazine Proceso. "The legislation instead strengthens monopolies rather than developing modern guidelines that allow a diversity of content, easier Internet access, and the availability of new technologies to the population."

Villamil says that a deeply undemocratic aspect of the law is allowing the two broadcast giants Televisa and TV Azteca to determine 90% of the content placed on air and that the only oversight will come from the Secretaría de Gobernación (SEGOB).

Opinions differ on whether the legislation provides the new regulator, the Instituto Federal de Telecomunicaciones (IFT), with sufficient autonomy and enforcement power. The IFT replaced the Comisión Federal de Telecomunicaciones (COFETEL), which was widely viewed as weak and subject to manipulation. COFETEL, ironically, was created as an independent agency that was intended to force Telmex to provide access to its infrastructure (SourceMex, July 3, 2002).

Villamil suggested that the institute would have very little autonomy. "The weakened IFT will have to deal with uncomfortable and discrentional situations," said the Proceso columnist. "The institute will have to answer to the consumer protection agency (Procuraduría Federal del Consumidor, PROFECO), which is an institution better suited for other functions when it comes to the rights of users."

Columnist Enrique Quintana of the daily business newspaper El Financiero offered a different opinion. "The IFT has been given teeth," he said. "We now have the possibility of imposing fines as high as 6% of the annual earnings of violating companies."

Quintana noted that the IFT also has the power to determine when a company has gained a dominating market position and to take appropriate corrective actions.
There is also debate on whether true competition has been created. Villamil is among those who believe that the new laws do not guarantee the equity that was promised when the general law on the reforms for television (both on-air and paid services) and telecommunications (Internet and land and mobile phones) was passed in 2013.

The Proceso columnist said the reforms also failed to create democratic alternatives for small communities, since indigenous and community-based outlets will remain restricted to very low wattage and limited-capacity towers. "In other words, religious or parish-based radio will have more potency," said Villamil, who noted that financial restrictions were also imposed on outlets based in universities.

There was agreement that the legislation appears to greatly benefit Televisa—even at the expense of Mexico’s other corporate giant, Grupo Telmex. "The secondary laws will not halt the concentration in pay television," said Villamil. "To the contrary, monopolistic tendencies will be encouraged. This will be a reflection of Televisa’s ‘business plan,’ which was formulated in June of last year."

'Dominant' corporations required to make changes

Earlier this year, IFT regulators declared Televisa a dominant company in the free on-air television broadcast industry but not in the pay-TV sector. This designation, along with the determination of Telmex’s dominance in the telephone sector—particularly through its cell-phone subsidiary América Móvil—gave legislators the green light to move forward with reforms.

"Both América Móvil and Televisa will have to share their infrastructure," Quintana said. "The telephone company will have to accommodate competitors, and the television company will have to share the broadcasting industry with new networks. This is going to generate increased competition in both sectors."

Even with the secondary laws not yet in place, the government began the process of opening up bids for a potential third network earlier this year (SourceMex, Jan. 8, 2014).

Critics said, however, that the Senate and Chamber of Deputies, where the PRI has a plurality, appeared to be protecting Televisa by defining dominance via a firm's market share in an industry as a whole rather than on particular services. This, they said, allowed Congress to impose tougher restrictions on Telmex than on Televisa.

Sen. Javier Corral of the center-right Partido Acción Nacional (PAN), a long-time critic of media concentration in Mexico (SourceMex, April 5, 2006, and May 16, 2007), explained that the changes enable Televisa to continue to gain market share in the pay-TV market without facing regulation. "The only real question is whether Televisa will face actual competition," Corral said.

Analysts said Corral’s contribution to the debate was valuable because it pointed to the government’s cozy relationship with Televisa. "Corral was not the only one making the arguments, but he was the most articulate voice," political analyst Lorenzo Meyer, a professor emeritus at Colegio de México, said in an interview with radio host Carmen Aristegui on MVS Noticias.

Other analysts agreed that the legislation also appears to give Televisa, and to a smaller extent TV Azteca, increased political clout. "There is no effective regulation," political analyst Denise Dresser of the Instituto Tecnológico Autónomo de México (ITAM) said on MVS Noticias. "[This law] in the end provides privileges to Televisa. … This law goes against the public interest, and we will pay the cost for several years."
Others noted that the legislation seems to favor Televisa over Telmex, as the broadcast network was given some advantages, while the telephone empire controlled by billionaire Carlos Slim Helu will now be subject to real competition.

An important change is that América Móvil will be required to share some of its network with competitors. Under the legislation approved by Congress, the company must present a plan to regulators to reduce its market share below 50% from its current level of 70%. Telmex also controls about 80% of Mexico’s landline service.

Legislators also inserted a measure in the secondary laws that effectively delay Telmex’s entry into the television market. Slim had long sought to offer TV broadcast services (SourceMex, Aug. 31, 2011 and June 13, 2012), but Telmex must now wait two years before the company becomes eligible to apply for a broadcast license.

Despite the delay, Quintana pointed out that Telmex will finally get the opportunity to enter the television broadcast industry. "If it meets all requirements regarding documentation, Telmex could receive a concession by September 2015, which would create strong competition for Televisa," said the El Financiero columnist.

Quintana said the law on balance is very beneficial to consumers. América Móvil and other carriers will have to stop charging long-distance fees starting next year. "The elimination of a fee for domestic long-distance calls, both on landlines and cell phones, will result in savings of 22 billion pesos (US$1.6 billion) for Mexican consumers on an annual basis," said Quintana.

Consumers are expected to benefit in others ways. For example, the new law forbids all operators from calling users with service promotions unless they have authorization to do so.

"With these changes, we will eliminate the dysfunction that has been so prevalent in the telecommunications industry, which has extracted an important social cost on the economy in the form of low levels of coverage, poor quality, and high prices," columnist Marco Antonio Mares wrote in the daily newspaper Milenio.

**Overwhelming approval in Congress**

The secondary laws received overwhelming approval in both chambers of Congress, passing by a margin of 80-37 in the Senate and 390-129 in the Chamber of Deputies. In both chambers, the PRI voted unanimously for the measure, along with a majority of PAN members. The allies of the two parties—the Partido Verde Ecologista de México (PVEM) and Partido Nueva Alianza (PANAL)—also supported the measure. The opposition came primarily from the center-left parties—the Partido de la Revolución Democrática (PRD), the Movimento Ciudadano (MC), and the Partido del Trabajo (PT)—along with a handful of legislators from the PAN.

Legislators said the reforms would help Mexico move forward. "With more investment we will have more competition, more quality and options of service, and accessible prices for users," said Deputy Manlio Fabio Beltrones, PRI floor leader in the lower house.

Deputy Miguel Alonso Raya, one of the floor leaders for the PRD in the lower house, said center-left legislators opposed the measure because the secondary laws did not do enough to dismantle the monopolies in the sector.
Still, despite the easy passage of the secondary laws, there was a lot of behind-the-scenes maneuvering intended to keep a majority of PAN members from joining the opposition. "Through the lobbying efforts of Televisa, the PRI and the administration in the last four months applied the principle of divide and conquer to pass an initiative that the opposition parties had described as unconstitutional because it deviated from the principles approved in 2013," said Villamil.

And, despite the criticisms, the Peña Nieto government defended the measure approved in the Senate and Chamber of Deputies by pointing out that its clauses adhere very closely to the specifics contained in last year's constitutional changes. Presidential spokesperson Eduardo Sánchez said the measure intends to increase the number of service providers while improving quality and lowering the cost of services, which was a key target specified in the 2013 law. "The winners are the 117 million Mexicans who will receive better service and value for their money," said Sánchez. [Peso-dollar conversions in this article are based on the Interbank rate in effect on July 9, 2014, reported at 12.96 pesos per US$1.00.]

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