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Radio Regulations in Latin America

The Mexican Case

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The development of the radio industry in Latin America, its growth, and its consolidation as a commercial model have generated great business in the region. I propose an analysis of the Mexican case to review some of the problems to which the radio model in the region is subject and that have, in many cases, their roots in the rules that guide the operation of the mass media. This analysis also will provide the key to understanding the challenges that must be met by countries that are making fundamental changes, that through the law can appoint lines of action, that become communication policies, and that can develop more democratic ways of social participation in radio. Understanding the principles that shape the radio-communication model of a country is a determining factor for discovering the characteristics of this medium. Indeed, analyzing radio regulations tells us about the society that makes those regulations.

Keywords: *Mexican radio; administration of the frequencies; radio regulation in Mexico; concessions and permits; official times; right of information; legal reforms; citizens rights; independent production; concentration and monopoly practices; community radios*

This article examines the development of the radio industry in Latin America, its growth and consolidation as a commercial model that has generated significant business concentrations, and the industry's operating dynamics in the region.

An analysis of the Mexican case will allow us to review some of the main problems faced by the region's radio model that, in many cases, are rooted in the laws that govern media operation. It will also provide us with a guideline by which to understand the challenges faced by those countries that are currently pursuing basic reforms that, from a legal standpoint, can

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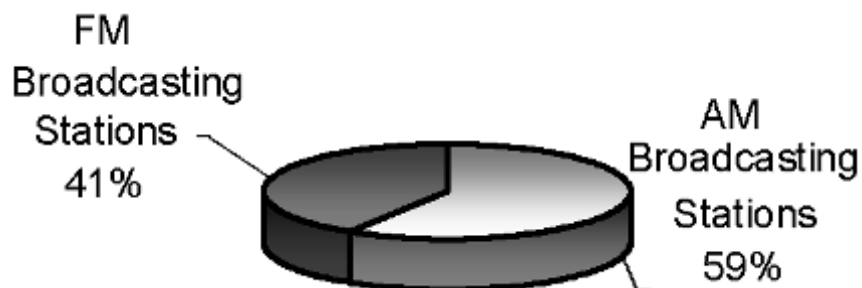


FIGURE 1. Distribution of Radio Frequencies in Mexico (2001)

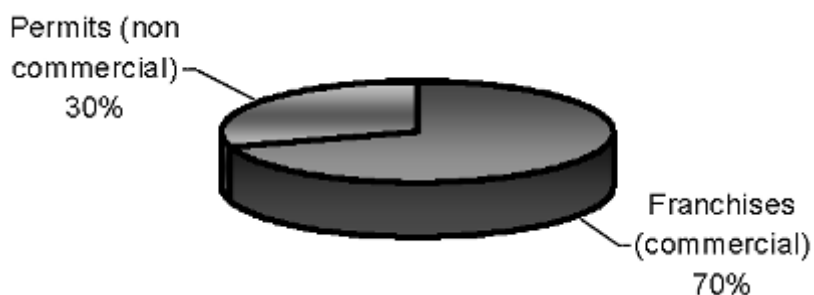


FIGURE 2. Distribution of Radio Broadcasting Stations According to Their Function, Mexico, 2001

contribute to defining communication policies for the development of more democratic ways of social participation in radio.

A key element to becoming acquainted with the media's characteristics is knowing the principles and rules that shape a country's radio-communication model. These principles and rules establish the guidelines for those institutions responsible for the operation, promotion, and development of the radio. They also contribute to the state policies concerned with supervision and monitoring to enforce the rules or to those that ensure the validity of the law to protect the public good. Thus, the study of radio regulations reveals a lot about the society on which those regulations are based, and the Mexican case is enlightening to help us understand what is happening in contemporary society and its relationship to the media-regulatory framework.

Today, the Mexican radio—almost eighty years old¹—has 1,474 broadcasting stations.² According to current legislation, broadcasting stations are divided into franchises for commercial use and permits for official,

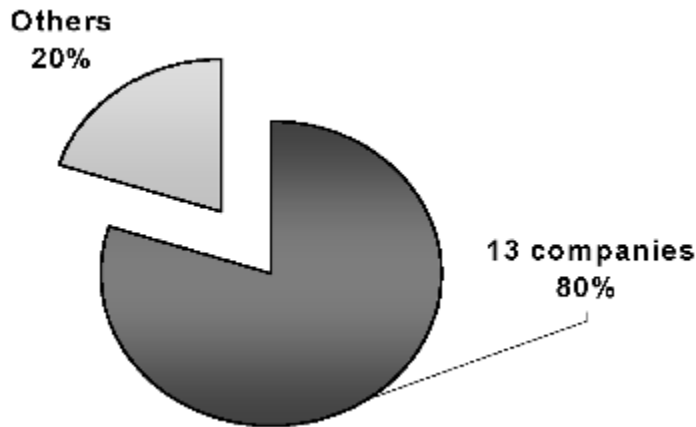


FIGURE 3. Mexican Radio Business Concentration, 2001

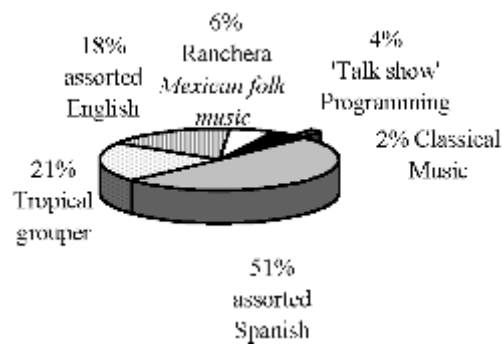


FIGURE 4. Distribution of Musical Programming

cultural, educational, and service use.³ Following this classification, an analysis of the Mexican State's management of radio frequencies reveals that 77.20 percent of radio stations are commercial broadcasting stations and 22.9 percent have permits for educational and cultural broadcasts.⁴

The disparity in radio-use management reflects the predominantly commercial model to which radio audiences are currently subjected. In the commercial use of radio, monopolistic practices are reflected in a business concentration of 80 percent of the 1,138 franchised broadcasting stations that are managed by just thirteen radio groups, leaving the remaining 20 percent to nongrouped broadcasting stations.

This quantitative overview is the basis by which to show how the features of communication policies are responsible for current operating

conditions in Mexican radio, which are indeed no different from those in Latin America. The latter have had to adopt the U.S. radio model, based on commercial advertising, in order to consolidate development and growth, leaving public-radio broadcasting models in the margins.

In terms of programming and despite the undeniable and valuable cases of some private broadcasting stations, in general the national dial features a predominantly musical profile commonly known as "Assorted Spanish," that is to say, a mix of all genres of Spanish popular music, broadcast by more than 50 percent of the country's stations. Another 4 percent of stations feature what is known as "talk show" programming (either news or editorial programs); 27 percent of stations include news as part of their profile; 1.29 percent include sports.

Radio Regulations in Mexico

Radio broadcasting depends on federal jurisdiction, and this sector's regulations include radio and air television in a single piece of legislation: the Radio and Television Federal Act (LFRTV). The Act was passed on January 8, 1960, forty years after the birth of radio broadcasting and ten years after the introduction of television, which clearly shows that by the time the law was passed, the media already had a consolidated industry with established operating rules.

On the other hand, the regulations governing the 1960 Radio and Television Federal Act were passed thirteen years later, on April 4, 1973. The 1973 regulations define the competence of intervening authorities and guide radio use to the extension of popular education by strengthening the radio's informative, recreational, and economic development functions.

For their operation, and as stated in the Mexican Constitution, radio and television broadcasting stations make use of a national good—airspace. The Mexican State has direct and inalienable control over its territorial airspace, and its use and exploitation can be carried out only with a permit issued by the Federal Executive. Therefore, the Executive can grant franchises for airspace use and exploitation to individuals who, according to the law, must "be Mexican citizens; accept that the franchise is for a maximum of 30 years, though it can be later renewed to the same franchised operator; and submit detailed information on the investment made, aside from making a guaranty deposit."⁵

The franchises-and-permits regimen for radio and television in Mexico has been questioned in numerous public forums. The greatest social claim against the Mexican radio broadcasting model lies precisely in the fact that it has fostered inequity in the distribution of frequencies, as can be seen in the statistics shown above. This situation is favored by the authorities' discretionary power for granting and renewing franchises. Moreover, the

practice is encouraged by current regulations, since they establish that relevant authorities decide the publication of bids to assign frequencies, they receive the applications, and, at their own discretion, they decide who the designated operator is. According to the current model, should there be any objections by the rest of the applicants, the same authorities will hear the claims and take the necessary action at their own discretion.⁶ Likewise, discretionary powers play an important role when renewing franchises, which are automatically ratified to their original owners regardless of the offenses the owners might have committed.

One of the main aspects of this law, included in Section 4, is that radio and television constitute a public interest activity and, as such, the State is responsible for monitoring and promoting their activities to ensure the adequate performance of their social function. Thus, within the regulatory and monitoring framework, these functions are concentrated in the Federal Executive Power through its State Secretariats.

The Government Secretariat is in charge of contents monitoring, regulatory supervision, and operation of the State media. The Communications and Transportation Secretariat is responsible for the supervision and technical control of electronic means and has the authority to manage national assets and grant franchises for their exploitation.⁷

There is a particular feature of the Mexican radio broadcasting model that is not present in the rest of the Latin American countries: the "official broadcasting," that is, free broadcasting time in electronic media devoted to social, educational, and general-interest messages. According to Section 59, official broadcasting for State use is thirty minutes per day in all radio and television stations. On the other hand, there is a fiscal regulation that establishes a special tax to be paid by franchised companies for the benefits they perceive for using a national good such as radio broadcasting frequencies. This tax, in place since 1969, forces broadcasting companies to grant 12.5 percent of their total broadcasting time to the State for public-interest messages. This official broadcasting time, devoted to general interest, educational, and cultural contents, could have been used to counteract the inequity of the poor presence of public broadcasting stations, supplementing with equivalent contents and programs in the private media itself. This is an interesting feature of the Mexican model; however, due to its imperfection, regulations are not fully observed, which proves that the Mexican model is based on a law that is not in practice.

Regarding official broadcasting, there are enough studies to prove that the time available for the State is only partially used by the Executive, who allegedly manages it. Surveys carried out in radio broadcasting stations in Mexico City in June 2002 showed that contents broadcast in compliance with these "official" times barely cover 6 percent of the total programming, and most of the time they consist of promotional "spots" of federal

government agencies. Lack of compliance with State regulations is even more evident in radio broadcasting, a resource that has been wasted by the State.

In terms of sanctions imposed for breaching the law, the most serious is the revocation of the franchise or permit. Among others, causes for revocation are a change in the location of broadcasting equipment; disposal of the franchise and its corresponding rights; and transfer of its operation to foreigners—all these without authorization of the relevant authority. However, studies show that there are no records of any revocation regarding radio broadcasting.

There are other management offenses and fines of up to US\$5,000; however, these sanctions are also subject to the relevant authority's discretionary powers because they are not specified in the law, and they are easily met by operators since the amounts do not represent any significant economic loss. There are not stronger sanctions—such as the loss of the franchise after reiterated offenses—because offenses are not cumulative, and because they are not filed—they do not appear on record when franchises or permits are renewed.

In this sense, in the September 1, 2002 Government Report, President Vicente Fox stated that his administration had carried out a total of 749 legal actions against broadcasting stations: 237 against TV stations, 332 against radio stations, and 180 against movie theaters. Although these figures contrast with the numbers for the same period of the previous year, with a total of 375 legal actions, they constitute merely a record of breaches of the law.

As has been shown, radio broadcast regulations in Mexico and in many other Latin American countries include both rules that are in effect and others that are obsolete or which are not observed, even though they were passed many years ago.

One of the main aspects of the law that would represent a change in the regulatory model, particularly for the adequate compliance with the law, refers to a regulatory agency or legal coordinating body for radio broadcasting. In Section 90, the 1960 Radio and Television Federal Act establishes the "creation of an agency dependent on the Government Secretariat called the Radio and Television National Council. The Council is made up of a representative of the Government Secretariat, one of the Communications and Transportation Secretariat, one of the Public Education Secretariat, one of the Health Secretariat, two representatives of the radio and television industry and two workers' representatives." Even though this Council was never established, and the 1960 Act was never put into effect, in 1986 a Presidential Decree established the constitution of an Advisory Committee for the Radio and Television National Council.

In 1977, the amendment of Section 6 of the Constitution had put the media and Information Right regulations on the agenda of the public sector

and particularly of certain sectors of society, raising the issue of social responsibility of the media and its prevailing model. These issues are reflected in the main argument of the Decree, which established the creation of an Advisory Committee of the Radio and TV National Council, which set forth the need of "achieving more ambitious goals as regards the contents of radio broadcasting and a higher social participation, specially of academic institutions." Thus, the Decree established that "according to the law, the Radio and Television National Council, made up of Government, radio and television industry, and workers representatives, is a specialized body whose coordination, monitoring and broadcasting organization functions include those of requiring opinion surveys from institutions, agencies, and people related to radio and television sectors, and optimizing social, cultural and artistic broadcasting standards." Moreover, "the Council, respecting the freedom of speech, has the duty of ensuring that radio broadcasting is carried out according to the highest purpose of its social function. Also, from a qualitative viewpoint, [it is in charge] of analyzing the services offered by the radio and TV to the public interest, suggesting the right actions in order to establish a more efficient policy on the subject." In this way, the Advisory Committee would be able to request qualified opinions from representatives of academic and business institutions.⁸

These collegiate bodies that have relative or absolute autonomy for the regulation of electronic means are present in many democratic countries. Such is the case of the National Telecommunications Committee in Brazil; the Canadian Radio, Television and Telecommunications Committee; the Federal Telecommunications Commission in the United States; the Audiovisual Higher Committee in France, and so on. Regarding television regulations, they are present in Latin American countries such as Chile and Colombia.

However, although Mexico has a forty-year-old law, it has not been possible to count with a plural regulatory body to ensure a better performance of electronic media, while the relevant authorities' direct and discretionary practices still prevail.

Attempts of Legislative Reforms in Electronic Media

The legislative update on the matter has always been a controversial topic. The features of a model consolidated under the prerogatives and agreements with relevant authorities have increased the sector's power. The electronic media has invested efforts, through regulation policies, to procure a privileged space where its negotiating capacity with the State has allowed for a wide area of impunity and bargaining that simulates compliance with the law.

It was only in March 2001, forty years after the LFRTV Act was passed, that efforts to update radio and TV regulations became visible. With the advent of a new political party in the presidency, expectations surrounding this topic rested on the promise of a strict observation of the law. In this context, the Round Table for the Integral Reform of Electronic Media Legislation was launched on March 5, 2001. Membership included business representatives, legislators, State media, political parties, universities, and social organizations who agreed on an agenda to review and modify certain topics according to current conditions.

The Table organized seven groups that would elaborate proposals, where the issues discussed were:

1. Main Principles
2. Jurisdiction and Responsibility
3. Social Participation and Citizens' Rights
4. State Media
5. Economic Responsibility

The work teams got to work and by the end of 2001, they had produced a document including proposals for those aspects that had to be updated in the new law for electronic media. In February 2002, the members of the Round Table decided to form a writing committee to turn their proposals into a law project. However, in September 2002 the committee had not yet concluded its work, which means that this article will not examine the parameters that would define a new legal framework for radio broadcasting. The task is not an easy one, due not only to the complexity of matter, but also, mainly, to a culture of juridical immobility of those sectors who have accumulated benefits thanks to the ambiguity of the current legal framework and its application. These sectors will defend themselves from any change that does not incorporate their business interests, which have been consolidated under the auspices of the discretionary use of the law and its application.

It is true also that there is some inertia in the State itself and a great temptation to keep for itself some aspects of discretionary use of power that would allow it to continue negotiating with media operators in exchange for support of their political projects. The legislative power faces also the challenge of considering the update of electronic-media legislation as a matter of general interest and not simply as something pertaining to political parties. Previously, the media have demonstrated that when they disagree with a legal reform they use their power to misinform and generate misinformation campaigns to scare legislators who would insist on changing the legal framework for electronic media.⁹

In what follows, I will analyze the main arguments that a new law for electronic media in Mexico will incorporate if the project is advanced.

Many countries in Latin America are awaiting this law, since they consider the Mexican reform an encouragement for other attempts that are taking place in countries such as Peru, Argentina, Uruguay, and Colombia.

Among the proposals discussed for the new law and regarding main principles, it has been suggested that the law will be based on Sections 6 and 27¹⁰ of the National Constitution, regarding the rules to preserve the rights and freedoms of persons, institutions, and companies that operate radio and TV broadcasting stations. This constitutional basis also ratifies that radio and television are public services that can be offered by individuals to whom the State grants a franchise to operate a national good, and that due to its nature it implies the exercise of a public duty that cannot be waived. On the other hand, the project agrees that, aside from constitutional principles, this law will be based on the *Universal Declaration of the Rights of Man* (Section 19), the *International Agreement of Civil and Political Rights* (Sections 19 and 20), and the *American Convention On Human Rights* (Sections 11, 13, and 14).

The importance granted by the work team to citizen rights and social participation is fundamental regarding the purpose of the regulatory body. In relation to this, there was a consensus to incorporate into the law the right to replication as a guarantee for all individuals affected by inaccurate or malicious information against them. Moreover, the work team expressed the need for citizen participation in the government agencies in charge of public media and in the law's regulatory agency.

A problematic issue that has been strongly advocated by social organizations is the need to establish rules for the equal access to participate in the operation of electronic media and a clear definition of the criteria to access "official broadcasting." Regarding the latter, the project proposes that the Executive Power should not be the only beneficiary of free broadcasting times, but that these should be distributed fairly among the three State powers and the different levels of government: federal, state, and municipal. If after this distribution there should still be free spaces, those social organizations that have demonstrated a standard in program content should be allowed to broadcast their programs in official broadcasting allocated times.

Proposals regarding legal changes in franchises and permits for the operation of electronic media were varied. First, it was agreed that the group had to look for alternatives in order to ensure a greater transparency in the allocation of franchises and permits. Also, the legal organization of frequency operators should be accurately defined, as in the case of "franchise" for commercial use; "permit" for nonlucrative and cultural, community, and social purposes use; and finally, "Direct State Operation" for State media.

Regarding electronic media programming, the project proposes acknowledging children's rights and in this sense, to accurately define the rules that should be met by programs devoted to children. Proposals also include defining percentages for national programming, which should be formed by national production and at least 20 percent independent production.

The new law must consider that penalties for noncompliance, apart from being updated in relation to minimum wages to be effective, should include repeated offenses. State media operation will also be regulated by a special legal framework that is not yet in effect, and there will be a strong demand for social participation in its government agencies. State media will be allocated an independent budget and the possibility of receiving alternative nonprofit income, which will allow them to strengthen their autonomy and decentralize their decision-making process.

The issue of concentration and monopolistic practices in the media will require defining the legal criteria to favor free competition among operators of radio and TV frequencies and to monitor monopolistic practices and concentration rates. Among the proposals discussed is the establishment of installments for the allocation of frequencies to individual franchised operators or radio broadcast business managers.

The need to update legislation regarding electronic media in Latin American countries cannot be overstated, especially for those that are undergoing a reform of the State in a framework of democratic and transparent regulations. In this sense, it is important to point out that the relevance of any law lies in the fact that the object of the law has to be in effect and refers to a concrete and updated reality, and that there is an effective and feasible compliance to the law. To guarantee a constitutional state, the state must ensure that regulations are observed and monitor that its legal framework reflects the reality that is regulated. That is why regulations that have been paralyzed for forty years cannot adequately refer to the media reality of twenty-first century radio.

Some Aspects of Regulations and its Reforms in Latin America¹¹

In the following section I will examine the current situation of some Latin American countries that are also in the process of updating their legislation regarding radio broadcasting, which points to the currency of the matter throughout the region.

In Argentina, efforts are being made to come up with a modern legal framework for the operation of electronic media. On April 25, 2001, the Executive Power submitted to the Chamber of Representatives a law project for radio broadcasting that sought to derogate the law in effect since

1980. Since the return to democracy in 1983, Argentina has sought to change the previous law, and the project presented by former president Fernando de la Rúa proposes, among other things, that nonprofit organizations have legal access to operate radio frequencies, because that possibility does not exist in current legislation. On the contrary, nonprofit juridical persons are actually excluded from the possibility of managing a frequency.

In 2001, the province of Córdoba in Argentina passed a regulation that is also part of the agenda for the Mexican model: the obligation on the part of radio broadcasting companies to translate to sign language those messages that pertain to government acts.

In the case of Colombia, the radio industry was affected by economic recession and the country's political instability, so that many franchises had to be leased or were returned to the State. In June of 1998, as soon as private television companies were born, they had to face the problem of advertising financing due to economic crisis and the high costs of franchises. On the other hand, in the same year the State granted 564 permits to operate community-based radio stations. This excess of supply has deepened the crisis of the advertising market and encouraged strayed audiences.

To counteract these problems—and in the understanding that costs are unregulated since the laws of supply and demand determine the prices for advertising spaces—the Ministry of Communications of Colombia has promoted an adjustment in the number of frequencies that will be allocated. This will affect the smaller companies since the Ministry has stated that those community operators that have not complied with the law will be cancelled, which means that of the 564 broadcasting stations granted in 1998, 250 are off the air due mainly to financial reasons.

The Colombian Congress is currently reviewing a law project that regulates Section 20 of the Constitution, referred to as the Right of Information and which contains proposals for the general regulation of electronic media activity. This revision proposes the creation of two agencies to encourage the self-regulation of mass media and whose function would be the relation of the media with the public for the management of the media. These agencies are the National Council of Mass Media Consumers and the Public's Private Council in each information media. This review also proposes the creation of courses in schools and universities that would offer training on the public's critical reception.

As regards monopolistic practices and concentration of mass media in Colombia, the project contemplates "ownership specialization" and promotes the creation of community-based media.

The issue of community-based radio stations is also debated in Paraguay, since as in the case of many Latin American countries, these radio

stations lack a legal definition because the law does not establish clearly their scope and the procedures to get the frequencies permits. The National Telecommunications Council of Paraguay is in charge of regulating those aspects that are not considered in the law, and it is there where no agreement can be reached with the representatives of the radio broadcasting companies. The government insists that community-based radio stations must have a limited scope and that frequencies must be put out to tender, while radio representatives state that their community and nonprofit status would prevent them from entering an open bid because they would be in a disadvantageous position vis-à-vis other radio stations.

In Peru, the process of political change and the role played by television during the Fujimori regime has shed doubt on the credibility of electronic media and generated the need to submit a law that would regulate radio and television activities, which still lack a specific legal framework. The debate has only just begun, and business pressure tactics—just as in Mexico—are starting to show. The project submitted to Congress is being debated and its purpose is to have a legal framework for the electronic media industry.

Final Remarks

The complexity and diversity of the communication system and its problems in Mexico and Latin America in general require a strategy for a legal reordering together with concrete actions that would grant both consistency and continuity, efficiency and flexibility to the series of plans, programs, and specific policies designed for electronic media. This is especially so considering the sector's technological changes and rapid development, where regulatory frameworks are always overcome by technological transformation. Another aspect that should be taken into account to evaluate national broadcasting policies is the world tendency toward economic globalization, in which business monopolization and concentration directly affect national communications companies, which in Latin America seem to be condemned to dance to the tune of developed countries.

Thus, there is a need to define the main guidelines of the legal framework that should govern and guide new ways of social organization and participation and of those sectors interested in regulatory agencies. These guidelines should, far from restricting freedom, extend its exercise and take on the responsibility of action, with the legal instruments necessary to strengthen national culture and identity, and respect for national sovereignty.

Notes

1. The first radio broadcasts began in 1923, with experimental signals until September 14, when CYB, today XEB, was launched on the AM 1120 frequency.

2. In amplitude modulation 866 and in frequency modulation 608; data provided by the Secretariat of Communications and Transportation, 2001.

3. Section 13 of the Radio and Television Act establishes that: "Commercial stations shall require a franchise. Official, cultural, experimental and radio school stations or those established by public agencies or institutions to fulfill their purposes and service duties will only need a permit."

4. Among these broadcasting stations there are university radio stations, states' administrations' radio stations, native people's radio stations, and radio stations that belong to the federal state executive. As they are not allowed to receive funds other than those allocated by the official budget, they are currently facing a growth crisis and are unable to invest in technology. Likewise, the serious problem posed by their direct and exclusive dependency on the authority that provides them with resources in most cases leads to lack of credibility among their audiences.

5. The deposit is of US\$1,000,000–3,000,000.

6. See Section 19 of the Radio and Television Federal Act.

7. "After consultation with the SEGOB, [the Communications and Transportation Secretariat is authorized] to grant franchises and permits in order to establish and exploit telegraph, telephone, wireless communication and telecommunications systems, and public service satellites for the remote processing of data, experimental cultural and amateur radio stations, commercial and cultural broadcasting stations; and [is authorized] to watch over the technical aspect of those services and stations['] systems operation."

8. Asociación Nacional de Universidades e Institutos de Enseñanza Superior (National Association of Universities and Higher Education Institutes); Universidad Nacional Autónoma de México (Autonomous National University of Mexico [UNAM]); Instituto Politécnico Nacional (National Polytechnical Institute); Colegio Nacional (National College); Consejo Nacional de Ciencia y Tecnología (National Council of Science and Technology); and Consejo Nacional de la Publicidad (Advertising National Council).

9. This has been sufficiently documented with, for example, the attempt to pass the Federal Law of Social Communication, which would render obsolete the 1917 Printing Law, and that would rule the freedom of speech and the right to information. The law was stopped in Congress in 1998 when a wide campaign of printed and electronic media qualified it as the "Gag Law" without really explaining the reasons for calling it that and giving no truthful information about the review process in the Representatives' Chamber.

10. Section 6 refers to freedom of speech and right of information as constitutional guarantees. Section 27 establishes the predominance of the nation regarding radio-electrical space and airspace.

11. Information is based on the 2000–2001 Report of the IberoAmerican Association of Information and Communication Rights (Asociación Iberoamericana de Derecho de la Información y de la Comunicación).

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