

# TELECOMMUNICATIONS LAWS OF THE WORLD

Colombia



Downloaded: 15 October 2021



# COLOMBIA



Last modified 26 February 2020

## OVERVIEW OF LEGAL LANDSCAPE

Telecommunications in Colombia is a highly regulated industry as it is considered a public service under the State ownership. However, public or private corporations legally incorporated in Colombia could be entitled to provide telecommunications services after completing the telecommunication network operator and service provider registration. Other requisites or authorizations shall be previously issued depending on the services intended to provide.

Colombian telecommunications industry is regulated by Law 1341 of 2009, which establishes the general policies and regulation that every telecommunications company must comply regarding to user protection, competition principles and the quality and coverage of the service. However, Law 1978 of 2019 reinforced the Colombian Government public policy on telecommunications, by stimulating investment to overcome the digital gap and unifying the sector objectives.

The Communications Regulatory Commission (CRC) is the body appointed to the Information, Technology and Communications Ministry (ITC Ministry) responsible for regulating network and service provider markets. On the other hand, the ITC Ministry and the Superintendence of Industry and Commerce are the entities entitled to supervise the compliance of the regulation.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

### Primary Telecom Legislation

The primary telecommunications law in Colombia is Law 1341 of 2009, which defines the main principles, concepts and legal guidance of the information society environment and the information and communication technologies public policy.

On the other hand, Law 1978 of 2019, issued on July 28 of 2019, modified some provisions of Law 1341 of 2009 with the main objective to modernize and adequate the telecommunications regulation towards the global and national industry challenges.

### Regulatory Framework

The regulatory framework for telecommunications in Colombia has a wide scope and includes different sectors and topics:

- **Sole Regulatory Decree of the ICT sector:** This decree includes legally binding dispositions regarding to (i) information technology policies and guidelines, (ii) user compensation system, (iii) ITC Ministry registration procedure, (iv) structure of the telecommunication sector, and (v) dissemination and participation of the CRC.
- **CRC Resolution 5050 of 2016:** This compilation resolution regulates the following issues: i) telecommunications user rights, obligations and protection measures, ii) access and interconnection of telecommunications networks and, iii) efficiency criteria of telecommunications services.
- **Law 1680 of 2013:** By which people with visual disabilities or impairment are guaranteed access to information, communications, knowledge and information and communications technologies.
- **Law 1507 of 2012:** By which the distribution of powers between the State entities in the matter of television is

established. According to this normative body, television is a public service of competence of the Nation.

- **Law 1442 of 2011:** Law approving the agreement regarding postal payment services signed in Geneva on August 12 of 2008.
- **ICT Ministry Resolution 415 of 2010:** Broadcasting services regulation, which develops the scope, objectives, and principles of said public service, the conditions for its provision, the rights and obligations of providers, and rules for the concession of the service.
- **Law 1369 of 2009:** The law indicates the general regime for the provision of postal services and what is pertinent to the entities responsible for the regulation of these services, which are a public service under the terms of article 365 of the Political Constitution.
- **Law 1340 of 2009:** Antitrust regulation which applies to telecommunication services.
- **Law 527 of 1999:** Regulation of access and use of data messages, electronic commerce and digital signatures.
- **Law 335 of 1996:** Private television regulation.
- **Law 182 of 1995:** Public television service and policies regulation, by which is established that television is a public service subject to ownership, reservation, control and regulation of the State, whose provision will correspond, through concession, to the public entities referred to in this Law, or to individuals and organized communities, under the terms of article 365 of the Constitution.
- **Law 142 of 1994:** Colombian public services general regulation.
- **Law 80 of 1993:** Colombian public procurement regulation.

## REGULATORY BODIES OR AUTHORITIES

### The main regulatory bodies:

**ICT Ministry of Colombia:** Is the National Entity responsible for designing, adopting and promoting the policies, plans, programs and projects of the Information Technology and Communications sector. It also has some supervision powers and so it can fine for the infringement of the law.

Address: Edificio Murillo Toro Carrera 8a entre calles 12 y 13, Bogotá D.C.

Phone: + 57-01-344 34 60

Website: [www.mintic.gov.co](http://www.mintic.gov.co)

**Communications Regulation Commission:** This body is responsible of ordering and ensuring the good provision of the telecommunications services, including commercial public television.

Address: Calle 59 A bis No. 5-53, Piso 9. Bogotá D.C.

Phone: + 57-01-8000-919278

Website: [www.crcom.gov.co](http://www.crcom.gov.co)

**Superintendence of Industry and Commerce:** This body is responsible for supervising competition related matters and consumer protection matters of the telecommunication companies.

Address: Carrera 13 # 27-00

Phone: + 57-5870000

Website: [www.sic.gov.co](http://www.sic.gov.co)

## TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

### Telecom Services Legal Definition

Law 1978 of 2019 defines telecommunications services as the resources, tools, equipment, software, applications, networks and media that allow the compilation, processing, storage, transmission of information such as: voice, data, text, video and images. In Colombia, Telecom service is defined also as the utility or benefit that results from the provision, use and application of the set of capabilities and facilities of telecommunications, aimed to satisfy the interests and needs of users and improving the quality of life of the population, according to the International Telecommunications Union (ITU) F500 Recommendation.

The foregoing service are aimed to be provided by legal persons, public or private, duly constituted in Colombia, with or without profit, in order to satisfy specific telecommunications needs to third parties, within the national or abroad territories.

## **Classification of Telecom Services**

Law 1341 of 2009 classifies telecommunication services and networks in a single group. This group includes landline, mobile, data transmission, internet, mail and postal services, radio and television services.

## **OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES**

- The Sole Regulatory Decree regulates the ICT Registry, which must be fulfilled by all the persons or entities who provide or will provide telecommunication networks or services. This registry is an online public instrument under the responsibility of the ICT Ministry and once registered any telecommunication company is authorized to provide services in Colombia, which is the general authorization rule.
- Decree 867 of 2010 and Law 1369 of 2009 regulates the Registry of Postal Operators. Registration and updating of information in this registry allow postal operators to operate legally.
- Law 1341, Resolution 2877 of 2011, Resolution 106 of 2013 and Resolution 917 of 2015 of the ICT Ministry regulate the satellite capacity provider registration. Through this registry the ICT Ministry authorizes the satellite capacity provider to offer, provide and / or use for itself or for third persons the satellite capacity in Colombia.
- According to the Law 1978, it is required a prior and explicit authorization issued by the ITC Ministry in order access and use the radioelectric spectrum. All the operators who have been authorized to use the radioelectric spectrum before the enforcement of the mentioned Law will be understood as authorized. The authorization will be valid for a period of 20 years.

## **DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES**

Law 80 of 1993 establishes that the companies that provide telecommunication services must be duly incorporated in Colombia. However, the legal system does not provide for any type of explicit restriction for companies that are not domiciled in the national territory.

Nonetheless, is a service is offered in Colombia permanently, for tax purposes it is important to have a company incorporated and domiciled in Colombia.

## **EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

CRC Resolution 4424 of 2014 regulates roaming services in Colombia. This Resolution allows greater transparency and strengthens telecommunications services regulation regarding to telecommunications providers information obligations in relation to their clients and service users concerning International Roaming. The foregoing, in order to reinforce users' expenses control and greater service efficiencies.

Colombia is an active participant and member of the Pacific Alliance along with Mexico, Chile and Ecuador. According to the commitments of the Alliance – a international agreements between the Governments of these countries in order to create joint economic development strategies –, it is intended to have lower Roaming tariffs to the extent of the participants territories.

## **TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

Resolution 2066 of 2011 and 5111 of 2017 issued by the CRC establishes the user protection regime, including specific rights and

obligations of communications services users and providers.

According to Colombian Consumer Protection Regime and Telecommunications Legal Regime, the following, are the most relevant issues any provider must consider in order to comply with the current regulation:

1. **Consumer Information:** In accordance with the provisions of the Superintendence of Industry and Commerce, Authority for consumer protection, the principle of information is the service provider obligation to deliver users during the offer of services, the conclusion of the contract and its execution, all the information associated with the conditions of provision of the services, rights, obligations and the rates in which the services are provided.

This information must be provided in a clear, transparent, truthful, sufficient, true, complete, timely, and not misleading manner, so that users make informed decisions regarding the service or services offered or required.

2. **Minimum Term Clauses:** The minimum term clauses are those contractual stipulations that are agreed only once at the beginning of the contract, in which the user undertakes not to terminate in advance and without just cause his contract for the provision of communications services.

The minimum permanence clauses are those contractual stipulations that are agreed only once at the beginning of the contract, in which the user undertakes not to terminate in advance and without just cause his contract for the provision of communications services.

In no case may the providers of communications services offer users or include in the contracts for the provision of mobile communications services, or in the contracts for the sale of mobile terminal equipment, minimum permanence clauses. In the last case, the minimum permanence clauses are prohibited as of July 1, 2014.

3. **Number Portability:** Number portability is the possibility that a user has of switching from one service provider to another mobile phone provider, while retaining their telephone number. All users of mobile services have the right to carry their number, when switching to another service provider, whether in prepaid or postpaid mode. The change can be made at any time and does not require authorization by the current provider to make it.

## REGULATORY TAXES AND FEES

### Main Taxes Levied Over Telecom Companies

#### Corporate Income Tax

Colombian companies are subject to corporate income tax of 33% on their worldwide income. Taxable basis will correspond to the gross income (ordinary and extraordinary) less costs and expenses authorized for tax purposes incurred in the income producing activity.

Corporate income tax rate will be gradually reduced as follows: **(i)** 2020: 32%; **(ii)** 2021: 31%; and **(iii)** as of 2022 to 30%.

Notwithstanding the above, the Colombian Tax Code sets a presumptive income system as an alternative method to determine corporate income tax, which is calculated annually at a 3.5% rate over taxpayer's net worth in the immediately preceding year. For 2019 and 2020, presumptive income must correspond to 1,5% of the net assets determined as of December 31st of the previous year. As of 2021, presumptive income system will no longer apply.

#### Tax incentives

Special corporate income tax rates:

- 27% for taxpayers that performs new investments (i.e. telecommunication sector) in fixed assets equal or exceeding 30,000,000 tax value unit (COP \$ 1,028,100,000,000 - US \$ 326,460,097 approx.) over 5 years and creates more than 250 direct employments;
- 20% corporate income tax rate for telecommunication services providers that qualifies as Free Trade Zone Industrial Users.
- Under certain conditions, income from: **(i)** Television programming and transmission services; and **(ii)** Radio broadcasting

programming and transmission activities, could be exempted from corporate income tax for seven (7) years. obtained by companies carrying out. Entities carrying out these activities should be eligible by the Ministry of Culture.

## **Turnover tax / Industry and Commerce Tax (ICA)**

The Industry and Commerce tax (ICA) is a local tax imposed on the gross revenue generated from industrial, commercial or service activities carried out in every corresponding municipality in which such services are provided.

Tax rates vary from 0.2% to 1.4% of the gross income depending on the tax code of the municipality where the activity is rendered. 100% of the Industry and Commerce tax paid during the relevant taxable year can be credited against corporate income tax liability.

Telecommunication activities are subject to industry, in order to determine the territoriality of the local tax the general rule is that income is understood to be perceived in the place where the provision of the service is executed, except for:

- TV and internet by subscription and fixed telephony is deemed to performed in the subscriber's municipality according to the place informed in the services agreement.
- Mobile telephony, mobile navigation and data service: As of January 1, 2018: the services are deemed to be rendered in the municipality where the main domicile of the user that registers at the time of the subscription of the agreement or in the update document. The income that cannot be assigned to a municipality should be distributed proportionally in the total of municipalities, according to their participation in the income.

## **Special contribution over telecommunications networks and services provision.**

Entities subject to surveillance and regulation of the CRC must pay an annual contribution of 0,1% (For 2019 according to Resolution 5582 of 2018) on the gross income obtained in the year prior to that to which the contribution corresponds, for the provision of telecommunications networks and services (excluding terminals).

## **Main Taxes and Fees Levied Over Telecom Activities**

### **VAT – Services:**

Unless it is an exempted VAT activity, telecom activities are subject to a general VAT rate of 19%. The following telecommunication activities are exempted VAT operations:

- Internet access and connection services for residential users of strata 3.
- Internet access and connection services rendered from fixed networks to residential subscribers of strata 1 and 2 are VAT exempted operations. These services allow the paid VAT to be bimonthly reimbursed to the services provider.
- First 325 minutes of local telephone services rendered to users of 1, 2 and 3 strata, and the telephone services rendered from public telephones.
- Supply of web pages, servers (hosting) and cloud computing.
- Advertising services rendered by:
  1. Newspapers that had registered total sales for less than 180,000 tax value units (2019: COP \$6,168,600,000) as of December 31 of the immediately preceding year.
  2. Radio stations that had registered total sales for less than 30,000 tax value units (2019: COP \$1,028,100,000 as of December 31 of the immediately preceding year)
  3. Programmers of Regional television channels that had registered total sales for less than 60,000 tax value units (2019: COP \$2,056,200,000 as of December 31 of the immediately preceding year).
  4. The advertisement on radio stations whose sales are less than 30,000 tax value units (2019: COP \$ 1,028,100,000) as of December 31 of the immediately preceding year and programmers of regional television channels whose sales are less than 60,000 tax value unit (2019: COP \$2,056,200,000) as of December 31 of the year immediately previous.

### **VAT – Sales and imports of goods:**

Regarding Telecom activities, the following are goods excluded from VAT: **(i)** Personal computers: desktops and laptops whose value does not exceed 50 tax value unit (2019: COP \$1,714,000); and **(ii)** Smart mobile devices (tablets and cell phones) whose value does not exceed 22 tax value unit (2019: COP \$754,000).

### National consumption tax:

- Mobile phone, data, internet and mobile navigation services are subject to a 4% national consumption tax. The taxable basis will be applied on the entire service value, without including VAT.
- For data, internet and mobile navigation services, the national consumption tax is applicable on the portion of the services that exceeds 1.5 tax value units (2019: COP \$ 51,000).
- Unless exempted or excluded, additionally 19% VAT will apply on these services.

## KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Law 1341 in article 64 establishes a series of behaviors that lead to sanctions. Some of the behaviors are:

- Not enrolling in the ICT registry.
- Use the radio spectrum without the corresponding permission.
- Failing to pay the consideration provided in the law.
- Refrain from presenting the required information to the authorities or presenting it inaccurately or incompletely.
- Failure to comply with the quality and efficiency parameters issued by the CRC.

Additionally, article 65 of Law 1341, establishes that whoever incurs in any of the conducts provided in article 64, will be sanctioned with reprimands, fines, suspension of the operation, expiration of the contract or cancellation of the license, authorization or permit.

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