

## Mexico adopts one of the strictest net neutrality frameworks in the world

The Mexican constitutional reform in telecommunications published last year acknowledged Internet access as a human right. The recent Federal Telecommunications and Broadcasting Law (the "Law") has introduced many new concepts, such as net neutrality, which was previously unregulated in Mexico. For more information about the constitutional reform and the Law, please refer to the previous article in this issue.

Despite its existence and application years before, net neutrality regulation has recently become a hot topic worldwide and international regulators have adopted different positions. For example, the European Parliament recently tabled proposals to: (i) differentiate specialised services from Internet access services and ISPs would be able to offer the former only if network capacity is sufficient to provide the latter; (ii) narrow the concept of network management; and (iii) prohibit ISPs from blocking, slowing down, degrading or otherwise discriminating against specific content, except for network management.<sup>1</sup> In the United States, the Federal Communications Commission ("FCC") submitted the highly debated Open Internet Notice of Proposed Rulemaking for comments. One of the most disputed proposals of the FCC is that ISPs may undertake individualised bargaining with upstream content and service providers in some cases.<sup>2</sup>

The concept of net neutrality regulated by the Law applies not only to licensed operators of public telecommunications services in Mexico, but also to authorised entities that commercialise telecommunications services (both considered as "ISPs"). The law provides that ISPs shall provide Internet access services in accordance with the capacity, speed and quality contracted by users, independent of the content, origin, destiny, equipment or application used, as well as of the services provided through the Internet.

The Federal Institute of Telecommunications (the "Institute") shall issue general guidelines to further regulate net neutrality (the "Guidelines"), which must be consistent with the following principles:

(i) free election; (ii) non-discrimination; (iii) privacy; (iv) transparency; (v) traffic management; (vi) quality; and (vii) sustained infrastructure development.

Free election means that Internet users should be able to access any content, application or service offered by an ISP without being limited, degraded, restricted or discriminated on its access and with the possibility of using any kind of instruments, equipment or devices able to connect to the network ("technological neutrality").

Under the non-discrimination principle, ISPs are prohibited from obstructing, interfering, inspecting, filtering or discriminating vis-à-vis any kind of content, application or service over their networks.

In addition, ISPs will have to comply with the following obligations: (i) protect privacy of users and security of the network; and (ii) publish on its websites information concerning the characteristics of the service provided, including the policies applicable to traffic management, network management authorized by the Institute, speed, quality and warranty of the services ("transparency").

The ISPs may take measures or actions necessary for "traffic management" and "network management" under the policies approved by the Institute, in order to ensure the speed or quality of the service contracted by the user, provided that the foregoing does not constitute a practice contrary to efficient competition.

Also, the ISPs should maintain the minimum "quality" standards established for that purpose in the Guidelines. Likewise, the Guidelines shall promote the sustained growth of the telecommunications infrastructure.

Failure of an ISP to comply with the Mexican net neutrality obligations against blocking, interfering, discriminating, delaying or unfairly restricting access rights of any user, will result in a fine of between 1% and up to 3% of the ISP's revenues.

Although a more detailed regulation of net neutrality will be included in the Guidelines, the Law envisages a fairly clear purpose to promote net neutrality without

<sup>1</sup> See *European Parliament votes to strengthen net neutrality in the Spring* edition of this GMC Quarterly.

<sup>2</sup> See *Open Internet NPRM*.

restrictions such as those discussed in other countries. Moreover, Internet access is considered as a human right and therefore net neutrality will be likely to be protected similarly. On their face, the Mexican rules on net neutrality are among the strictest in the world. They may inspire other countries or regions that are considering net neutrality legislation, including the European Union as it considers net neutrality rules under the “Connected Continent” package.

However, Mexico has not faced the problems and litigation that, for example, the United States has experienced in the past years regarding net neutrality, since it is a new concept in the regulatory framework. At some point in time, such a concept and the Guidelines may be subject to interpretation and litigation, especially as technology evolves. ■

With thanks to Rodrigo Méndez.



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