

TELECOMMUNICATIONS LAWS OF THE WORLD

Mexico



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MEXICO



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OVERVIEW OF LEGAL LANDSCAPE

Telecommunications is a regulated practice in Mexico.

In 2013, several provisions of the Mexican Constitution were amended in connection with a major telecommunications reform, which spirit was to enhance competition in the telecommunications and broadcasting sectors, since both markets had been historically highly concentrated and therefore the main amendments to the Constitution and subsequently, to the secondary legislation, were aimed to achieve said spirit.

The abovementioned reform created the Federal Institute of Telecommunications (*Instituto Federal de Telecomunicaciones*) (“IFT” by its acronym in Spanish), as a governmental agency with constitutional autonomy, responsible for regulating the telecommunications and broadcasting sectors.

The authority of the IFT was significantly increased compared to that of its predecessor (the Federal Telecommunications Commission (*Comisión Federal de Telecomunicaciones*)), and it was invested not only with all the required faculties as regulator of the sector, but also with authority to be the competition agency in the telecommunication and broadcasting sectors and hence, to enforce the provisions of the Mexican Antitrust Law in such sectors and to regulate in an asymmetrical manner the dominant firms in the relevant markets.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecommunications is the Federal Telecommunications and Broadcasting Law (*Ley Federal de Telecomunicaciones y Radiodifusión*) (the “Law”).

Regulatory Framework

In order to fully implement the constitutional reform, significant amendments to the secondary legislation were required.

The legal framework applicable covers all activities related to telecommunication services offered and/or commercialized in the country.

The following link provides a complete list of all regulatory framework applicable:

https://www.ift.org.mx/sites/default/files/marco_juridico_10_enero_2022.pdf

REGULATORY BODIES OR AUTHORITIES

The IFT Plenary is formed by seven Commissioners, including its President. It is the governing body of the Institute.

Its main functions are to plan, formulate and conduct policies and programs and regulate the development of telecommunications and broadcasting activities in Mexico.

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

Telecom Legal Definition

Any emission, transmission or reception of signs, signals, data, writings, images, voice, sounds or information of any nature made by wire, radio, optical, physical or other electromagnetic means, excluding broadcasting.

Classification of Telecom Services

Telecom services are considered to be of public interest and provided by concessionaires to the public in general. They are classified based on their purpose, which may be commercial, public or social.

Telecom Activities Regulated by IFT

Additional activities derived from the above services may be agreed between concessionaires. These activities include, among other:

- Wholesale: access to individual elements, to network or services capacity, including interconnection services, used by concessionaires or resellers to provide telecom services to final users.
- Interconnection: provided among concessionaires of telecom services to carry out interconnection between their networks.
- Restricted Audio and TV (Cable TV): provided to subscribers through public telecom networks, upon entering certain agreement and the periodic payment of a prefixed amount.
- Visitor User (Roaming): users from a public telecom network may generate or receive voice or data communications through the access of another concessionaire's (of a public network for local mobile service) infrastructure without the need of any additional procedure.

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

IFT grants the right to provide all kind of public telecom services (or broadcasting), as well as to develop the telecom activities listed in article 170 of the Law.

Concessions to provide public telecom services

- Unique concession for commercial use [1]: confers to its holder the right to provide in a convergent manner, all kind of public telecommunication and broadcasting services.
- Concession for radio spectrum or orbital resources: to use and exploit frequency bands. All concessions to use and exploit frequency bands are granted through an auctioning process.

IFT also grants authorizations [2] to companies that are not concessionaires in order to:

- Establish and operate or exploit telecom services as a reseller; and
- Develop and exploit certain telecom activities such as internet services or reception of foreign satellites providing services in national territory.

- Installation and operation of ground stations (gateways).

The license required to carry out a telecom activity (concession or authorization) may vary and shall be analysed on a case-by-case basis.

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

- Concessions: domicile in national territory is required.
- Authorizations: domicile in national territory is required.

Telecommunications sector allows foreign investment participation up to 100%.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Concessionaires operating public telecommunication networks shall provide interconnection to their networks to any other concessionaire that requests it and, for said purposes, subscribe an agreement within the sixty (60) days following the date in which the relevant request is submitted.

To that effect, in accordance with the provisions set forth in article 137 of the Law:

- on December 18, 2014 the IFT published in the Mexican Official Gazette the Resolution through which the IFT issued the methodology to calculate the interconnection costs pursuant to the Law (*“Acuerdo mediante el cual el Pleno del Instituto Federal de Telecomunicaciones emite la metodología para el cálculo de costos de interconexión de conformidad con la Ley Federal de Telecomunicaciones y Radiodifusión”*);
- on December 29, 2014 the IFT published in the Mexican Official Gazette the Resolution through which the IFT established the Electronic System of Interconnection Requests (*“ACUERDO mediante el cual el Pleno del Instituto Federal de Telecomunicaciones establece el Sistema Electrónico de Solicitudes de Interconexión”*); and
- on October 3, 2016 the IFT published in the Mexican Official Gazette the first Resolution through which the IFT points out the minimum technical conditions for interconnection between concessionaires that operate public telecommunication networks and determines the interconnection rates resulting from the calculation methodology for interconnection costs. This resolution is annually reviewed and approved by the IFT and published in the Mexican Official Gazette during the last quarter of the relevant year. The resolution applicable to the minimum requirements for interconnection for 2019 was published in the Mexican Official Gazette on November 13, 2018.

The general principle applicable to the approval and publication of the minimum requirements for interconnection is to avoid that resolutions regarding disagreements between concessionaires are carried out on a case by case basis. Thus, in the event that concessionaires fail to reach an agreement, the IFT will promptly apply the provisions contained in the referred resolution, unless the conflict is related to matters that are not covered therein. In this sense, the interconnection rates established by the IFT based on the cost model for network interconnection and reviewed annually shall be applicable in case of disagreements between networks operators.

Likewise, interconnection rates applicable to non-switched services have been established by IFT which shall be used to resolve interconnection disagreements between operators. These rates offer a larger variety of options since they depend on the location and type of collocation or haul.

In addition to the foregoing, there are certain additional regulations applicable to economic agents with substantial power in order to promote free competition in the telecom sector.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

- Mexican Constitution (Article 6) guarantees the right of access to information and communications technology, as well as to the telecom and broadcasting services, including internet by establishing the basis, principles and main aspects that shall be included in the Law, as well as the mechanisms to ensure the protection of this right.
- The Law (Articles 191 to 203) provides the rights of consumers and the mechanisms for protection to said rights before the Federal Office of Consumer Protection (*Procuraduría Federal de Protección al Consumidor (PROFECO)*). These provisions promote the access of users (including disabled users) to all public telecom services under the principles of free competition, quality, plurality, global coverage, interconnection, convergence, continuity, free access and no unlawful interferences.
- According to NOM 184 (Mexican Standard for Telecommunications Consumers), telecommunications service providers are required to obtain PROFECO's approval of the contract model they sign with their clients.

REGULATORY TAXES AND FEES

Main Taxes Levied Over Telecom Companies (applicable rates vary depending on the chosen tax regimes)

Companies in Mexico shall pay an income tax rate of 30% of the result obtained in the relevant fiscal year; incomes may be subject to preferential tax regimes depending on the relevant circumstances and certain legal provisions.

Main Taxes and Fees Levied Over Telecom Activities

- Public telecom services are subject to:
 - - Value Added Tax (Impuesto sobre el Valor Agregado (IVA)) equivalent to 16%; and
 - - Excise Tax on Production and Services (Impuesto Especial sobre Producción y Servicios (IEPS)) equivalent to 3%. Data transmission services (internet) are exempted from this tax.
- Telecom service for social purpose: exempted from paying taxes.

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

- Warnings
- Economic fines: from 0.01% up to 10% of annual revenues of the concessionaire or authorized depending on the seriousness of the contravention; up to double in case of recidivism.
- Cancellation of the concession of authorization granted and prohibition to obtain a new one.
- Economic and material sanctions to Telecom Services providers or to individuals causing damage to means of communication used for the provision of telecom and broadcasting services.

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