

## LICENSING PROCEDURE ESTABLISHED IN THE MEXICAN LAW FOR THE OPERATION OF SATELLITE ORBITS ASSIGNED TO MEXICO AND FOR THE TRANSMISSION OF SIGNALS COMING FROM FOREIGN SATELLITES

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Abstract- Federal Telecommunications Law in Mexico, in force since 1995, is the regulatory instrument which establishes the licensing procedures for satellite operations.

The importance of this law is the opening of the telecommunications competition in Mexico, which began with telephony in 1996, and in the satellite area, the first licenses for operating satellite orbits assigned to Mexico were granted in 1997 and for the transmission of signals coming from foreign satellites were granted for the first time just in 2001.

The purpose of this paper is to present the procedure established in the Mexican Law, to speak about these new licenses, the opportunity of investment that they represent in Mexico and the convenience or inconvenience of this procedure and the amendments that we are proposing to the Mexican Congress to include in the new Federal Telecommunications Law.

### **INTRODUCTION**

The lack of a State policy in the telecommunications field in Mexico, has caused that its development has no

objectives and that it does not correspond to the necessities of our country. The lack of such policy has been reflected in the deficient regulation that by now seems to be improvised in one field –the telecommunications one- which is the vertebral column of the development of any country. Via satellite communications has not been and is not an exception. The same as other activities, satellite communications was regulated based in two fundamental issues: I) as a strategy area reserved to the State, and therefore the services were provided by the Federal Government itself, and ii) as a main area in which the provision of services are subject to license and of course, with the participation of the private sector, of whose opening we will speak later on in this document.

### **II. REGULATORY BACKGROUND**

The fundamental basis that regulates rights and obligations of the Mexican population and that establishes the departure point of the specific laws in Mexico, is the Federal Constitution of the Mexican Republic<sup>1</sup>, issued on February 5, 1917, which included the part related

properly to the constitutional rights of the Mexicans and a precept which is the basis of the provisions that today rule the areas reserved to the State and the foundations for the regulation in competency areas. The original text of the Federal Constitution established in article 28 that in Mexico, there would not exist monopolies, with the exception of telecommunications and to **telegraphy and radiotelegraphy**.

The Federal Constitution was amended on February 3, 1983, due to the fact that Mexico was about to launch its first satellite, Morelos I (1985). The amendment was made in the same article 28 itself, fourth paragraph and its text would include **via satellite communication** as strategic area, and therefore it was reserved for its provision to the State, without the participation of particulars.

In the justification of such amendment, which supported it, there was no explanation of why should it be considered as a strategic area.

Between the amendment to the Federal Constitution and the adoption of new laws in Mexico, in 1995, some commercial agreements became relevant. Mexico concluded some of them such as NAFTA.

On the other hand, there was a raise in the importance of the negotiations on the opening of the international trade services, initiated with the Tokyo Round in 1978 within the frame of the General Agreement of Trade and Tariffs<sup>4</sup> (GATT) and concluded within the Uruguay Round, when the final Record was executed in Marrakech on April 15, 1994. In said meeting GATT Secretariat was substituted by the World Trade Organization (WTO), which originated a

new services trade system, in which the General Agreement of Services Trade, established relevant questions that subscribing countries are obliged to include in their own respective national regulations.

Mexico, the same as other countries amended its regulation in regards to opening to the competition the telecommunication services, within which we can find via satellite communication.

Based in those considerations, article 28 of the Mexican Federal Constitution, which we have mentioned, was amended once more in 1995, in order to establish via satellite communication as a priority area -not as a strategic area anymore-, opening to the private sector, the chance of investing in the satellite sector.

Simultaneously, the amendments to the Federal Constitution, the secondary laws in force, which regulated via satellite communication in terms and under the general rule established by the Supreme Mexican Law, the Federal Constitution, are:

- General Communication Means Law<sup>2</sup>, and
- Federal Telecommunications Law<sup>3</sup>.

The first one of them, General Communication Means Law, was published on February 19, 1940, and it is obvious that in such time it was very distant to speak about satellites, except for the Moon, which is the earth natural satellite, and inclusive telecommunications, which concept and actual definition, was not considered textually. Telephony and telegraphy were very basically regulated.

General Communications Means Law, established in article 11 –in accordance to the Federal Constitution- that:

“The provision of public telegraphy, radiotelegraphy and mail services was exclusively reserved to the federal Government and to the decentralized organizations established for those purposes”.

Also were exclusively reserved to the Federal Government, the establishment of satellite systems, their operation and control, the provision of the public service of satellite signals transportation; as well as earth stations with international links for via satellite communication.

The Ministry of Communications and Transports, shall establish according to the Law and its regulations, the basis according to which the installation, operation and control of earth stations shall be carried out”.

In relation to terrestrial segment –earth stations ES-, was managed, from my point of view, in a confiscatory way, this is, if a particular was interested in such service, and also he had the possibility of having the ES in his facilities, besides buying it and in order not to distortion such reserve in favor of the State, he was compelled to assign it to the Federal Government.

Such situation was amended, in a way, in the Telecommunications Regulation of 1990, in which there was a great chapter related to via satellite communications, in which only ES for international links should be assigned to the Federal Government.

It is important to remark that via satellite communication was operated by the Federal Government through the

Decentralized Organization Telecomunicaciones de Mexico, until the semi-official corporation named Satelites Mexicanos, S.A. de C.V. (SATMEX), was incorporated on July 26, 1997, in which Mexican Government would temporarily participate.

### III. CURRENT REGULATION

With the time, the reserve established in favor of the State, turned out to be a burden for the Federal Government itself, which did not have the budget necessary for providing it with the quality and efficiency required, therefore, ten years after it was established, and in accordance to the amendment of the Constitution of 1995 that we have referred to, that declared it as priority area, and based in the obligations obtained, basically in the WTO, competency was opened and of course, private national and foreign investment.

In the Federal Telecommunications Law, in force since June 8 1995, the following was established in satellite matter:

1. Are subject to license:
  - 1.1. Occupation of geo-stationary orbit positions and satellite orbits allocated to the Country, and exploitation of their respective frequency bands; and
  - 1.2. Exploitation of emission rights and reception of signals of frequency bands associated to foreign satellite systems that cover and might provide services in national territory.
2. General rules applicable to both type of licenses:

- 2.1. Licenses will only be granted to Mexican individuals or corporations;
- 2.2. Direct foreign investment might participate only for up to a 49%;
- 2.3. They will only be granted for a 20 year term, and could be prorogated for a similar term;
- 2.4. Rates will be freely fixed;
- 2.5. Services shall be provided with quality, competitiveness, continuity and permanence;
- 2.6. Licensees shall refrain from applying crossed subsidies in services or in relation to its affiliates;
- 2.7. They should only provide licensed services.

III.1. Licenses for using orbital positions and satellite positions allocated to the Country, and exploitation of their respective frequency bands, with their respective frequency bands and rights of emission and reception of signals, are subject to the following requirements:

Additional to the general rules aforementioned in section 2, Federal Telecommunications Law establishes the following rules:

- a. Federal Government might request payment for its granting;
- b. Make available to the Federal Government, enough and adequate satellite capacity to the national security networks and to present social services, which will be granted free of charge;
- c. They will be enforced to put in orbit a satellite, 5 (five) years after having obtained the license, the latest. In this case –in case of a variation of the provisions of Plenipotentiaries to be held in Marrakech from September 23 to October 18, 2002- as to the

- terms, in the respective license itself there will be established the maximum term for putting a satellite in orbit;
- d. The control and operation centers of the satellites, shall be established in Mexican territory and must be operated by Mexicans;
- e. The licensees might explore –provide services- in other countries based on the legislation in force in each country and in the Agreements subscribed by the Mexican Government;
- f. Licensees shall respect the intellectual property rights and the signals they distribute through those satellites.

Under such regulation, the Federal Telecommunications Law and its Via Satellite Communications Regulation – published on August 1, 1997-, was carried out the privatization of the satellite corporation SATMEX, through a bidding procedure of the capital stock, including in the bidding bases that the patrimony of such semi-official company would be integrated, among others, with the licenses granted for occupying and exploring the geo-stationary orbital positions of 109.2°W; 113.0°W and 116.8°W, frequency bands C and Ku and the signals emission and reception rights.

The aforementioned procedure, originated privatization of via satellite communication in Mexico.

III.2. Licenses for exploring the emission and reception rights of signals of frequency bands associated to foreign satellite systems that cover and might provide services in the national territory.

As a part of the satellite opening, the Mexican Government granted on August 10, 2001, licenses to the following corporations: **Telesistema Mexicano, S.A. de C.V.** –which operates with PanAmSat satellites capacity-, **Controladora Satelital, S. de R. L. de C.V** –using PanAmSat International Sales, Inc. satellite capacity-, who is its shareholder at a 49%; **Sistemas Satelitales, S. de R. L. de C.V.** –using satellites of GE Americom-; and recently another licenses **Astrum Comunicaciones, S.A. de C.V** –which will operate with capacity of MSAT of Canada-

Notwithstanding that the Federal Telecommunications Law does not mention anything about the application of an specific procedure for granting such license, article 30 of such Law, establishes the following conditions for the provision us services in the Mexican territory to a foreign satellite operator:

1. Satellites should cover Mexican territory;
2. To have bilateral treaties in that subject with the country holding the signal origin;
3. That such treaties consider reciprocity for Mexican satellites;
4. The licenses shall only be granted to Mexican corporations and individuals.

Requirements and procedure for obtaining concessions are established in the Via Satellite Communication Regulations, in which we find:

i) Prove the relationship between a foreign satellite operator and the Mexican licensee; location of satellites in order to prove that they cover the Mexican territory; technical specifications of satellites; documents that prove that the

Mexican licensee will hold “control” of the services provided in Mexico.

Different from the licensee of an orbital position, Federal Telecommunications Law does not establish the obligation of making a paying for the granting of such license, due to the fact that it is not subject to any bidding procedure.

An important question for granting such licenses is the existence of treaties executed with the origin signal country. Currently, Mexico has treaties with the following countries:

a. United States of America:

1. Treaty related to the transmission and reception of satellite signals for the provision of satellite services to USA users in Mexico (April 28, 1996), which is completed with the following Protocols:

- For the provision of Via Satellite Direct to Home (April 7, 1997);
- For the provision of Fixed Satellite Service (March 17, 1998);
- For the provision of Mobile Satellite Service and Associated Connection Links (December 21, 1998);

2. Agreement for the use of satellites and earth stations for the provision of services included from and in the territories of USA and Mexico (December 21, 1998)

b. With Canada:

1. Treaty for the provision of satellite services (April 9, 1999) which is completed with the following Protocols:

- For the provision of Mobil Satellite Services and Associated Connection Links (January 16, 2001);
- For the provision of Fixed Satellite Service (January 16, 2001).

c. With Argentina:

1. Agreement related to the reciprocity in the use of Satellites and transmission and reception of signals from Satellites for the provision of Satellite Services to the Users of the United Mexican States and the Argentina Republic (July 7, 2000).

Based on the provision of the Federal Telecommunications Law, the Via Satellite Communications and in the referred treaties, as part of the satellite opening, the Mexican Government granted on August 10, 2001, licenses to the following corporations: **Telesistema Mexicano, S.A. de C.V.** –which operates with PanAmSat satellites capacity-, **Controladora Satelital, S. de R. L. de C.V.** –using PanAmSat International Sales, Inc. satellite capacity-, who is its shareholder at a 49%; **Sistemas Satelitales, S. de R. L. de C.V.** –using satellites of GE Americom-; and recently another licenses **Astrum Comunicaciones, S.A. de C.V.** –which will operate with capacity of MSAT of Canada-

Satellite opening in Mexico, could turned out to be easy, if we consider that the

Federal Telecommunications Law and Via Satellite Communications Regulation establishes requirements, procedures and terms for its granting; nevertheless, even when nowadays licensees, in general, of satellite services are providing services, it is true that –the same as is has happened in other countries= the opening to competition caused that the existing satellite operator and one of its subsidiaries, promoted several judicial remedies, which have not been resolved yet.

Another aspect regulated by the Federal Telecommunications Law is the relative to the possibility of operating in the Mexican Territory, international satellites, established under multilateral international treaties of which it is member.

Before Federal Telecommunications Law entered in force in 1995, satellite services operated by INTELSAT and INMARSAT were held through the public organization of the Federal Government, Telecomunicaciones de Mexico (TELECOMM). Such situation was modified by the privatization of INTELSAT and INMARSAT, of which resulted in the incorporation of two private corporations which in order to continue providing services in Mexico must do it, either:

- Through a Mexican corporation that previously obtains a license from the Mexican Government. In case of INTELSAT, there is a Bilateral Treaty with USA, and not in the case of INMARSAT, who requests that in order to comply with the Mexican Law, to execute a treaty with England in order to keep providing services legally; or

- Through TELECOMM, whenever a direct allocation is expressly authorized for those purposes.

In that respect, the provision of such services has not been interrupted and keeps being administrated by TELECOMM, because the provision of services is of public interest.

In case of the **global positioning systems (GNSS)**, they provide services in the national territory, and there is no existing license.

Also, it is true that such services are provided free of charge. If in the future, GNSS intended to exchange such position, it should be adjusted to the Mexican Law.

### III. 3. Amendments to satellite legislation

On August 28, 2002, the Congress - Representatives- filed a proposal of a new Federal Telecommunications Law, which far from facilitating and giving legal certainty and promoting the satellite sector growth in Mexico, it will inhibit its growth and development and will raise the prices of those services.

This proposal:

1. Establishes new conditions to satellite operators, which use foreign satellite capacity, as there is an obligation to make a payment to the Federal Government –either with money or with satellite capacity- which is not provided in the current law;
2. It does not establish the requirement neither the procedure for obtaining the licenses for using satellite capacity of foreign operators;

3. In case of approval of the new Federal Telecommunications Law it will create for beginning trade barriers of satellite services in Mexico;
4. Its application will generate licensees with different obligations and rights.

It is not yet an applicable law, it is just a proposal which might be amended within the same legislative procedure, and with the comments made by the telecommunications industry.

### IV. CONCLUSIONS AND RECOMMENDATIONS

1. Privatization of satellite sector in Mexico, is the result of the barriers elimination to international trade of services, established upon competition and free concurrence;
2. Deregulation of such sector, which will begin with the amendments to the Federal Constitution in 1995, through which via satellite communication stopped being a strategy area reserved to the State, and therefore, the provision of satellite services was let to the private sector.
3. To the result of the multilateral commercial negotiations given within the WTO in the Agreements adopted in 1994 and 1997, for example the Basic Telecommunications Agreement.
4. In 2001, the Mexican Government granted some licenses to Mexican Companies to provide foreign satellite capacity services in Mexico, situation that the national operator, showed its inconformity through the legal ways, whose resolution is still pending.

5. Satellite opening in Mexico is a reality.
6. New regulation that in its case be approved as referred above, shall contribute to the development of satellite services- and in general to telecommunications- not to inhibit it; with no doubt it is an alternative for the Mexican Government to support in its infrastructure and capacity as an integration mean to the Mexicans.

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