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Nicaragua Controversy Sales a Public Company

by LADB Staff

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After several years of trying to privatize the state-owned telecommunications enterprise Empresa Nicaraguense de Telecomunicaciones (ENITEL), the Nicaraguan government completed the controversial sale to a consortium alleged to be a front for politicians, including President Arnoldo Aleman. Cutting through a thicket of claims and counterclaims, the Corte Suprema de Justicia (CSJ) pronounced the sale legal. But the opposition Frente Sandinista de Liberacion Nacional (FSLN) wants an investigation of Aleman and ENITEL directors.

On Aug. 31, the government announced the sale to a consortium comprising Swedish firm Telia Swedtel and Honduran firm EMCE. The consortium offered US\$83.1 million for a 40% interest in ENITEL, more than US\$2 million above the base price. Radiomovil DIPSA, an affiliate of Mexican telecommunications firm TELMEX, and Compania de Telecomunicaciones de El Salvador, an affiliate of France Telecom, dropped out of the bidding leaving the Telia Swedtel-EMCE bid uncontested.

This was the fourth attempt to complete the privatization of ENITEL, a process that began during the term of President Violeta Chamorro (1990-1997). The previous attempt was abandoned in September 2000 because France Telecom, the only bidder, offered US\$63 million, well below the base price of US\$79 million set by the government (see NotiCen, 2000-09-28). Privatization of ENITEL has been a part of Nicaragua's understanding with the International Monetary Fund (IMF) and the World Bank (see EcoCentral, 1997-10-30, NotiCen, 2000,09-28).

During the current controversy concerning the sale, World Bank representative Ulrich Lachler reiterated the bank's position that the privatization was essential to Nicaragua's final acceptance in the bank's debt-reduction program, Initiative for Heavily Indebted Poor Countries (HIPC). Under the privatization scheme, 40% of the company's shares go to the private sector and 1% will be donated to ENITEL workers, who will have the option of purchasing a further 10%. The rest is to remain under government control. Proceeds from the sale are to be divided among various government projects, including the creation of rural-credit and anti-poverty funds, improvement of electrical, water, and road infrastructures, and rural housing. These kinds of programs form part of the HIPC requirements for development and poverty reduction.

The sale caused an uproar because an Appeals Court had suspended the bidding process until the Corte Suprema de Justicia (CSJ) could issue its ruling on a suit brought by Managua's Sandinista Mayor Herty Lewites. Lewites also has taken legal action to recover US\$29 million ENITEL owes the city in back taxes. Sandinistas charged that Telia Swedtel was a front for a Honduran-Panamanian firm controlled by Honduran interests and associates of President Aleman. Among the firm's partners are Rene Morales Carazo, a brother of Aleman's close advisor Jaime Morales Carazo, and Honduran businessman Freddy Naser. Naser is a nephew of Honduran President Carlos Flores.

Sandinista legislators called on the National Assembly's anti-corruption committee to investigate the sale. Edwin Castro, coordinator of the FSLN delegation, said the sale was flawed because, among other things, it was sold to a firm that would administer but not actually own the ENITEL shares. Sandinistas say that ENITEL is being delivered to Honduras at a time when it is in a serious boundary dispute with Nicaragua (see NotiCen, 2001-08-23, 2001-09-06).

Sandinista Bayardo Arce called the sale "a disgraceful scandal" in which Nicaragua was handing its strategic telecommunications system over to a country that was making "hostile preparations against Nicaragua." Sale linked to President Aleman Besides the question of national pride and security, Sandinistas say that Aleman's connections to the buyers raises suspicions of corruption. Mayor Lewites took the matter to the government accounting office (Contraloria General de la Republica, CGR) on Sept. 3, charging that the real operatives behind the privatization were Aleman, Byron Jerez, and former ENITEL president Jorge Solis. Jerez and Solis were indicted last year on charges stemming from the "checazo" scandal, which involved questionable government purchases and unexplained check payments (see NotiCen, 2000-06-15). The charges were later dropped by a judge who did not review the evidence (see NotiCen, 2000-07-27).

Lewites alleged that Aleman had committed fraud and abuse of authority in an illegal sale. He named others, including Treasury Minister Esteban Duque Estrada and ENITEL director Agustin Aleman the president's brother as participants in the scheme. However, ENITEL attorney Pablo Beteta said the Appeals Court order suspending the sale had itself been suspended by a petition ENITEL filed against it. The same petition asked the court magistrates to recuse themselves for having given statements on the case to the media. Since the sale took place while the suspension order was in limbo, the sale was legal, argued Beteta.

In Lewites' account of the sale, Naser put up US\$20 million and the Honduran firm CIBERTEX invested US\$10 million. He said the deal was worked out in a warehouse belonging to the Treasury Ministry without consulting the CGR as required. A blanket of government disinformation covered up the details of the privatization, he said.

Supreme Court approves sale

The CSJ overturned the Appeals Court suspension on Sept. 19 and declared the sale legal. Josefina Ramos, president of the CSJ's Sala Constitucional, ruled that, because the sale of state assets was a political decision, the CSJ should rule politically. "The Sala Constitucional of the Corte Suprema de Justicia, just as the Corte Suprema it does not embarrass us to say is a nonpartisan political organ," said Ramos. The ruling split the court, and commentators said it could set a dangerous precedent.

Sala Constitucional magistrate Rafael Solis opposed the ruling and said it should be appealed to the Corte Centroamericana de Justicia. Solis said the CSJ had been subjected to heavy pressure from the executive branch to rule in favor of the sale. He argued that the ruling was invalid because of technical errors and omissions, one of which was the illegal use of copies instead of original documents. He said Ramos also erred by personally selecting magistrates to make a quorum on the panel instead of choosing them by lot.

When asked by the daily La Prensa why she chose two magistrates from the governing Partido Liberal Constitucionalista (PLC) instead of making a random choice, Ramos said it had not occurred to her. Lewites responded to the ruling by calling Aleman a leader of "terrorist commandos" who destroyed the CSJ. He named magistrates Fernando Zelaya Rojas, Francisco Plata, and Ramos as accomplices.

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