

MEXICAN TELECOM REFORM: PRIVATE INTEREST FIRST?

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ABSTRACT. *Telecommunications reform, one of the pillars of President Enrique Peña Nieto's highly-publicized structural reforms, was enacted to recognize as human rights access to: (i) information and communications technology; and (ii) broadcasting and telecommunications services, including broadband and the Internet. The reform also gave the Mexican government the authority to sanction or even split up companies engaged in monopolistic practices, and to establish ad hoc restrictions to minimize undue market advantages for dominant industry players – defined as companies that capture 50 percent market share measured by number of users/audience, capacity or network infrastructure. This article explores several aspects of this new legislation, including regulatory agencies; media and plurality; audience and users' rights; restrictions to minimize market manipulation; mergers; data retention and geo-localization; and access for persons with disabilities. It also examines various aspects of the legislative process, as well as some broader implications of the new law.*

KEY WORDS: *Telecommunications, broadcasting, audience, mergers, antitrust, plurality, competition.*

RESUMEN. *La reforma de telecomunicaciones en México fue uno de los pilares de las llamadas reformas estructurales, cuyo objetivo fue reconocer a nivel constitucional el derecho de acceso a los servicios de telecomunicaciones y radiodifusión, los derechos de la audiencia, así como fijar límites a los grandes grupos corporativos de telecomunicaciones y radiodifusión. Este artículo presenta los aspectos principales de la nueva ley mexicana de telecomunicaciones (el regu-*

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lador, pluralidad y medios, derechos de las audiencias y usuarios, la preponderancia, medidas contra los dominantes, concentraciones, conservación de datos y geolocalización, usuarios con discapacidad), los aspectos relevantes del proceso legislativo y el análisis del proceso legislativo.

PALABRAS CLAVE: *telecomunicaciones, radiodifusión, audiencia, concentraciones, competencia económica, pluralidad, competencia.*

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I. BACKGROUND

Following the 1910 revolution, Mexico's economy was developed by monopolistic interests that operated on the local, regional and national levels. The telecom sector was no exception.¹ Since capital formation and economies of scale were so vital in developing a functional infrastructure, the government deemed competition as against the public interest.² Licenses were granted on a discretionary basis pursuant to loyalty both to the government and (most importantly) the PRI (*Partido Revolucionario Institucional*), the political party that ruled Mexico for over 70 years.³ Without loyalty, no applicant was able to obtain a broadcasting license.

¹ Example in telecommunications can be found on the Ley de Vías Generales de Comunicación (1940). Also see CLARA LUZ ALVAREZ, DERECHO DE LAS TELECOMUNICACIONES 391 (Fundalex and Posgrado de Derecho de la UNAM, 2013).

² InfoDev, *Forms of Market Failure*, ICT REGULATION TOOLKIT, (Nov. 7, 2014, 12:44 PM) <http://www.ictregulationtoolkit.org/en/toolkit/notes/practicenote/2609>.

³ Partido Revolucionario Institucional, *México, el PRI y sus Cifras* (Aug. 23, 2014, 1:30 PM) <http://pri.org.mx/TransformandoaMexico/MexicoPRI/MexicoysusCifras.aspx>.

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