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**MEXICO'S LICENSING
PROCESS FOR THE
RIGHTS OF
TRANSMISSION AND
RECEPTION OF SIGNALS
RELATED TO BANDS OF
FREQUENCIES OF
FOREIGN SATELLITE
SYSTEMS WHICH COULD
OFFER SERVICES IN
NATIONAL TERRITORY.**

ABSTRACT

In the entire world satellite services are provided by numerous competitors in accordance with international treaties. Even though regulations vary from country to country making it important for space lawyers and enterprises to know and precise the regulatory and legal frame

of each case in the interest of providing global services.

The purpose of this paper is to give a specific study of the regulatory and legal frame as well as the international treaties adopted by Mexico for licensing process for the rights of transmission and reception of signals related to bands of frequencies of foreign satellite systems which could offer services in national territory. Also to be a practical guideline for those enterprises interested in providing commercial services in Mexico's market by the operation of foreign satellites.

INTRODUCTION

The purpose of this document is to indicate and analyze Mexican regulation and regulation derived from international agreements that form part of Mexican Positive Law, related with the process for the granting of concessions to rights to transmit and receive signals and bands of frequencies associated with foreign satellites which cover and can provide services in Mexican territory, in order to facilitate the entry of new competitors in the satellite communication market under previously established and clear rules.

Unlike the situation in Mexican legislation before 2002, in which there was no real openness to offer these services and the only provider was the company Satélites Mexicanos,

S.A. de C.V. (SATMEX) -privatized in 1997-, which had no competitors, today we can see the results in a competitive and well-served market, due to the effective application of the Federal Telecommunications Act [*Ley Federal de Telecomunicaciones*], published on June 7, 1995, largely derived from the signing of bilateral agreements with Argentina, Canada and the USA, and their respective protocols for the transmission and reception of foreign satellite signals to provide satellite services in Mexican territory.

INTERNATIONAL (BILATERAL AND MULTILATERAL) LEGAL CODES.

To aid the understanding of this study, I shall mention the multilateral agreements and bilateral agreements to which Mexico is party and which, as part of Mexican legislation, stem from the Political Constitution of the United Mexican States (Article 133)¹. In point of fact, under such Article, treaties entered into by the President of the Republic and ratified by the Senate of the Republic are Supreme Law in Mexico. The powers of both the President and the Senate of the Republic are contained in Articles 89

¹ Article 133: Agreements which conform to the Constitution, entered into now or hereafter by the President of the Republic, with the approval of the Senate, shall be the Supreme Law of the entire Union.

Section X² and 76-I³, of the Federal Constitution, respectively.

RELATED INTERNATIONAL AGREEMENTS AND BODIES:

Below is an overview of the international instruments adopted in forums of an identical kind, to which Mexico is party and which, after ratification by the Senate of the Republic, form part of national law:

- Radiocommunications Regulations adopted at the World Radiocommunications Conferences (WRC) of the International Telecommunications Union (ITU)⁴, whose Final Minutes were signed by the Mexican Government and ratified by the Senate of the Republic.

The importance of such international instruments lies, among other things, in the fact that frequencies are awarded to the different telecommunications services; to geostationary satellites, given that the frequencies are associated with them;

² Article 89 Section I: The powers and obligations of the President are as follows: X. to enter into international agreements, submitting them to the approval of the Senate.

³ Article 76, Section I: The Senate has exclusive powers to: I. approve international agreements and diplomatic conventions entered into by the Executive of the Union.

⁴ WRC held in Istanbul, Turkey in 2000 and in Geneva, Switzerland, in 2003, in which the fundamental amendments to the Radio Regulations were adopted.

as well as the different spatial activities (radioastronomy, exploration of the Earth; teleobservation, etc.)

- Marrakech Agreement, which established the World Trade Organization (WTO) and the General Agreement on Trade in Services, adopted by such Organization, to which Mexico is Party⁵.

The instruments adopted by the WTO are part of Mexican law and have been, together with the bilateral or regional (multilateral) agreements signed by Mexico, the guideline for free enterprise and competition.

Regarding satellites, with the opening of the market in satellite services within the WTO (2002), the question arising in relation to the Federal Telecommunications Act is whether it is additionally necessary to sign a Bilateral Agreement to establish reciprocity. My point of view is that the national law must be kept in place to guarantee reciprocity and set the criteria by which providers of satellite capacity shall provide services in the territory of each of the Parties.

- Principles which should govern the use by the States of artificial Earth satellites for international direct television broadcasts.⁶

⁵ WTO established by Agreement at the meeting held in Marrakech, Morocco, in 1994.

⁶ Approved December 13, 1963, by Resolution 1962 (XVII) of the United Nations (UN) General Assembly

- Such Principles are an important precedent in relation to the rights of individuals to receive information and ideas, which is not incompatible with the sovereign right of the States in applying their national legislation so that satellite operators can provide services in territories of another Party. This question is picked up by Article 30 of the Federal Telecommunications Act is part of the bilateral agreements which Mexico has signed regarding satellites.

BILATERAL AGREEMENTS SIGNED BY MEXICO AND THEIR RESPECTIVE PROTOCOLS, RELATED WITH THE TRANSMISSION AND RECEPTION OF SATELLITE SIGNALS:

Mexico and the United States of America

- Agreement between the Government of the United Mexican States and the Government of the United States of America concerning the transmission and reception of signals from satellites for the provision of satellite services to users in the United Mexican States and the United States of America, signed in Mexico City on April 28, 1996.
- Protocol concerning the transmission and reception of signals from satellites for the provision of Direct-to-Home Satellite services in the United

Mexican States and the United States of America, signed in the City of Washington, D.C., USA, on November 8, 1996.

- Protocol concerning the transmission and reception of signals from satellites for the provision of fixed services by satellite in the United Mexican States and the United States of America, signed in Mexico City on April 28, 1996.
- Convention for the use of satellites and land stations for the provision of services comprising to, from and within the territories of the United Mexican States and the United States of America, signed in Mexico City on December 21, 1998.

Mexico and Argentina.

- Agreement between the Government of the United Mexican States and the Government of the Republic of Argentina concerning reciprocity in the use of satellites and the transmission and reception of signals from satellites for the provision of satellite services to users in the United Mexican States and the Republic of Argentina, signed in Mexico City on November 26, 1997.

Mexico and Canada.

- Agreement between the Government of the United

Mexican States and the Government of Canada concerning the provision of satellite services, signed in Mexico City on April 9, 1999.

- Protocol concerning the transmission and reception of signals from satellites for the provision of mobile-satellite services and associated feeder links in the United Mexican States and Canada, signed in Mexico City on January 16, 2001.
- Protocol concerning the transmission and reception of signals from satellites for the provision of fixed services between the United Mexican States and Canada, signed in Mexico City on January 16, 2001.

It is important to mention that these bilateral agreements and their respective protocols are duly in line with the fundamental principles of reciprocity and non-discriminatory treatment, set forth in the Mexican Constitution and the Federal Telecommunications Act and of course multilateral agreements such as that of the WTO.

In the case of the commitments adopted by the countries within the framework of the WTO, these should provide all the administrative and legal facilities for the granting of licenses and thus avoid obstacles to free enterprise and the services market, as in the case of satellite communication. This is reflected in

the Mexican regulatory framework for the granting of concessions. Another of the Mexican laws which apply to the granting of concessions (licenses) in Mexico is the Federal Antitrust Act, whose basic principles are to protect free enterprise and guarantee competition. The bases regarding satellites are fully defined because the competition is open.

The Protocols themselves to the Agreements which I have mentioned indicate as a condition for provided the services that the Party whose satellite will provide services in the territory of the other Party must be duly licensed under the laws of that country. Similarly, the procedures for granting licenses are mutually recognized under the terms of the agreements.

MEXICAN LEGISLATION

Like any activity carried out in Mexico, the regulation of satellite communication stems from the Mexican Constitution, which provides that satellite communications is a **priority area** for national development in the terms of Articles 25 and 28 of the Constitution⁷, the

⁷ Article 25 of the Constitution: The Public Sector shall have exclusive charge of the strategic areas set forth in Article 28, fourth paragraph, of the Constitution, with the Federal Government maintaining at all times the ownership and control of any bodies that might be established. It may also participate by itself or with the social and private sectors, in accordance with the law, to foment and organize the priorities areas of development. **Article 28.** The functions exercised exclusively by the State in the following strategic areas shall not constitute monopolies: mail,

“State, by exercising its control over them, shall protect the security and sovereignty of the Nation, and by granting concessions or permits, shall maintain or establish command over the respective means of communications in accordance with the laws applicable thereto.”

For its part, Article 27⁸, paragraph four, mentions that “The Nation has direct command over all the natural resources... and the space situated in national territory, within the bounds set by international law.” To date, no United Nations’ Resolution or international instrument that considers it has been issued to demarcate the limits referred to by such Article, however, in this case, Mexico’s position in the First Conferences of the Americas on Space, held in Chile, was and is that the jurisdiction or *ius imperium* is exercised by the Mexican Government in connection with the frequencies associated with Mexican satellites, i.e., the Mexican State exercises control over such assets used to propagate the electromagnetic waves which make satellite communication possible.

telegraph and radiotelegraph. Satellite communication and the railroads are priority areas in national development under Article 25 of this Constitution; The State, by exercising its control over them, shall protect the security and sovereignty of the Nation, and by granting concessions or permits, shall maintain or establish command over the respective means of communications in accordance with the laws applicable thereto.

⁸ Article 27 of the Constitution. The Nation has direct command over all the natural resources and the space situated in national territory, within the bounds and terms set by international law.

The exercise of control over this national asset corresponds to the State, who may grant concessions to private individuals or entities to work and use it, pursuant to the sixth paragraph of Article 27⁹.

In this respect, it is important that the State control referred to by the aforementioned Article 27 is found in the Federal Telecommunications Act in Article 2¹⁰, which refers to Mexico's sovereign right concerning satellite orbits and radioelectric frequencies.

For the creation of laws governing telecommunications and satellite communication in particular, under Article 73, Section XVII, of the Mexican Constitution¹¹, it is the Mexican Congress which has the authority to issue laws regarding general means of communication. It is worth mentioning that the radioelectric spectrum, telecommunications networks and satellite communication

are general means of communication.¹²

The Federal Telecommunications Act regulates satellite communication and, specifically, with regard to the subject matter of this work, Article 30¹³ of this Act sets forth the possibility of granting concessions so that foreign satellites **which cover Mexican territory**, may provide services therein, provided **there are agreements signed with the country of origin** in which **reciprocity for Mexican satellites is established**. It should be mentioned that the concessions will only be granted to juridical persons organized under Mexican laws."

This Article 30 set the bases for the issuance of the Satellite Communication Regulations [*Reglamento de Comunicación Vía Satélite*] (RCVS), confirming the following requirements for granting concessions for satellite operators to

⁹ Article 27, sixth paragraph: The dominion of the Nation is inalienable and not subject to expiration, and the working, the use or the exploitation of the resources in question, by private individuals or bodies or by companies formed under Mexican laws, may not be done without concessions, granted by the Federal Executive, in accordance with the rules and conditions set forth in the laws.

¹⁰ Article 2 LFT. The State has control over telecommunications, for which purpose it shall protect the security and sovereignty of the Nation. The State shall maintain command over the radioelectric spectrum and the orbital positions assigned to the country.

¹¹ Article 73. Congress has the power: XVII. to enact laws on general means of communication, and on post and mail.

¹² Article 4. For purposes of this Act, the radioelectric spectrum, telecommunications networks and satellite communication systems are general means of communication.

¹³ Article 30. The Secretariat may grant concessions on the rights of transmission and reception of signals and frequency bands associated with foreign satellites which cover and can provide services in Mexican territory, provided there are signed agreements on the matter with the country of origin of the signal and such agreements contemplate reciprocity for Mexican satellites. These concessions shall only be granted to juridical persons organized under Mexican laws.

Furthermore, the international satellites established under the multilateral agreement to which the country is party may operate in Mexican territory.

be able to operate in Mexico: i) they should cover Mexican territory; ii) there should be bilateral agreements in place; and iii) there should be reciprocity for Mexican satellites.

The legal codes regulating satellite communication are:

- Political Constitution of the United Mexican States
- Federal Telecommunications Act [*Ley Federal de Telecomunicaciones*], (LFT)
- Satellite Communication Regulations [*Reglamento de Comunicación Vía Satélite*], (RCVS)
- Foreign Investment Act [*Ley de Inversión Extranjera*], (LIE)
- Federal Antitrust Act [*Ley Federal de Competencia Económica*], (LCE)
- The international agreements already mentioned above.

CONDITIONS FOR USE TO WORK RIGHTS OF TRANSMISSION AND RECEPTION OF FREQUENCIES ASSOCIATED WITH FOREIGN SATELLITES

Mexican regulation concerning the technical conditions for the usage and working of satellite communications are essentially based on the provisions contained in the ITU Radio Regulations (Article V of the Mexico-USA Agreement). Accordingly,

satellites have to be properly coordinated with the countries in which the satellite footprint is present, in order to prevent harmful interferences. Similar matters are contemplated in the Bilateral Agreements signed by Mexico. For example, the text of Article IV, Part 2, of the Agreement signed with the United States of America, reads: "The conditions for the transmission and reception of signals from Satellites licensed by each Party or Administration, as the case may be, shall be as agreed in the Protocols, which shall comply with the laws and regulations of each country, and shall be annexed as an integral part of this Agreement..."

Article 9 and 10 of the Satellite Communication Regulations [RCVS] sets forth that in addition to a bilateral agreement signed with the Country and their protocols, there should also be a coordination agreement as set forth in the instruments of the ITU, or at least this should be under negotiation by the administrations of both countries. These provisions are consistent with the Agreements signed by Mexico regarding satellites.

OBLIGATIONS FOR FOREIGN SATELLITE SERVICES PROVIDERS.

The LFT provides that a concession title is required in order to work the rights of transmission and reception of frequency band signals associated with foreign satellites which cover and can provide services in Mexican

territory. The obligations can be classified into two kinds: i) to obtain the concession and ii) after obtaining the concession.

To obtain the concession, applicants must submit a satisfactory application to the Secretariat, containing at least:

- The location of the orbital position or satellite orbits and associated frequencies, registered or in process of coordination, as well as the name and documentation of the foreign satellite operator;
- The technical specifications of the foreign satellite system, detailing the characteristics of the coverage over Mexican territory;
- The documentation evidencing the contractual relation between the foreign satellite operator and the applicant who would work the system in Mexican territory;
- The technical specifications of the land transmitter stations which the applicant seeks to install in Mexican territory, for which it shall require a public telecommunications network concession, and the land stations located abroad which, if applicable, shall send signals to Mexican territory, as well as the terminal land stations to be installed in the country;
- The portion and the technical characteristics according to

which the concessionary will make its satellite capacity available to third parties, or if applicable, the description of the satellite services which are sought to be provided, as well as the technical specifications of the control center, of the master land stations in Mexican territory and abroad, and of the terminal land stations;

- The business plan, which will include, at least, a coverage, investment and financial program;
- Documentation to demonstrate its legal, technical, financial and administrative capacity;
- The favorable opinion of the Federal Competition Commission;
- Documentation to demonstrate that the applicants will keep control of the services provided in Mexican territory, for which they shall have to evidence:
 1. That they have the necessary technical resources to present the Commission with information concerning the traffic generated in Mexican territory or bound for Mexican territory;

2. That the foreign satellite operator assumes the obligation to comply with the instructions of the concessionaries, in connection with the services provided in Mexican territory;

3. That the foreign satellite operator assumes the obligation to provide the information required of it by the SCT (Secretariat of Communications and Transport) or the Commission, related with the services provided in Mexican territory;

4. That the concessionaries will use a specific numeration to identify the terminal land stations of the users in the country.

➤ Once the application is received, it is passed on to Federal Telecommunications Board for analysis and evaluation of the respective

documentation, who may request further information from the applicants.

➤ After the aforementioned Commission has issued its opinion and once the Secretariat of Communications and Transport is satisfied the requirements are met, the corresponding concession will be granted.

The term for granting concessions is 120 (one hundred twenty business days).

It should be mentioned that the requirements and the procedure for the granting of the concessions mentioned are set forth in the LFT and in the aforementioned Regulations, which provides the applicant of a concession with legal certainty and this is where the obligations are established in line with the law.

Providers of satellite capacity are subject to obligations of an informative nature, including: statistics, number of users, registration of rates, and in my opinion they do not imply excessive burdens for the concessionary.

The rights of a foreign satellite operate providing services through a Mexican company are the same as those given to domestic operators, i.e., the principle of non-discriminatory treatment is applied.

An important matter with regard to providing satellite services is the

satellite capacity provider's obligation to give social access and connectivity. In this respect it should be mentioned that Mexico has developed an important program called E México, whereby access is given to remote areas or those not fundamentally served through authorized domestic or foreign satellites.

In 1998, the Development Sector of the ITU made it one of its objectives to bring telecommunications to the world's most impoverished places, to combat the technological differences that exist between developed and developing countries, known as the "digital divide". They called this UNIVERSAL SERVICE.

Concessionary companies in Mexico such as Panamsat de México, have provided satellite capacity based on which the Mexican Government has developed the first phase of the E México Program.

The obligation to provide satellite capacity is partly free and partly with a differentiated rate.

In Mexico, rates are deregulated, i.e., they are set by the concessionary itself and only have to i) be registered prior to their application; ii) not be discriminatory; iii) not permit cross-subsidies; and iv) guarantee that, with the rate they apply, they will provide a quality service.

As regards requirements under the Federal Antitrust Act, there are established requisites, proceedings and terms, without prejudice to the fact that due to the granting of the first

concessions, it could be said that the way ahead has been completely cleared. Furthermore, the writs of amparo filed by SATMEX in 2002 against the granting of the first concessions to allow foreign satellites to operate in Mexico were won by the Mexican Government. Therefore, competition in Mexico is fully guaranteed with clear rules of access to the satellite service market.

Another law we have mentioned as part of the applicable regulation is the one relating to foreign investment, which provides for the possibility of up to a 49% share by direct foreign investment and up to a 90% share by neutral foreign investment (without voting rights but with property rights) may be authorized.

TARIFFS:

Mexican legislation stipulates free tariffs without any type of approval on the part of the authority. That is to say, service providers can freely establish their tariffs, and such tariffs should make it possible to render these services in satisfactory conditions regarding quality, competitiveness and permanence. In order to apply their tariffs, carriers must be bound by the following obligations: i) they must not adopt discriminatory practices; ii) they must not establish cross-subsidies to the services provided in competition by the carriers themselves or through their subsidiaries or affiliates; iii) they must register them before they are applied.

CONCLUTIONS

As I have pointed out in the Introduction to this document, the objective of this study is to establish the following:

1. That applicable Mexican regulations regarding the granting of concessions related to the emission and reception of signals coming from foreign satellites that cover the Mexican territory is established in the Mexican Constitution, the Federal Telecommunications Law and the Satellite Communications Regulations and in the multilateral treaties derived from the WTO, ITU and UN; as well as in the Bilateral Treaties that Mexico has signed with the USA, Canada and Argentina up to this date.
2. That the rules established in Mexican regulations relating to services rendered in the Mexican territory by companies which operate foreign satellites are stated clearly and precisely, a fact which provides certainty to investments in Mexico in this Sector;
3. That due to the fact that competition in this field has been open since the year 2002, when different concessions were granted to Mexican companies in order to operate satellite capacity

of foreign satellites, the conditions for accessing the market have been facilitated;

4. In addition to the above-mentioned and in order to provide a greater degree of legal certainty, the pleadings for protection (Amparos) filed by SATMEX, against such opening, were resolved in favor of the Mexican Government.
5. Any foreign satellite carrier which covers the Mexican territory, whose country of origin has signed a treaty with Mexico and provided that reciprocity for Mexican satellites is established, shall be able to participate as partner in Mexican companies and render its services in the national territory, subject to compliance with the requirements stipulated by the Law, without further restrictions.

BIBLIOGRAPHY

INTERNATIONAL UNION
TELECOMMUNICATIONS
CONSTITUTION
1992

FUNDAMENTAL TEXTS OF THE
INTERNATIONAL
TELECOMMUNICATIONS UNION

ADOPTED BY THE
PLENIPOTENCIARY CONFERENCE
International Telecommunications
Union
1999

WORLD TELECOMMUNICATIONS
DEVELOPMENT REPORT
International Telecommunications
Union
2002

WORLD TELECOMMUNICATIONS/ICT
DEVELOPMENT REPORT
International Telecommunications
Union
2006

TELECOMMUNICATIONS POLICIES
FOR THE AMERICAS
International Telecommunications
Union
Interamerican Telecommunications
Commission
2000

UNIVERSAL SERVICE SEMINAR
Interamerican Telecommunications
Commission
Permanent Consultative Commission
1998

CONSTITUCIÓN POLITICA DE LOS
ESTADOS UNIDO MEXICANOS
1917

LEY FEDERAL DE
TELECOMUNICACIONES
1995

DERECHO ADMINISTRATIVO I Y II
Serra Rojas
Ed. Porrúa, Mex.

1992

LEY FEDERAL DE COMPETENCIA
ECONÓMICA
1997

LEY DE INVERSIÓN EXTRANJERA

AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED
MEXICAN STATES AND THE
GOVERNMENT OF THE UNITED
STATES OF AMERICA
CONCERNING THE
TRANSMISSION AND RECEPTION
OF SIGNALS FROM SATELLITES
FOR THE PROVISION OF
SATELLITE SERVICES TO USERS
IN THE UNITED MEXICAN STATES
AND THE UNITED STATES OF
AMERICA, SIGNED IN MEXICO
CITY ON APRIL 28, 1996.

PROTOCOL CONCERNING THE
TRANSMISSION AND RECEPTION
OF SIGNALS FROM SATELLITES
FOR THE PROVISION OF DIRECT-
TO-HOME SATELLITE SERVICES IN
THE UNITED MEXICAN STATES
AND THE UNITED STATES OF
AMERICA, SIGNED IN THE CITY OF
WASHINGTON, D.C., USA, ON
NOVEMBER 8, 1996.

PROTOCOL CONCERNING THE
TRANSMISSION AND RECEPTION
OF SIGNALS FROM SATELLITES
FOR THE PROVISION OF FIXED
SERVICES BY SATELLITE IN THE
UNITED MEXICAN STATES AND
THE UNITED STATES OF
AMERICA, SIGNED IN MEXICO
CITY ON APRIL 28, 1996.

CONVENTION FOR THE USE OF SATELLITES AND LAND STATIONS FOR THE PROVISION OF SERVICES COMPRISING TO, FROM AND WITHIN THE TERRITORIES OF THE UNITED MEXICAN STATES AND THE UNITED STATES OF AMERICA, SIGNED IN MEXICO CITY ON DECEMBER 21, 1998.

AND CANADA, SIGNED IN MEXICO CITY ON JANUARY 16, 2001.

PROTOCOL CONCERNING THE TRANSMISSION AND RECEPTION OF SIGNALS FROM SATELLITES FOR THE PROVISION OF FIXED SERVICES BETWEEN THE UNITED MEXICAN STATES AND CANADA, SIGNED IN MEXICO CITY ON JANUARY 16, 2001.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA CONCERNING RECIPROCITY IN THE USE OF SATELLITES AND THE TRANSMISSION AND RECEPTION OF SIGNALS FROM SATELLITES FOR THE PROVISION OF SATELLITE SERVICES TO USERS IN THE UNITED MEXICAN STATES AND THE REPUBLIC OF ARGENTINA, SIGNED IN MEXICO CITY ON NOVEMBER 26, 1997.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF CANADA CONCERNING THE PROVISION OF SATELLITE SERVICES, SIGNED IN MEXICO CITY ON APRIL 9, 1999.

PROTOCOL CONCERNING THE TRANSMISSION AND RECEPTION OF SIGNALS FROM SATELLITES FOR THE PROVISION OF MOBILE-SATELLITE SERVICES AND ASSOCIATED FEEDER LINKS IN THE UNITED MEXICAN STATES