Telecommunications and Broadcasting Reform in Mexico in 2013: Key Elements of the Process

André Dorcé, Aimée Vega, Raúl Trejo Delarbre & Patricia Ortega Ramírez
Introduced and Edited by Toby Miller
Translated by Alexandra Sastre

The goal of this article is to analyze the key elements of the process of reform of Mexico's telecommunication and broadcast sector in 2013. The historic antecedents that ushered along the development of a model of concentrated power were reviewed and the actions of a few key citizens were revealed as an important counterpoint to this history. That counterpoint was echoed by initiatives from the country's three political parties and the President. The most significant points of this reform, as well as some of its challenges, are analyzed.

Antecedents: The political landscape of Mexico has been determined by a presidential structure that has historically monopolized political and legal factions, resulting in a great concentration of power in the hands of the President. Over seven decades, the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) governed our country with a nearly totalizing force. During those years, the discretionary and complacent relationship between the government and the radio and television industry facilitated both the financing of an authoritarian Presidential regime and the growth of the media.

Among the powers of the President has been the unilateral allocation of radio and television licenses. The absence of a state policy that privileged the notion of public service in the regulation of broadcasting and telecommunication, the stagnation and the empty legalities of our juridical norms in this regard, and the power relationships...
that have existed between our political class and the media industry all contributed to a system of communication in which the following prevail:

An extreme concentration of broadcasting resources in the hands of only a few companies, particularly in regards to the television industry, where two firms, Televisa and Television Azteca, monopolize 94 percent of commercial television signals.

A telecommunications market under an economic monopoly. Through his two companies, Telmex and Telcel, one individual, Carlos Slim, controls 80 percent of the landline and 70 percent of the cellphone market.

Limited diversity in the distribution of broadcasting signals. Of the 2045 radio frequencies that until 2012 the Federal Communications Commission had inventoried, 80 percent (1635) were allocated for the commercial market while 20 percent (410) were allocated for use in educational, cultural, and experimental purposes. The case of television was similar, and, during the same time period, commercial television was allocated 68.43 percent (672 channels) of all the channels in the country. Of these, 31.57 percent (310 channels) were allocated to public television. But the problem of a lack of plurality in the distribution spectrum becomes even more serious when we see that the majority of the frequencies without commercial ends have been granted to state governments or federal institutions rather than universities or social services. That is to say, of 402 radio frequencies, 62.2 percent are concentrated in hands of state or federal governments. In the case of public television, 92.1 percent of its channels were in some way dependent on government aid.

The laws that regulate telecommunications and other electronic mediums effective until at least 2013 emerged during the prolonged hegemony of the PRI. The Federal Radio and Television Act was passed in 1960, 10 years after the emergence of television in Mexico, and 30 years after the birth of radio. Since then, strong interests in the broadcasting sector have determined the direction of the rules in place to regulate it. In 1995, a Federal Broadcasting Law was put into place.

Since the last few years of the twentieth century, Mexican politics has diversified as various political parties consolidated. In 2000, while the presidency was taken over by a political party other than the PRI, the change did not facilitate the democratization of either media structures or the laws regulating broadcast media. The complacency, and even submission, of governments (headed for over 12 years by the National Action Party [Partido Accion National, PAN]) to the broadcasting industry not only maintained but increased the privileges bestowed on media owners, which led to their consolidation as one of the most powerful influences in the social, cultural, and political life of our country. The sector opposed any change to the regulation of media that might have altered or diminished its privileges. In 2005, urged on by changes that the industry faced in the digital age, the powers that be sought to secure their interests and increase their influence in the media sector, and in 2006 achieved legislative approval of reforms to federal broadcasting laws in their favor. These
reforms were actually drafted in the very offices of Televisa, the most powerful of
these broadcasting companies, and were henceforth referred to as the “Televisa Law.”
But counter-power was also at work, and a year later, thanks to the efforts of a key
group of senators, Mexico’s Supreme Court declared the main articles of the
legislation unconstitutional.

Since December 2012 the presidency has once again been in the hands of the PRI.
Three political parties, the PRI, PAN, and PRD (Partido Revolucionario Democrático) garner more than 75 percent of the votes, although none has an absolute
majority in the Senate. President Enrique Pena Nieto and these three parties initiated
a rapprochement in a bid to push forth ambitious legal reforms influencing social,
political and economic life in Mexico; amongst them can be found constitutional
amendments regarding the media that were recently passed by Congress.

Key Elements of the Reform

Reforms to media law would not have been possible without this collaboration
between political parties. Proposals to update existing media laws in Mexico had
regularly been put forth in previous decades, but little progress was made, because
political parties were hesitant to confront powerful media corporations.

The media companies’ abuse of their power eventually became the very catalyst of
reform. Only when the government finally understood the need to counteract these
abuses, with stronger and more transparent regulations of the media, were previous
suggestions from advocacy groups, media scholars, and media professionals
undertaken.

The reforms approved by Congress in 2013 modify eight articles in Mexico’s
Constitution. The level of detail in these new regulatory measures points to the aim
of the political class to ensure the reforms are implemented. It has already been seen
that powerful media corporations can influence legislative decisions and other
political matters. Party leaders, and President Nieto, wanted to make sure that these
reforms were taken seriously and not simply dismissed as meaningless rhetoric. A
senior PRI party member, Jesus Reyes Heroles, had been saying for nearly 35 years
that, in politics, form is the foundation. This is now the case thanks to these
ambitious constitutional reforms, which address the right to information, telecommu-
nication and broadcast regulation, and the growth of bandwidth.

The modification of eight articles of the Constitution, alongside 18 transitional
articles that are not part of the Constitution but reflect congressional decisions,
address 12 key issues:

- The acknowledgment that telecommunications and broadcasting are public
  services. This implies that the state guarantees quality, competence, diversity and
  coverage, among other things.

- Diverse open access television. Until now, only two companies (Televisa and TV
  Azteca) had broadcast stations with national reach. There will be two new
  commercial television stations, and one new public broadcasting station. The
transition to digital cable should be completed by the end of 2015. The new channels that will become available thanks to the digitalization of certain frequencies won’t be automatically utilized by the companies that actually manage the stations; rather, they will be assigned by regulatory authorities on the basis of competence and quality. Up to 49 percent foreign investment in the assets of broadcasting networks will be permissible.

*Diverse cable television.* Televisa, which controls approximately 70 percent of cable and satellite television market, will lose its dominance. Telmex, the company that dominates the phone market, will broadcast television through its telephone lines (an option which had not been permitted for 12 years). Cable providers will have the right to broadcast public television channels (national television stations have not permitted their signals to be carried by anyone apart from Televisa). Public stations belonging to federal institutions will be broadcast by all satellite and cable providers.

*National system of public media.* There will be a public organization, autonomous from the government, in charge of funding non-commercial broadcasting. Its President and board members will be selected by the Senate. All public media will have freedom of press, be financially independent, involve civic participation, and be fiscally accountable and transparent; that is to say, they will not depend solely on federal aid. More importantly, they will not depend on the government.

*Broadcast diversity.* The largest telephone company (Teléfonos de México, owned by Carlos Slim, which controls 80 percent of landline subscriptions) will have to make its national network available to other telephone companies, without conditions. Telephone companies also cannot turn to the legal system to suspend the decisions of regulatory authorities, as they have done for a long time (in Mexico, regulations have been postponed for over 10 years due to litigation).

*Limits to monopolies.* The Federal Telecommunications Institute (see below) will regulate competition in telecommunications and broadcasting. There will be prorated rules to eliminate barriers to competition, meaning the most powerful companies will be more heavily regulated in proportion to their hold on the market. When a corporation holds more than 50 percent of users, subscribers, audience, or network traffic, it will be considered dominant and hence subject to special regulation that may divest its assets.

*Government concessions.* Broadcasting and telecommunication licenses will now be issued by the Telecommunication Institute. Community and indigenous media outlets will be allocated space on the spectrum.

*Solid regulatory mechanism.* The Federal Telecommunications Institute, a regulatory mechanism with significant power (the aforementioned ability to regulate competition, among other things) will be headed by seven commissioners selected by the Senate upon the suggestion of Mexico’s President. Those selected must pass an
exam put together by autonomous organizations and universities. The Institute will also have an advisory council.

*Information society.* The State recognizes its failure to provide all citizens with broadband internet services. Although an exact date has not been set, a network will be established so that 70 percent of homes and 85 percent of businesses will have broadband (currently, only 20 percent of households have an internet connection). The government and the Telecommunications Institute will manage a national broadband network supported by the Federal Electric Commission, which generates and distributes electricity across Mexico. In addition, a wireless network of 700 Mhz will be supported, in part through private investment.

*The rights of society.* The right to respond to coverage by the media is reiterated (which was already in the Constitution, yet which still requires regulations to uphold). The rights of users and audiences are mentioned, albeit not in detail.

*New judicial framework.* The decisions of the Telecommunications Institute will not be subject to suspension by court order until judicial reviews have concluded. New courts and judges will specialize in broadcasting and telecommunications.

*Antitrust.* In addition to those issues related to broadcasting and telecommunications, constitutional reform will create a new Federal Antitrust Commission with the same autonomy as the Telecommunications Institute.

In the following months, Congress will have to approve a new federal Telecommunications and Broadcasting Law that will specify definitions, procedures and regulations for these provisions. The practical application of these important measures fostered by the constitutional reforms will depend on this federal law.

**Civic Participation in and Impact on the Reform Process**

Broadcasting and telecommunications reform is the product of regulation, self-regulation, and co-regulation, and some combinations of all three. This regulation is associated with the three branches of the state—legislative, executive and judicial—as well as the political parties. A unified yet plural entity will define the operational norms of broadcasting and telecommunications media. Self-regulation relates to the singular actions of the market, which is to say, the business leaders of this sector, in delineating their own rules. Co-regulation alludes to the involvement of civil society in these processes (Carlsson, 2006; Nordenstreng, 2007).

Given the present circumstances in Mexico, in which the institutional power of the state is counterbalanced by the influence of market and the emergence of new social actors, it is not possible to point to the absolute domination of any of the three systems cited in the previous outline of the laws and politics of the communications sector, but rather to their combined influence. Affirming this means recognizing the influence of diverse sectors, an influence that is not always balanced and that sometimes reflects antagonism between the state, the market, and civil society.
It is important to us to analyze civic participation here. The academic community, social organizations, broadcasting and telecommunications workers and, more recently, students have been involved in the discussion surrounding communications reform in Mexico. Key demands and proposals for reform have emerged from these sectors.

In 1977, some academics indicated that media regulation was a key issue for the democratization of the country. They first organized at the meeting of the Mexican Association of Communications Researchers (Asociación Mexicana de Investigadores de la Comunicación [AMIC]), proposing that communications scholars collectively take steps to influence industry norms, particularly given that the phrase reading “the right to information will be guaranteed by the State” was incorporated into law in 1977. With this in mind, they published, organized conferences and seminars, and publically put forth an important diagnostic report and proposals for improvement to House of Representatives in 1979.

Over the next few decades, scholarly activism transcended university settings to reach the place where decisions are made: Congress. From 1979 to 2013, professors participated in hearings held by both the legislative and executive branches. With the goal of extending this discussion to academics in other fields as well as community leaders, intellectuals, journalists, artists, and liberal politicians, the Mexican Association for the Right to Information (Asociación Mexicana de Derecho a la Información [AMEDI]) was founded in 2001. Since its formation, this organization has played a key role in framing the recent constitutional reforms, enabling the participation of both civil organizations that did not specialize in media-related issues and human rights experts. AMEDI was not only able to make this issue a priority on the national political agenda—particularly since the Televisa Law episode (2006–7)—but has participated in a range of diverse initiatives for law reform that went before congress (in 1998, 2003, 2005 and 2008).

In this context, the decision undertaken by Senators of the Republic in 2006, which we mentioned in the introduction of this article and which received the support of AMEDI, is especially important. This was the move to have the “Televisa Law” declared unconstitutional by Supreme Court of the Nation (SCJN), which AMEDI had initially put before Congress. The objective of the “Televisa Law” with these reforms was to assure monopoly over the allocation of television frequencies. After the SCJN debated the issue, the ministers declared these reforms unconstitutional.

We mention this episode because it expanded awareness in Mexican society about the need for democratic reforms, which eventually made the issue a central part of the platforms of both candidates in the 2012 presidential campaign. It is ultimately these antecedents, alongside the range of other problems generated by a communications industry concentrated in the hands of a few and increasingly perceived as arrogant in their impunity, which provoked the student movements of #YoSoy132, which demanded democratization of the media.

In conclusion, although we cannot confirm that the influence of civil society in the process of media reform was the result of collective action as opposed to the efforts of a few, we still want to emphasize the extent to which Mexican society was made
aware of the importance of these reform efforts toward democracy as a whole in the country. And so we ask: what has civic participation in these reforms brought to bear?

A human rights perspective, which placed front and center a discussion of the implications of the communication system on the quality of life. In this sense, civil society rightfully framed the issue of telecommunication and media reform as not only an economic and technological one, but as one of human rights, fundamentally linking the right to freedom of expression to the right to information. It is an inclusive perspective, which drew attention to the importance of these reforms to society at large, not just the industry. It is also a perspective of integrity, which addresses reform not only in terms of how the market and technology define it, but by linking telecommunications and media reform to both human rights and cultural policies. In short, although we cannot be certain of the level of participation from society at large or even the academy in this reform process, we recognize that without some support from these sectors, we would not have such reforms.

The Challenges of Reform: Cultural Policies and the Rights of Audiences

The success of this ambitious program of reform represents possibly paradigmatic changes in governmental management of telecommunications and broadcast reform in Mexico. The goals of many of the more substantial elements of these reforms could effectively facilitated via secondary laws that must be put in place in a relatively short amount of time (180 days). These laws would regulate the establishment of regulatory bodies, the public broadcasting system and its respective organizing bodies, and the operationalization of universal digital inclusion, as well as fostering economic competition and infrastructure development, among other things.

We can characterize this reform as advancing a legislative framework that brings together economic, telecommunications, and broadcasting realms. To the extent that it seeks to respond to longstanding social and political shortcomings by incorporating the right to information within human rights, the plurality and justice of this reform presents the possibility of a new socio-cultural order in these areas at the national level. However, one of its most significant structural deficiencies is precisely its explicit detachment from a body of cultural politics that formally recognizes the linkages between cultural and communication rights. In this respect there are many faults, but we want to highlight the role this legislative reform might play in the reconfiguration of Mexico’s rich multicultural map in its presentation of a normative framework for the expression, production, diffusion, and consumption of cultural diversity.

It is true that this reform includes crucial transversal definitions of the broadcast spectrum in relation to quality, competence, plurality, and coverage; it is also true that the plurality of economic agents is frequently confused with diversity. This may seem a merely semantic issue. It is more than that. Plurality implies a quantifiable variety of agents, while diversity implies a qualitative difference between those agents. The reforms have had only a limited impact on ensuring socio-cultural diversity.
The most palpable example we find is in the normative distinctions between concessions for social and public use and those for commercial and private use. The reforms establish that the concessions of the first two kinds (social and public) should attend to the communication needs of cultural diversity (for example, facilitating the work of community, indigenous, and education media as well as independent producers). This will not be the case with commercial and private concessions granted by the state. This exempts commercial and private dealers from dealing in a substantive way with sociocultural, national, and global diversity.

On the one hand, this change will put a very complex and unbalanced workload and set of obligations on the new public broadcasting organization. We do not know what the Federal Institute of Telecommunications will do to ensure sociocultural diversity of media content. It may be left up to the hegemonic culture industries to respond to political and economic demands for multicultural recognition as they see fit.

Today we know that in Mexico, as in many other countries, the culture industries and the creative sector generate 7.3 percent of gross domestic product (GDP, Piedras & Garcia Canclini, 2012). In part, this rich socioeconomic potential depends on effective synergy and integration between telecommunications organizations, broadcasters, other culture industries, and regulatory bodies. However, development of this kind depends on an approach that doesn’t simply reduce actual sociocultural diversity to a plurality of economic agents. Such competition only generates capital gain and access to technological infrastructure, not social peace and a democratic multiculturalism.

The rights of the audience are not, in essence, that different from (social and cultural) human rights that the Mexican state already recognizes in both its constitution and multiple international treaties and inform some aspects of the new changes already mentioned: rights to information, freedom of expression, and so on, Solis, 2009).

The upcoming layout of the secondary laws that derive from this reform set up important opportunities to establish organizational vehicles with a cultural politic that is intersectional (Jiménez, 2006). That makes possible, among other things, the diversification of audiovisual production, recognizing the rights of both independent producers and audiences to be participants in the process through assuring them exhibition and broadcast resources.

**Conclusion**

Constitutional reform of the telecommunications and broadcast sector could mean significant changes in Mexico. Decades of reticence on the part of both media industries and the government over updating regulation the communications industry have been replaced by a large-scale reform made possible thanks to an agreement between the country’s most important political powers.

This reform will only produce results favorable to a democratic society if it is accompanied by regulatory laws consistent with it. Mexico’s congress must create or
enact at least a dozen laws, among which will be the Federal Telecommunications and Broadcasting law. This legislative task, particularly the implementation of the new authority of these sectors to make decisions, should be overseen with rigorous scrutiny.

The reform will not change cultural politics, nor will it necessarily change the quality of the media. Society itself needs to put forth an ample agenda of demands to develop both these things. However, this new context of civic oversight, and new fodder for communications researchers, augurs drastic changes from the unexpected reform of 2013.

Notes
[1] It is important to clarify that in this data on radio and television stations, all stations that, according to Cofetel, were assigned to public and private institutions and companies have been counted, but this does not mean that at the time this information was collected all were active.
[2] The total number of television frequencies includes mirror channels that have been flagged for digital conversion.
[3] Among those scholars who first took action were Beatriz Solís and Fatima Fernandez, who in subsequent years were joined by Alma Rosa Alva de la Silva, Javier Esteinou, and Gabriel Sosa Plata, among others.
[4] AMEDI was founded by Beatriz Solís. Its current president is Aleida Calleha.
[5] Some of the legislators in this case were Javier Corral of PAN, Manuel Barlett of PRI, Felipe Vicencio of PAN and Cesar Raul Ojeda of PRD.
[6] This movement emerged in response to a visit from then-candidate Enrique Pena Nieto to the Iberoamerican University in May of 2012 during his presidential campaign and the alleged influence of Televisa in the campaign.

References


