

ROUND TABLE

EFFECTIVE ENFORCEMENT OF LAWS AND REGULATIONS IN TELECOMMUNICATIONS

Best Practices in Effectively Enforcing Telecommunication Rules

Coordinator: We would like to invite to head the Round Table “Best Practices in Effectively Enforcing Telecommunication Rules”, Doctor Clóvis Baptista, Executive Secretary to the Inter-American Telecommunications Commission – CITEL, in Washington DC, United States. Telecommunications Engineer, graduated at the *Pontificia Universidade Católica* of Rio de Janeiro, in 1972, with extension in Systems Analysis. Since March 2002, he acts as Executive Secretariat to the OAS’s Inter-American Telecommunications Commission OEA, with headquarters in Washington. From 1974 to 1995 he worked to Embratel, where he performed high-responsibility managerial functions. He was Special Advisor to the Ministry of Communications to International Affairs of ANATEL, since the Agency establishment in 1997 until February 2000. He left ANATEL to take office at OAS.

We would like to invite Dr. Roxanne McElvane. Dr. Roxanne is Senior Advisor to International Development at FCC, United States. She is a Licensed Lawyer to the areas of Washington DC and New York, and at the United States Supreme Court. She has 20 years of experience in Communications Rights – her area of concentration. Along the last 8 year, she has worked in communications matters, mainly associated to developing countries.

We would like to invite Dr. Robert Finlay. Currently, Dr. Robert Finlay is the Director to the National Telecommunications Regulatory Commission of Granada, a member of the Eastern Caribbean Telecommunications Authority. Along the last three years, he worked as Regulator to grant the release in Granada’s telecommunications sector. He is Engineer in Radio Transmission, certified by the Institute of Incorporated Engineers, London, and has 30 years of experience in telecommunications industry. He has also worked to the MBA program in Telecommunications Management.

We would like to invite Dr. Paul Morgan. Dr. Paul Morgan is the General Director of the Regulatory Office in Jamaica. He graduated in Electrical Engineer and is member of the British Association of Electrical Engineers and the Jamaican Engineer Institution. Graduated in England, he is also Post-Graduated at the University of Pennsylvania, United States. As General Director, he is in charge of regulating telecommunications, electric power, water and aspects related to transportation sector.

We would like to invite Dr. George Mosse. Dr. George Mosse is the Executive Director to the Public Utilities Commission of Bahamas. He graduated at Southampton University, England, holds MBA by Cawfield University, England. He is professional engineer, specialized in telecommunications and hydraulics engineering. He held offices of General Manager to Bahamas Telecommunications Company, General Manager of Water and Sanitation in Bahamas. George Mosse is interested in telecommunications regulation since 1998. He carried out studies in Management of Spectrum and Licensing, conditions for telecommunications licenses and policies to the telecommunications sector.

We would like to invite Dr. Luis Gerardo Canchola Rocha. Dr. Luis Gerardo Canchola Rocha was born in the city of México and graduated in Laws in 1994. He holds a Master Degree in Corporative Economic Law by the Pan Americana University. For 13 years, he performed his duties at banking sector, in the fields of legal advisory and contentious. In 1997, he was appointed General Director to Contentious Issues, Mexican Federal Commission on Telecommunications, and still holds that office.

We would like to invite Dr. Gabriela Urquidi Morales. Gabriela Urquidi Morales was born in Cochabamba, Bolivia. She graduated in Law by the *Universidade Católica Boliviana San Pablo*, with specialization in Administrative, Tributary Laws and Civil Procedure. She took other post-graduation courses. She acted as Bolivian delegate in the Group of Andean Community of Nations, in Beijing, China, during the Exhibition of Telecommunications Industries, in 2003. In the field of oversight, she worked as Chief of Goals Achievement and Contracts of Telecommunications Superintendence, from 1998 to 2002. Currently, she is the Legal Director to Bolivian Telecommunications Superintendence.

We would like to invite Dr. Gabriel Adolfo Jurado Parra. Dr. Gabriel Adolfo Jurado Parra is Secretary-General to Colombian Ministry of Communications. He is a lawyer, specialized in Economics Law and Master in Political Sciences and Telecommunications Law.

Now, we grant the floor to the Moderator of this Round Table, Dr. Clovis Baptista.

Clovis Baptista – Moderator: Good afternoon. First of all, I would like to thank ITU and ANATEL for having invited me to participate with you in this event on “Effective Application of Telecommunications Legislation and Regulation”. Before addressing to the other members of the Head Table and ask them to make brief comments on “Best Practices in the Field of Effective Application of Rules”, I would like to ask your permission to say a little about the Inter-American Telecommunications Commission – CITELE.

We are an international organization, member of ASO – the political organization for American countries. ASO is made up by 34 State Members and, specifically for CITELE, private sector actively and continuously participate in our works. Currently, we have about 200 private members that participate in every activity performed by our Commission.

I would like to emphasize one of the most import ongoing projects of CITELE, which is reviewing the so-called “Blue Book – Telecommunications Policies to Americas”. I have here in my hands the 2000 Blue Book, jointly published by CITELE and ITU. Now we are working to have its 3rd action finished by the end of November 2004. As Dr. Juan Zavattiero from ITU has previously informed you, the book is aimed at being a reference manual on regulatory policies to Americas’ countries. Therefore, due to extraordinary changes in telecommunications sector, CITELE members judged relevant to update our 2000 edition, in order to include most relevant aspects that affect telecommunication sector’s performance in our region.

Along this year, CITELE is to hold several events, meetings, where we shall dynamically assess progresses in preparing such “Blue Book”. I would like to emphasize that, simultaneously to CITELE meeting and upon the World Bank support, we will also hold several videoconferences, in order to use information and communications technology to extend the scope of the debate to be held this year.

Let me mention that on 28 May 2004, we will hold a videoconference to discuss the general view on the “Blue Book” project, where countries will have the chance to Express and present the issues they judge should be considered in this development project. In July 2004, we will hold another videoconference, focused on service and universal access, i.e., what kind of recommendations the “Blue Book” should bring concerning that issue. In August we are expected to hold two videoconferences. One will approach interconnection issues and granting of licenses to telecommunication services operators, while the other shall focus on technical and regulatory aspects of Voice Over IP. In November 2004, we will finally hold a videoconference on “Regulation on the Use Radiocommunications Spectrum in Competitive Market”. The “Blue Book”, in its 3rd edition, shall reflect the findings of those discussions.

I would also like to inform that we have recently concluded an agreement with ITU to hold in Washington DC, from 22 to 24 November 2004, the V Global Symposium of Regulators, where Regulators from all over the world should gather to discuss aspects of regulatory policies. The event will take place at ASO headquarters, in Washington DC, and CITEL is permanently working with ITU to make it a successful event. We expect intensive participation of ASO members in the symposium.

Now, I would like to focus on the purpose of this panel. We had extremely interesting discussion along the last two days. Similarly, we could observe that all countries, all Regulators face similar challenges. Regardless its size or experience, Regulators face similar challenges. During this Round Table, which will close the seminar, we intend to identify good practices in the field of effective application of rules and which problems were faced by Regulators and which lessons we may learn.

I would like to ask each member of this Round Table to briefly state their concept on what, in their view, could be a set of good practices in effective application of rules; their experiences in this field and the kind of plan they would have for further works in this field. I would like to stress once more that the findings of this seminar will be integrally incorporated in the “Blue Book”.

I would like to start with Dr. Paul Morgan, Office of Utilities Regulation, Jamaica, who needs to leave a little earlier. I would ask him his view on this issue.

Paul Morgan – Office of Utilities Regulation from Jamaica: Thank you. First of all, let me also thank ITU and ANATEL for what has been an excellent program so far. It seems to me that we have short focused seminars such as this. We seem to get much more out of it than from large conferences. There is so much that we can talk about when we deal with enforcement and best practices, that I thought the best thing to do would be just to focus on one area. I’ll make a very short introduction, just to tell you that you might have been confused when we previously talked about Jamaica and the different agencies which have responsibilities in the sector. It is really not that difficult. Essentially, the Office of Utilities Regulation is the economic regulator and the Spectrum Management Authority deals with matters related to the use of spectrum. It is very simple.

Having said that, I think perhaps what I would want to tell you is that, in Jamaica, the Telecom sector was liberalized over three phases. In the first phase, the mobile sector opened up; in the second phase, the local market opened up; and in the third phase, the international

market opened up and, thus, the entire sector was liberalized. As you can imagine, good interconnection arrangements were absolutely crucial at this stage of the process. In the first phase, two new entrants were brought into the market to join the incumbent. In the second phase, some 17 licenses were issued and one company built the local network offering fixed wireless technology and, of course, in the third phase, there were several players who came into the international market. At each stage, as you can imagine, the incumbent was required to provide the means for interconnection.

The law prescribed that, within 90 days of it being enacted, the incumbent had to put a reference of interconnection to the Regulator for approval. The incumbent was able to do this and, within a twelve-month period, after going through the usual consultations, we were able to conclude and approve that interconnection arrangement.

An interesting thing that happened was that the incumbent was not in a position to provide data for cost-based pricing. And the law anticipated this, because, as you would imagine, the incumbent would not necessarily be anxious promote this activity rapidly. But the law anticipated this. What it said was that, if in the event that the Regulators were not able to fix those cost-based interconnection prices, determining those prices, then, they were allowed to use benchmarks as the basis to establish those prices. And that is exactly what happened. It was interesting because, having established those interconnection prices on the basis of benchmarks, we introduced new prices once the data were available and once the cost-based studies were done. Of course, when the cost-based studies were done, it turned out that the benchmarks were too high and there was quite an “excitement” when we tried to reduce the prices we had fixed earlier.

So, it’s been clear to us that the régime for interconnection arrangements, for interconnection pricing is, in my view, extremely important and I think the basis to do this is really one where the reference interconnection order is put out there, so that all the entrants into the market, at least, have this basis, on which they can negotiate with the incumbent. This is a suggestion, for those who are not using this methodology, to think about it. I think Bolivia and also Costa Rica are on this methodology. Thank you.

Clovis Baptista – Moderator: Thank you very much, Mr. Paul Morgan. I would like to ask the audience to be patient, because I will grant the floor to each speaker and, by the end, session will be opened to questions. Since this is the final session, I thought this would be the most efficient way to carry out works. I would also like to ask the speakers to respect the 5-minute time for each intervention. Now, I invite Dr. Gabriela Urquidi, of the Bolivian Telecommunications Superintendence, to present her ideas about which best practices we could follow to effectively apply regulation, policy and legislation on telecommunications.

Gabriela Urquidi – Bolivian Telecommunications Superintendence: Thanks. I will briefly comment some experiences we had in my country and that I consider appropriate. Probably, such experiences could help you in your countries. The issue is settlement of conflicts, which has been commented along these days. I think there should be a balance between the right and the power of sanctioning endowed to Regulators. That should be balanced with alternative resolution of conflicts.

As we could notice, application of sanctions is essential to the Regulator’s enforcement power. It is very dangerous the inexistence of executive power to sanction, since if you

knows it will not receive the sanction, it does not bother about complying with the rule. However, extreme application of penalties for each minimum fault may also change services and markets. Therefore, I consider a healthy practice to balance sanctioning power and alternative settlement of conflicts.

As previously mentioned, in Bolivia we have a procedure, named *avenimiento*, which is conciliation. It may be applied both between operators and between operators and users. Procedures applied among operators have been very successful. This morning was commented that an application issue is to record, in writing, conciliation procedures, or alternative ways. In Bolivia, once conciliation is reached, it is recorded in write as part of an administrative procedure, and is totally public.

In Bolivia, arbitration is not possible for interconnection and regulatory issues, since law expressly establishes that the Regulator is responsible for settling conflicts. It also relies on the possibility of previously solving the issue through conciliation and, if no agreement is reached and conflict remains, a sanctioning procedure may be initiated. Such procedure entails considerable sanctions to operators.

Another matter I consider interesting in this topic is partial conciliation. It means that two operators start negotiating and reach consensus about a subject, but not about another. Partial conciliation may be reached and continue a procedure on the other subjects, where consensus was not reached.

Another topic worth of notice, explained in details by Pedro Solares this morning, concerns Basic Supply of Interconnection. We consider it an important mechanism, which allowed all new participants to interconnect “easily”, with less difficulties than when they had to negotiate agreements or when the regulatory entity had to intervene. The establishment of minimum pre-established technical, legal, administrative and legal conditions brings transparency, and the new participants know the guidelines to their works and, thus, interconnection is operationalized.

One last issue is that, in Bolivia, we are analyzing the possibility of including a mechanism as follows: Regulators may intervene in interconnection-related conflicts, when operators fail in reaching an agreement. However, the problem is that may take too much time, because deals with matters implying in complicated technical, financial and economic details. Then, the ideal would be issuing a resolution to establish minimum conditions. But that would be a provisional resolution and, as soon as formal procedure is terminated, final decision should be issued and the preliminary resolution would be duly adjusted. Thank you very much.

Clovis Baptista – Moderator: Thank you for being so concise and for your contribution. I would like to invite Dr. Robert Finlay, Director of the National Telecommunications Regulatory Commission of Grenada.

Robert Finlay – National Telecommunications Regulatory Commission of Grenada: First of all, I want to say that for those of you who don’t know Grenada, it’s a very small island nation, just to the north of Venezuela, on the top of South America with a population of 90.000 people. We have special challenges in telecommunications because of our small size.

We had a monopoly provider, which is a big company that provided services for many of the small islands. So, traditionally, have always not been able to match resources with that operator in terms of regulation. Liberalization came into being in Grenada through a negotiation between the operator and the governments. Because of this, certain agreements, which were signed, led to the formation of the legal framework. Here is where we have had our biggest challenges because there were many gaps in the legal framework, which did not work in favor of the Regulator having the power to do certain things. As a result of that, we had problems.

For instance, we had two competitors in the mobile market and they had interconnection agreements. The incumbent operator delayed the process unnecessarily and the Regulator could not do as much as he wanted to do because interconnection regulations were not in place at the time. So, we prepared a price cap, which is ongoing now for probably almost two years. There is a challenge there because the Regulator, at first, did not have the tariff regulation to work with. Secondly, because the interpretation of the Act, which the provider uses, is not the same one the Regulator uses. So, the provider took the Regulator to Court. And then there was a negotiated settlement between the Government and the operator.

The problem is that, in these negotiated settlements, we don't always get the best practices. For instance, in forming the price cap, as a Regulator, we would like to look at the long-run incremental cost for costing. On the other hand, the provider ensured, through an agreement with the government, that they could use the historical cost method. So, there is a conflict there. What I'm saying is that we've had problems with the legal framework; we had problems in preparing tariffs; we had problems because there are gaps in definitions. Even the legal framework has gaps in definitions. This is due to our unique situation because our liberalization process came into being through negotiation between the Government and the provider, and not through a study, specifically designed for preparing the legislation and piloting the process through.

Therefore, what I see as our biggest challenge is that the period we are in could be considered as a transitional period, where we have to go back and look at the legislation, look at the process and see if there is any way we can develop a strategy so that we can regulate properly to see how we can fierce the challenge of an operator that is very big and has a lot of resources beyond our capability. Thank you.

Clovis Baptista – Moderator: Thanks, Dr. Robert Finlay. I would like to invite Dr. Roxanne McElvane, of FCC.

Roxanne McElvane – US Federal Communications Commission: Thank you. I first would like to thank the BDT and ANATEL because I think this seminar has been really well organized. We got so much information that I think my head is going to explode. But I think it's very timely and very useful.

What I'm going to talk about for a few moments is something I would like to bring your attention to and that is the work that is going on in the ITU-D on this very issue. Back in 2001, at the ITU World Development Conference, Member States at that time agreed to study the issue of "enforcement practices". So, for the past year and a half, there's being on-going study with the objective of producing best practice guidelines. The United States is

involved along with ANATEL, from Brazil; we have two members from France – Mr. Mege, from Thales and someone from the ART in France; and one rapporteur from Srilanka. It is our job to pull together examples from our Member States and put together a set of best practices guidelines on very issues we have been talking about. We are going to meet tomorrow and Thursday, here in this building, to review the draft that we have. I just wanted to alert you to the fact that we are welcome to participate and I'll just give you a brief idea of what is in the document at this point.

We had to follow the structure that was adopted in Istanbul because that's what the membership of the ITU approved. The study groups function within the ITU family as a way of allowing Member States to make their contributions to what the ITU does. The ITU is our Union and, in the end, the guidelines that we produce will be our guidelines, once they are adopted.

We are looking at six areas, according to the way that the question was adopted. We're looking at the source of enforcement power, in other words, legislation. That is, what kind of authority and power people are being given from around the world, what are the problems they are finding with their legislation and what are their recommendations for best practices. We are also looking at practice and procedures, as well as sanctions and penalties. Another issue we're covering is how are regulatory authorities being organized and how they are using their resources. We also have a section on independent decision-making, and finally, we're talking about gender and enforcement. At this point, we have a number of recommendations. I believe we have 40 recommendations in total. They are preliminary, it's in draft form and we'd love to have your review of them, your input and comments on them. I think we have examples from 21 countries.

Enlisting to the discussions over the past couple of days, I think it's already been said that most of the regulatory authorities around the world really are facing the same issues. One of the things that we are looking at in particular are recommendations that might be very useful for developing countries in particular, although, I think it's an issue that developed and developing countries interested in.

I don't want to get into the content because we have a limited amount of time. I just wanted you to know that the document exists, it's on the BDT website and we'll be meeting tomorrow and Thursday to review it. Please, if you are not able to come, get a copy of the document and send us your comments. We expect to have a draft ready by the end of June. It will be presented in September, translated at least into French and Spanish.

I just wanted to make two comments because the Chairman asked us to comment on best practices. The first think that I wanted to mention was our section on gender and enforcement. What we are trying to do in the document is looking at the degree to which enforcing certain telecom laws impacts gender. For example, if you have a universal service program that is targeting rural areas and most of the population in that rural area are women. We are trying to look at the realities of women in the world and if you, as Regulator, are interested in evening out disparity in gender and trying to get other groups to have access to ICTs, these are things that you can look at. Another statistic shows that women, very often, are the majority of illiterate population. The rest of it is about all you've talking here and you're all very familiar with.

My final point is that I think that the discussions we've on dispute resolutions have been very good. I would like see that in more context. Any regulatory authority has got to have the ability to enforce the laws. I think the gentleman from Mexico made the point. Because they were not able to sanction their fines, people treated their inspectors that way. That's a core function of any regulatory authority. What I would like to see on the dispute resolution angle is to see that put in the context of how it helps Regulators and what areas is that appropriate. Perhaps it is in interconnection and may be not in the spectrum issues. But I wanted to make that point.

Clovis Baptista – Moderator: Thank you very much, Dr. Roxanne. Maybe by the end of the session, if you agree, you could complement your view. Now I would like to invite Dr. Gabriel Adolfo Jurado, Secretary-General to Colombian Ministry of Communications, to make its contribution to the debate. Thanks.

Gabriel Adolfo Jurado Parra – Colombian Ministry of Communications: Thank you very much. Due to short time, I will start my talking thanking ITU and ANATEL for their hospitality and kindness.

I believe we could find out, during this discussion, that the problems brought about by application and effectiveness of telecommunications-related rules and regulations are shared by all of us. Therefore, we should carry out joint effort that, maybe, could allow us to take advantage of experiences to pursue collective solutions, which would be later individualized to the specific circumstances in each country.

However, I would like to bring about four issues that called my attention along discussions, and that would become points of reflection to the work that, from now on, we have to develop to grant effectiveness and enforcement to telecommunications rules.

I believe we must carry out in-depth works on where regulation is inserted into legal framework in our different countries. I believe that thereon we may locate in that legal framework the extension of legal rules to be issued on regulation and, therefore, we may also set forth clear rules, not only to operators, not only to users, but also to judges in their interpretation of rules. Hardly judges, regardless how convenient they consider a decision by the regulatory authority, could sustain it if they think that such order is in opposition to the constitutional ordering. So, I believe we should focus on an initial effort towards effectively adopting regulatory structure, within the framework of constitutionality.

I believe it is worth to take into consideration relevant experiences of some countries concerning regulatory aspects on operators, which could also be imposed to users and consumers, to establish a circle of compliance to rules on telecommunications regulation. I am particularly referring to two cases in Colombia that, somehow, were interesting and successful. One, like in Bolivia, concerns the generation of Basic Supply of Interconnection that has, to some extent, decreased the number of interconnection conflicts, because we set the conditions and operators must obey them. Somehow that facilitates the compliance with interconnection obligation.

The second point I would like to refer has to do with incentives and punishments. We believe in the relevance of establishing a regulation of incentives and punishments, wherein would be established the parameters for granting operators either an incentive, or a punishment.

That is being particularly worked out in Colombia in relation to tariff issues. Thus, the regulatory authority establishes methodologies for fixing minimum and maximum costs in tariff-related issues. However, amongst such parameters, some figures of incentive are also outlined, such as compliance with quality standards, in such a way that who complies 100% with quality of services provided to users, becomes closer to tariff maximum threshold. And, in fact, who complies less with quality goal, will be closer to tariff floor. Somehow, it generates mechanisms to have operators complying with quality rules.

The third point of reflection is the mechanism of protection to users and citizens, which must be established. I believe our countries should undertake strong efforts, focused on granting compliance with consumers' rights. In fact, our legislations establish several rights, but citizens rely on few mechanisms and real possibilities to make their rights effective. There are broad procedures, processes usually take long time and, finally, people choose for not stressing themselves. So, there should be great efforts towards building up mechanisms to grant effective rights to users.

Finally, I would like to bring your attention to a topic that we have failed in solving, i.e., the technical issue. Here, it should be established to which extent one may in fact exercise technical control over telecommunications operators, concerning compliance with rules. And, maybe we should then set up for some technical self-regulation mechanisms because, in fact, it would be impossible for an entity that inspects compliance with technical rules to grant 100% of compliance with them. It would be impossible for an authority to verify if each antenna, as commented this morning, is 5, 10 or 15 centimeters higher than what is established by law; if the radiation angle of a broadcaster is really properly oriented; if in fact the transmission bytes are compliant with the established in law; etc. There is a wide range of technical issues, and it leads to the need of establishing a mechanism to grant their compliance. In Colombia, we are undertaking strong efforts but, I have to tell you, it would be as impossible as assigning one policeman to each telephone, to check if rules are complied. I believe that there is a huge challenge posed to our countries to succeed in generating mechanisms that, somehow, come to help in self-regulation, upon the participation of authorities, operators and citizens. Thanks.

Clovis Baptista – Moderator: thank you very much, Gabriel, for your outstanding contribution. Now I would like to invite Dr. George Mosse, Executive Director of the Public Utilities Commission of Bahamas.

George Mosse – Public Utilities Commission of Bahamas: Thank you, Mr. Moderator. First of all, I wish to express gratitude to the ITU and ANATEL for the invitation to participate in this seminar.

We have got three main legal instruments that govern the regulation of telecommunications in the Bahamas. The first one is the Public Utilities Commission Act itself, which has some rules that indicate how the PUC should conduct its own affairs. We then have the Telecommunications Act, which is about the telecom sector itself. And we have a more detailed document, the Telecommunications Sector Policy, which serves as the government's instructions to the PUC and by a section in the Telecom Act, the PUC is obliged to implement that policy. Finally, we have the individual license.

The Telecom Act came into operation in March 2000. So, we now have a lot of experience in this work. But, I will just outline to you the framework within which we are supposed to carry out our enforcement jobs. The PUC is empowered to conduct inquiries. We can carry out investigations, we've got the power to collect information and we can impose penalties on licensed operators. I say licensed operators because, if someone is providing telecommunication services without a license, that is a criminal offense and our principal task is to hand a report to the police.

If the PUC suspects that an operator is not operating in accordance with its license, we are required to issue a notice to the operator, explaining how we feel he is not conducting himself in accordance with his license. The notice will also contain what we call the draft instruction, which will outline what we intend the operator to do or not to do. The operator is given, by law, 28 days to respond to this notice. If the PUC is satisfied with the explanation or the response to the notice, then, that is the end of the matter and we withdraw the draft instruction. If the PUC is not satisfied with the response or the explanation, the PUC will issue the instruction, which will be the same as the draft instruction that is contained in the notice. This would outline basically what we would expect the operator to do or not to do. If the operator carries out the instruction, then, that is the end of the matter. There is nothing else supposed to take place. However, if the operator fails to comply with the instruction, then, the PUC can issue sanctions, or penalties and we can issue a public sanction, or we can fine up to three hundred thousand dollars or we can execute any other remedy we feel we can, under the context of the law. Of course, somewhere along the line, the licensee has the right to appeal to the Supreme Court. I wish to assure you that they actually do. So, even though we've only been around for about 4 years, we've been to Court many times. I'll just stop right there. I believe I was within the time, right?

Clovis Baptista – Moderator: Thank you, Mr. Mosse. You have complied with time limit. Finally, I would like to invite Dr. Luis Gerardo Canchola, General Director of Contentious of the General Telecommunications Commission in Mexico.

Luis Gerardo Canchola Rocha – General Telecommunications Commission: Thanks. I will try to make a brief presentation, to avoid going beyond 5 minutes. I believe I will summarize what all representatives making up the Panel have said in relation to their findings towards better applying regulations on telecommunication matters.

In principle, it is evident that we need a Regulatory Entity empowered. We need a Regulator with enforcement powers. Without this feature, it would be worthless. It is important to have Regulatory Entities fully exercising the duties of oversight and surveillance. Therefore, we may assist and cooperate with concession holders in meeting their obligations.

Concerning sanctions, it is clear that Regulator is not aimed at sanctioning. Our purpose is to provide services to collectivity. However, to do that we must work, we must impose ourselves. Surely, imposing sanctions should not be a purpose, but it is a necessary evil we must appeal to. Such sanctions should be carried out through expedite, transparent and fair procedure, and must be proportional to the violation perpetrated.

Referring to resolutions, it is important that resolutions issued by authority are endowed with effectiveness. It means that they should have sound basis, be motivated, but timely. In many instances concerning telecommunications dynamics, where we are a step behind in terms of

regulation. We have huge problems with by pass, huge problems with IP. These are issues where we have not yet developed enough and we must work hard to have timely resolutions.

In Mexico, in interconnection procedure, the parties are expected to decide within the deadline established, and if one of the parties does not decide, the authority intervenes on it. A matter where agreement is usually reached is tariff. In tariff matters, the parties always reach agreement. And we should retake what we have talked yesterday about courts. Three or four months ago, I saw a resolution by a judge settling an interconnection disagreement on tariffs, dating back to 2001. And the judge, in its decision, obliged the Regulatory Entity to issue a new tariff to 2001. We are in 2004. So, there was nothing to be complied with. I said: How do you want us to comply with it? They have reached an agreement. There is an agreement dated 2002 and a rule.” Then, we observe little effectiveness in judicial resolutions.

Thus, I restate the need for establishing courts, or qualifying them. I do not necessarily advocate for establishing a specific court for telecommunication issues. In our country that would be very complicated, due to our legal system. Mexican legal system is very inflexible. Authorities’ powers must be expressed. Our Telecom Act, dated 1995, following international trends, is a framework law, where regulation specific to utilities allow regulations to be issued by the Executive. Courts have not clearly agreed on that. Only now we may rely on a resolution by the Court, validating a resolution issued by the Executive. In fact, that is a sensitive matter. So, I insist in urging the adjustment of telecommunications regulation and in building awareness among judges and courts to duly apply it. Finally, that would result in the applicability of telecommunications regulations. Thank you very much.

Clovis Baptista – Moderator: Thank you, Dr. Luis Gerardo. I would like to apologize for being so strict in managing time, but I did that to open to audience the session of questions and induce them to address questions to the Panel.

Pearl Antonius – Telecommunication Authority from Suriname: It’s a pity that Mr. Morgan went away because I had some questions for him, but perhaps Mr. Mosse could give an answer to the questions I have. Mr. Morgan said that in the year 2003, Jamaica reached the stage of full liberalization in the telecom sector. He pointed out that it was done in three phases. The Bahamas had a situation that, in 2002, the new Telecommunication Act came into force. My first question is: Did it happen into phases as well? How many years did it take to reach that stage? How cooperative the monopolist of that time was? Or was it not? What were the main obstacles you were confronted with?

George Mosse – Public Utilities Commission of Bahamas: The Telecom Act came into being at about the same time that the government was trying to sell the State-owned company. In the Act itself, was mentioned in general terms that the State-owned telephone company would state special rights as spells out in the telecommunication sector policy. Those rights basically were that the company was to have exclusivity with respect to Voice Services for three years after the privatization of the company and was to have mobile exclusivity for one year after the sale of the company. It has turned out that the government didn’t succeed in selling the company. So, at this point in time, we are preparing comments to the government that the policy should be revisited so that there can be another start in the sale of the company.

As regards cooperation, it is very difficult to get full cooperation for many operators. If the entity is State-owned, it presents some very challenging situations. We had a unique experience where the sale of the company was initiated by one administration, which didn't complete it and now we have a new administration, which declared that it would carry on with the project that was initiated by the previous administration. However, the reality is that not all of the Ministers in the current Cabinet probably share the same enthusiasm for the sale of the company as those in the other administration did. So, these are very challenging times.

In the meantime, we have a cable TV operator that has Internet and data licenses and they also operate submarine cable. They are just trying to squeeze everything out of the market that they can, within the confines of their licenses. All operators get angry when a major operator tries to deceive you. The cable TV operator has a subsidiary that operates a submarine cable. They were ready to lay a second submarine cable. We signed a notice to the company, but again, the law says we have to give them 28 days to respond. I don't know what the response will be, but while we are in the process of taking certain action, they can probably go to the Court and say that they feel threatened and will probably take out some restraining order. It is just a lot of legal play, but that's what our law allows. So, there are challenges on all sides.

Clovis Baptista – Moderator: Thank you, Mr. Mosse. In fact, it is of utmost relevance to know the experiences of every country represented herein. I believe this is the major contribution brought by events of this nature. I would like to grant the floor to Mr. Mege, who wants to ask a question.

Philippe Mege – Thales: Thank you very much. I would like to talk a little about our experience in control self-regulation. In the European Union, we believe that Regulators should analyze legislation and planning issues, aiming at the welfare of citizens rather than of operators. Furthermore, it should be concerned with what happens in an industry of new pieces of equipment and new services. Why? Every new service has been made by given entrepreneurs worldwide. Then, with power, such services and pieces of equipment are imposed, previously to regulation. Market has accepted them, so, they must be regulated. Regulators should observe that panorama, since users will ask for that. Europe aims at providing citizens with a cellular phone network endowed with mobility and ultra wideband interactivity. For us, television is a cellular network. So, self-regulation is very simple for existing services as, for instance, GSM system. Each operator has a management center, where it gathers technical information. So, according to law: You should provide me access to your management center. If you do not want so, you have no concession. Penal responsibility is assigned to industry, but power is assigned to Regulator.

We are talking about globalization, and then we should see what happens in other countries, and which of them have a solution. Furthermore, to the Regulator it is a very important source of financial resources. For example, in Europe there are over 50,000 installers. And every year they pay a license. Then, all mechanisms existing in the market are to be analyzed.

Clovis Baptista – Moderator: I would ask if any member would like to comment the points presented by Mr. Mege.

Gabriel Adolfo Jurado Parra – Colombian Ministry of Education: Thank you. In fact, when I mentioned self-regulation, I meant these concepts presented by Philippe that result, for sure, of this work of establishing the regulation extension. It will not come automatically. Maybe it will remain in a perfect market, where still remains a long way to reach it. But, since such conditions must be brought to market, self-regulation starts by defining, in rule, the mechanisms to self-regulate us.

Clovis Baptista – Moderator: Thank you very much. I would like to know if the audience has any question to ask.

Participant: Roxanne, I would like to know if you can speak a little bit about enforcement related to the unbundling regulation in the United States.

Roxanne McElvane – US Federal Communications Commission: As you know, we've a couple of Court decisions that have pretty much thrown a number of issues up in the air. Currently, what we are left with is that, fundamentally, interconnection is required. The FCC had identified certain points in the network that were considered technically feasible where carriers would have to allow interconnection. That's not even a settled issue at this point. The two main issues are – where can you connect and how much you to pay for it. We had a Commission that determined that, in order to advance broadband deployment in the United States, incumbent carriers no longer would have to allow interconnection with that portion of their network that could be used to transport high-speed data. That was not a requirement, but for the other portion of the network, the low frequency portion of the line, unbundling was still required. Each individual state would make the determination of when that no longer had to happen. In other words, on a case-by-case basis, there is enough competition in South Dakota now and this is no longer required. A number of the companies which felt that they were having to sell portions of their network below cost, said: "We'll sell this portion of the network, but not that portion". So, the two decisions that were left in the hands of the state were: (1) when we no longer have to unbundle at all and (2) what is in the universe of unbundling, that is, which portions of the network and which pieces can be included or excluded in the bundling. So, a number of people had problems with that because we have a national network and people who felt that the government should be involved in promoting broadband felt that we should have continued to require carriers to sell that portion of their network that can be used to provide broadband services at the prices that we determined that they should be sold, and that the other companies were saying they were too low. Other people felt that the problem with the decision was that, if you were going to let every individual state determine whether or not you should unbundle and which pieces should be unbundled and the prices for unbundling, we would have one huge mess. We would have lots of work for lots of lawyers, but that's no way to run a Nation.

What we are left at this point is that the Court stepped in and said: "We are going to allow the decision to stand as it does not require companies to sell off the portion of their networks that can be used for high-speed data". So, that's not a requirement. But we are overturning the decision that says each state can determine where you can unbundle, when you can unbundle, when you cannot unbundle and how much you have to pay for it, because we think that's a big mess.

So, at this point, our Chairman has appealed to individual companies to work out negotiated agreements because these rules that blow everything up go into effect in early May. We are almost there, maybe another two weeks. So, we have a mess on our hands in the US.

Clovis Baptista – Moderator: Thank you very much, Roxanne. Does anybody else want to ask a question?

Philippe Mege – Thales: We should observe what happens in other countries. In China, even municipalities grant licenses. For instance, in the city of Canton, we have three pilot-projects. According to law, the city of Canton, Xangai, may grant licenses and holds only one court of local Government. And when you leave Canton, the province grants license, without informing the Central Power. Each one has its own telecommunication management system, its controlling system, and so on. There is a regulation. The major one is the Regulation on Information Security, mainly on Internet and frequency. But is very hard to implement such a system in this country. We have too many interlocutors.

Clovis Baptista – Moderator: I would like to ask a question. I want to focus on the issue of broadband access. Apparently, we in the Americas are underdeveloped in relation to Europe and Asia. For us, in CITELE, this is a core element to build up the global information society. I would like to ask the members of this Round Table that want to answer it. How do you see current situation, not only at national level, but at the level of our region, since we are talking about commercial integration of Americas. Would there be any good practice to be included in the “Blue Book” that could assist countries in their planning and induce market to invest in this business? I would like to know if anybody in this panel would like to make any comment on this issue.

Roxanne McElvane – US Federal Communications Commission: First of all, there is more than one way to achieve that. As I had mentioned earlier, the problem of regulating to achieve broadband access is that the incumbents who already have networks don’t want regulation to be imposed upon them. They don’t want to make it more expensive for them to deploy network. In the United States, the reason why we do not require our incumbents to release the portion of their networks that can be used for broadband is because we don’t want to create a disincentive for those companies to continue to build out. What they tell us is: “I’m not going to invest the millions that I have to build out a broadband network that I then have to turn around and lease to my competitors for below cost”. That’s the argument that they have made to us. That strikes me as a sensible argument. The other side of that coin, though, is that we want broadband to be built in this country and we’re going to force them to do it.

But we’ve also seen examples where companies have claimed that they were not receiving the adequate compensation for leasing out their networks and then turned around and spent literally billion of dollars in auctions to buy spectrum for wireless companies. Yet, the argument on the part of the carriers is that it is not economically profitable for them and the regulation is what is making it unprofitable. That strikes me as a persuasive element. So, if you’re talking about interconnection and you are forcing people to interconnect and you’re also studying prices, that can be a disincentive for them to reinvest into the network and to build out advanced networks that then have to lease back out.

Clovis Baptista – Moderator: Thank you very much. I would like to know if the member of the Table, from other countries, other economies, can see any way for stimulating the development of such broadband access in the region, reaching remote sites, rural areas, through satellite-based platforms, etc. I would like to hear other opinions on this issue.

Gabriel Adolfo Jurado Parra – Colombian Ministry of Communications: I believe Roxanne has mentioned a crucial point, the issue of regulation. I believe that as less entry barriers – including regulatory barriers – we pose, the best will be broadband development. The second issue effectively relates to costs. I believe that many of our countries face problems in development broadband, not that much for costs, but for the market it may come to generate. Somehow, operators come to markets with profitable economic model. I believe countries with poor economic resources face a dilemma to generate incentives to allow operators to enter into broadband market. Otherwise, it will be very hard because the barrier will be economic, rather than regulatory. I believe that, as we can generate incentives to have operators joining the broadband market, it should facilitate the development of our Latin American countries. Thank you.

Clovis Baptista – Moderator: Thanks for your contribution. I should inform you that ITU signalized to me that our time is over. I would like to thank you all. It was a pleasure and an honor to have shared this closing panel with you.

Coordinator: We would like to thank the members of the Table and Dr. Clovis Baptista, for heading the Round Table, and would like to ask you to return to your seats, for the closing ceremony.

CLOSING

Coordinator: To make up the Panel to the Closing Ceremony, we invite: Mr. Juan Zavattiero, Chief of ITU Regional Office to Americas, and the Vice-Rapporteur of ITU-D Question 18/1 and rapporteur to that same question within the scope of CBC-7, in Brazil. With the floor, Mr. Juan Zavattiero.

Juan Zavattiero – Chief of ITU Regional Office to Americas: Thank you very much. Good night, I would say by now. We will have a brief closing session due to short time. The high-quality of presentations by speakers and the great incentive provided by participants clearly was an excellent framework to this seminar. Inclusively the dedication to this seminar was outstanding. I could notice that, during coffee breaks, the discussions continued, the topics continued. Right now, due to time restraints, we had to ask Dr. Clovis to finish.

Surely the discussions held here are an excellent preamble to the meetings to be held as of tomorrow. So, let me remind you that tomorrow and Thursday the Rapporteur Group will hold a meeting on Question 18, which deals with the powers of national authorities. The meeting will be held at *Sala Ipanema*, in the mezzanine top floor. Still on the 22, in parallel to Question 18, a seminar will be held about issues concerning the implementation of IP telephone system in developing countries. The seminar will take place in this room. I would also like to remember you that on Friday, 23 and Saturday 24, the Rapporteur Group to Question 19 will meet and discuss the implementation of IP telephone services in developing countries. The seminar shall be a preamble to that meeting on Question 19, such as this seminar has been the preamble to Question 18.

I would like to thank all staff that worked here, mainly those who did not come because are working hard behind the stage, the *Girls of the Room*, mainly the interpreters, the speakers – who delivered excellent presentations - , the participants who also had an outstanding participation and, particularly, I would like to thank ANATEL for the support to hold this seminar. For you all, congratulations and good night.

Coordinator: We will now listen to Dr. Ornana Luiza Azevedo de Melo, for the final words.

Ornana Luiza Azevedo de Melo: Good night. I will be brief, but would like to thank the participation of all in this seminar. First of all, I would like to express my surprise and satisfaction for the number of participants that came to exchange experiences with us in this event.

This event was born within the scope of Question 18/1, the rapporteur of which is our colleague Roxanne MCElvane, of the United States FCC. In the group, almost entirely made up by women, came about the idea of holding this event in Brazil and, who knows, bring the attention of our friends and colleagues in the Americas. We assembled the event, sent invitations and, surprisingly to me, we did not imagine such a huge participation of our colleagues, who delivered fantastic presentations on several topics. So, on behalf of ANATEL, I would like to thank the interest, participation and efforts of you all. It was an odd opportunity to exchange ideas and experiences on such relevant issues.

I could hear, with satisfaction, many of you expressing your curiosity in knowing if problems faced in enforcement issues are not individual issues of each country. It became very clear that this is a problem posed to all countries. So, solutions are not individual ones; eventually, they may be collective solutions, adjusted to concrete cases. So, we had great pleasure and satisfaction in developing this activity here, and we hope this is the first meeting of several other meetings, because union makes power. I thank you all. I hope you enjoy Rio de Janeiro. The city receives us with open arms. Thanks.

Coordinator: Thank you all for your presence. Good night.