

The Regulation of MVNOs in Mexico and the Future Ahead

Mexico has regulated Mobile Virtual Network Operators (MVNOs) for more than fifteen years. The first comprehensive regulation appeared in 2005 when the Executive Branch issued Regulations for resellers of telecommunications services. In 2013, however, the Federal Congress approved a major constitutional reform in the field of telecommunications, Internet and Information and Communication Technologies (ICTs) and Antitrust. Consequently, this reform further implemented by the enactment of a new Federal Law on Telecommunications and Broadcasting on July 14, 2014 (Telecommunications Law) has detailed the regulation of MVNOs.

Since the first regulation, Mexico has allowed MVNOs to operate as reseller, and the new Telecommunications Law did not modify this structure. To operate, an MVNO needs an authorization from the Federal Institute of Telecommunications (the Regulator). This authorization will allow to establish and operate or exploit an MVNO or reseller of telecommunications services without being a concessionaire of telecommunications (art 170). The Regulator grants authorizations for a ten-year period and may renew the authorization for similar periods provided that the MVNO applies for the renewal in time.

The Regulator has not issued the rules for the application of the authorization to operate as a reseller. Nevertheless, a preliminary version has been issued and the requirements seem to be not burdensome. The most important requirements include for legal entities: (i) to show the Mexican nationality by the domicile of the company in Mexico and the incorporation of the company under Mexican law. Foreign investors have sufficient leeway to incorporate a Mexican entity fully bankrolled by foreign capital; (ii) name and other documents of the legal representative; (iii) a description of the services that will be resold; (iv) a technical and operative description of the project; (v) an indication that the reseller will request numbers; (vi) and payment of the governmental fees. Certainly the most beneficial provision of this new regime appears in article 175 that mandates the Regulator to resolve all applications within 30 working days following the filing. If such period has elapsed and the application is not resolved by the Regulator, the application shall be considered resolved in a positive sense, i.e. the authorization is considered as granted. The Regulator, in turn, shall issue the authorization within the following 30 working days.

Lastly, although the operation of MVNOs is not so regulatory burdensome as a concessionaire, it should be noted that MVNOs shall comply with certain requirements before their operation. Such requirements are as follows:

1. To hold an authorization of the Regulator to establish and operate or exploit an entity as a reseller of telecommunications without being a concessionaire (art 170).
2. To allow portability of numbers (art 174). Moreover, this is a right of the users (art 191) that may not be waived.
3. To be responsible before the customers for the services it renders (art 174 section II)
4. To register the tariffs of telecommunications services offered to the public (art 177 section IX)
5. To assist the security and justice authorities in regards to requirements of information 24/7 (art 189 and art 190 section IV). The main obligations according to article 190 include the following:
 - locating in real-time equipment of mobile communication (geolocation);
 - keeping a record and control of communications made by any number for two years;
 - delivery of data to the authorities;
 - responsible personnel must answer governmental inquiries within twenty-four hours, seven days a week;
 - to set up procedures in order to receive reports of stolen equipment;
 - to suspend the service of stolen equipment;
 - to block the telecommunications services in the nearby areas of jail facilities, when requested by the authorities;
 - implement the harmonized national or international number for emergency services;
 - to provide the users with free communication to the emergency services.

6. To deliver a letter containing the rights of the users. The letter may be delivered by electronic means of communication (art 191).
7. To register the adhesion contract before Profeco (Federal Attorney's Office of Consumer) (art 192).

Different MVNOs have appeared recently, such as Virgin Mobile, Qbo Cel, Cierta, Maz tiempo, among others. In the near future, many other MVNOs may take advantage of the new regulation and compete in the Mexican telecommunications sector.