

7-5-2017

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Recommended Citation

Navarro, Carlos. "Mexico's Supreme Court to Hear Challenge to Telecommunications Reform Law." (2017).
<https://digitalrepository.unm.edu/sourcemex/6360>

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Mexico's Supreme Court to Hear Challenge to Telecommunications Reform Law

by Carlos Navarro

Category/Department: Mexico

Published: 2017-07-05

Four years after the Mexican Congress approved comprehensive telecommunications reforms ([SourceMex, March 27, 2013](#), and [July 9, 2014](#)), the country's high court (Suprema Corte de Justicia de la Nación, SCJN) has agreed to consider a complaint by dominant cell company América Móvil that could revert some of the progress achieved with the opening of the telephone sector.

A key objective of the reforms was to create competition by preventing a single company from gaining control over key aspects of telecommunications. At the time the legislation was approved, TELMEX-Telcel, a conglomerate owned by billionaire Carlos Slim, controlled 70% of cellular telephone service in Mexico and 80% of landlines.

Interconnection fees a central issue

Slim, who filed legal action against the reforms in 2015, has challenged a provision in the law that prohibited his cellular company, América Móvil, a subsidiary of Telcel, from charging other telephone carriers for connecting calls made to customers on its network. The legislation allows those same rivals to charge América Móvil for connecting its calls to their customers.

In filing the complaint, Slim and his legal team argue that Congress violated the Constitution by establishing a schedule of tariffs, a faculty reserved for the telecommunications regulator, the Instituto Federal de Telecomunicaciones (IFT). Furthermore, Slim's lawyers contend that Congress lacked the authority to create rules that singled out América Móvil for tougher penalties.

Even though the SCJN has agreed to hear the case, the high court has not offered a specific timeframe for the issue to be resolved. A ruling on the tarifa cero (zero tariff, or the portion of the law being challenged by Slim) could be handed down before the high court begins a two-week recess on July 15, but it's more likely that the issue will be addressed sometime after the court returns in August.

The arguments on behalf of América Móvil will be presented by Slim's high-powered legal team, which includes two lawyers who also served in prominent political posts, Diego Fernández de Cevallos, a former senator, and former Interior Secretary Fernando Gómez Mont.

If the court rules in favor of Slim on the tarifa cero issue, the competitors might not only have to pay connectivity fees to América Móvil, but they might also be forced to reimburse Slim's company for back fees they received. According to a report from Grupo Banamex, this would enhance the capitalization levels of América Móvil significantly.

The SCJN has already ruled on 10 other complaints that could have a bearing on the tarifa cero case. The complaints, filed against the IFT, include a decision on June 21 that favored a unit of América Móvil against rival companies Pegaso PCS and Grupo de Telecomunicaciones Mexicanas, both of which are units of the Spain-based multinational company Telefónica. Five justices sitting the SCJN's Segunda Sala, which deals with administrative and labor issues, made the decisions on these

cases. Those justices are Eduardo Medina Mora, Margarita Luna Ramos, Javier Laynez Potisek, Alberto Pérez Dayán, and José Fernando Franco González Salas.

“The future of the telecommunications reforms is in the hands of the five justices of the Segunda Sala of the SCJN,” financial columnist Maricarmen Cortés wrote in the daily newspaper *Excélsior*. “And there is growing concern in the telecommunications sector because these are the same five justices who ruled in favor of América Móvil on a total of 10 appeals that the telephone company owned by Carlos Slim Helú presented against the IFT over the issue of interconnection.”

Telecommunications chamber speaks out

Several rival companies have spoken out against the potential changes to the *tarifa cero*, including companies that have recently established a strong presence in Mexico—AT&T México, Motorola, and Axtel. AT&T entered the Mexican market shortly after the reforms were enacted by acquiring Grupo IUSA and Unefon, which at the time were the third and fourth largest cellular companies in Mexico.

“The Mexican government’s commitment was key to our decision to invest in Mexico, and we trust that the decisions that are about to be made will take into account what’s best for consumers,” Kelly King, head of AT&T in Mexico, told reporters in June.

The rival companies are active participants in the telecommunications industry chamber (Cámara Nacional de la Industria Electrónica, de Telecomunicaciones y Tecnologías de la Información, CANIETI), which strongly opposes the elimination of the *tarifa cero*.

Analysts noted that CANIETI is working hard to bring its concerns to the public. “The telecommunications industry, via CANIETI, sounded off a series of alarms through its message that the *tarifa cero* ... is essential to allow Mexico to continue building a more level playing field in the face of a competitor that currently controls 70% of the market,” financial columnist José Yuste wrote in *Excélsior*.

CANIETI, which represents several dozen companies involved in various aspects of telecommunications, noted that the ruling “could have serious consequences, such as an increase in prices to the consumer ... A ruling [in favor of América Móvil] would also represent a disincentive for new investments in our industry and would affect the financial situation of companies that created their business model based on the certainty provided by the telecommunications reform.”

Writing in the daily newspaper *El Universal*, columnist Mario Maldonado warned that Slim was “close to throwing out some of the benefits that the telecommunications reform created, especially those that deal with the reduction of fees for telephone service ... The billionaire has been lobbying for two years to eliminate the *tarifa cero*, and he will succeed if the ministers of the SCJN succumb to his wishes.”

According to Maldonado, a ruling in favor of Slim would create a precedent for changes in other aspects of the telecommunications law. “The reforms have benefited the users and attracted heavy investments from companies like US-based AT&T,” he wrote.

Gerardo Soria, president of the telecommunications consumer rights institute (Instituto del Derecho de las Telecomunicaciones, IDET), wrote in a guest article in the daily business newspaper *El Economista*: “In my opinion, what Telcel is seeking is to eliminate all asymmetric regulations that

were established via the telecommunications law, so that the IFT is the only entity determining regulations ... Evidently, it is much easier to influence seven [IFT members] than 500 deputies, 128 senators. and the Mexican president."

President Enrique Peña Nieto, who made the telecommunication reforms one of the centerpieces of his administration, stopped short of criticizing Slim but touted the benefits of the opening of the sector, citing the reduced costs and improvements in telephone and internet service and the increased US-Mexico interconnection, which have virtually eliminated long-distance costs for calls between the two countries.

"To not have made the change would have been irresponsible," Peña Nieto told hundreds of government officials and industry executives at the presidential residence Los Pinos on June 26. "It would have condemned Mexico to falling behind."

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