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NAFTA and Its Impact on the Privatization of Mexico's Telecommunications Industry

*Sergio E. Aleman**

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I. Introduction

With the enactment of NAFTA, the mouth of the U.S. telecommunications industry watered as it saw huge prospects by entering into Mexico.¹ Talk of entering Mexico's nine billion dollar industry surfaced.² Now, in 2001, the telecommunications industry is left scratching its head. Only recently did AT&T and MCI WorldCom settle their dispute with Mexico's telecommunications giant Telmex.

The dispute arose out of AT&T and MCI WorldCom's desire to provide long distance service to Mexico. NAFTA, at the time of its enactment, was seen as the great privatizing force in Mexico's telecommunications industry.³ However, NAFTA had very little impact in the industry's privatization. Instead, market forces took over the privatization of the telecommunications industry in Mexico. The dispute between AT&T, MCI WorldCom, and Telmex exposed the inadequacies of NAFTA with regard to Mexico's telecommunications.

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1. See Rafael X. Zahralddin & C. Todd Jones, *Venture Capital Opportunities and Mexican Telecommunications After the Passage of the NAFTA and the Ley de Inversion Extranjera*, 20 DEL. J. CORP. L. 899 (1995) (stating that NAFTA and the Foreign Investment Law of Mexico provided immediate benefits for U.S. industry in Mexico's telecommunications market).

2. See David Newman, *Mexico Opens Up: Deregulation Brings Free Trade to Telecom*, 24 DATA COMM. 96 (June 1995).

3. *Id.*

Part Two of this article will go through the history of the Telmex privatization. Part Three will discuss the complaints that the United States launched against Mexico to the World Trade Organization (WTO). Part Four contains an examination of the NAFTA provisions directed at telecommunications and their effect on the industry. Furthermore, Part Five will examine the steps taken by Mexico in opening up its telecommunications market to competitors. The provisions set out in the WTO Basic Telecommunications Agreement are discussed in Part Six of this article.

II. History of Telmex

Mexico's telecommunications industry came under government control in 1972.⁴ The Mexican government created a state-owned company called Telefonos de Mexico, S.A., otherwise known as Telmex.⁵ However, like most state-owned companies, Telmex became synonymous with inefficiency and corruption.⁶ Before its privatization, Mexico's telephone system still consisted of a pulse dial system.⁷ Often uninvited third parties involuntarily joined a two-party telephone conversation because of trouble with the telephone circuits.⁸ Customers who filed complaints with Telmex found it was too much of a hassle and repairing a phone line usually took more than the twenty-one days that Telmex had promised its customers.⁹ During this time, only six per one hundred people had phone lines.¹⁰

In 1990, under Mexican President Salinas de Gortari, Telmex was privatized. Telmex was sold to an international consortium made of Southwestern Bell (SBC), France Telecom, and Grupo Carso of Mexico.¹¹ Privatizing Telmex was seen as necessary to foster economic growth, especially in light of the modern information society.¹² As a result, Mexico's Ministry of Communications and Transportation (SCT), who in the past had direct control of Telmex, was now reduced to a mere regulatory agency.¹³ Telmex was expressly granted a six-year monopoly by the Mexican government in providing local and long distance service.¹⁴ Additionally, Telmex was given the power to establish its own rates for interconnection. This has given Telmex a tremendous advantage because

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4. See Brent Lee Vannoy, Comment: *Mexican Telecommunications: Privatization and NAFTA Open the Door for U.S. Expansion into Mexican Markets*, 17 HOUS. J. INT'L L. 309, 312 (1994).
 5. *Id.*
 6. See Gregg Jones, *Mexico Invites Foreign Partnership in Phone Co.; Bidding Opened for Privatization of System*, WASH. POST, Sept. 21, 1989, at E01.
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. United States-Mexico Chamber of Commerce, Telecommunications, *Business Opportunities in Telecommunications* (Oct. 1999), at <http://www.usmcc.org/n7.html>.
 11. Martha M. Hamilton, *With Telmex, Profit May Lie in Long Haul; Analysts See Strong Prospects for Mexico's Telephone Giant*, WASH. POST, Feb. 8, 1995, at C01.
 12. *Id.*
 13. See Vannoy, *supra* note 4, at 317.
 14. See Aileen A. Pisciotta, *Telecommunications in Mexico: A Market in Transition*, MEX. LAW & BUS. REPORT, Oct. 31, 1997.
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it owns all the telephone lines, which its would-be competitors must access in order to compete with Telmex.¹⁵

The privatization of Telmex was tainted with cronyism.¹⁶ Carlos Slim, a long-time friend of then President Salinas, led the consortium.¹⁷ Telmex was sold at a fraction of its actual value.¹⁸ After its so-called "privatization," Telmex raised its local phone rates drastically.¹⁹ These rate hikes were easily achieved under the government-granted six-year monopoly because no competition was allowed to counter Telmex's control of telecommunications.²⁰

In 1993, Mexico passed its new Foreign Investment Law (FIL),²¹ further liberalizing its telecommunications industry. The FIL limited foreign ownership in basic telephone service to 49 percent.²² Furthermore, it allowed for full foreign ownership of value added services.²³ By 1997, the Telmex monopoly was to be over and the Mexican telecommunications was to be open to competition.²⁴ Long distance providers got in line to take advantage of this new opportunity. In 1996, the Mexican government was prepared to allow six carriers to enter the market and compete with Telmex, some of which included AT&T's Alestra and MCI's Avantel.²⁵

These were substantial steps in privatization for Mexico, given Mexico's past fear of foreign investment. NAFTA was then hailed as the defining moment for privatizing Mexico's telecommunications industry.²⁶ NAFTA's goal was to eliminate all tariff barriers, including those in the telecommunications industry.²⁷ U.S. domination of Mexico's telecommunications sector seemed imminent. However, by the end of the year 2000, Telmex still controlled all of Mexico's local telephone service and two-thirds of the long distance market.²⁸ It is also important to note that Telmex accounts for one-fifth of Mexico's stock market.²⁹ This gives Telmex great influence on what laws and regulations the government of Mexico is to implement because of the fear that any such measures

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15. See Stephen I. Glover & JoEllen Lotvedt, *The Mexican Telecommunications Market: The Interplay of Internal Reform and NAFTA*, 3 NAFTA: L. & BUS. REV. AM. 23, 29 (Winter 1997).
 16. See Andres Oppenheimer, *The Banquet*, at <http://www.pbs.org/wgbh/pages/frontline/shows/mexico/readings/banquet.html> (last visited Mar. 4, 2001).
 17. See Luis Granovsky, *Untitled*, AGENCE-FRANCE, Dec. 10, 1995, at 1995 WL 11483300.
 18. *Id.*
 19. See Karen Hansen-Kuhn, *Privatization in Mexico: Telmex* (April 1997), at <http://www.50years.org/factsheets/telmex.html> (explaining that Telmex was allowed to raise prices to Mexican consumers in order to make the sale of Telmex more attractive).
 20. *Id.*
 21. Ley de Inversion Extranjera, D.O. Dec 27, 1993 [hereinafter FIL].
 22. FIL art. 7, *supra* note 21, at 1010.
 23. *Id.*, at 1011.
 24. See Hamilton, *supra* note 11.
 25. *Id.*
 26. See Zahralddin & Jones, *supra* note 1, at 932.
 27. Canada-Mexico-United States: North American Free Trade Agreement, Dec. 17, 1992 (entered into force Jan. 1, 1994), 32 I.L.M. 289, 296 (Mar. 1993) [hereinafter NAFTA].
 28. David Luhnnow, *U.S. Is Set to Ask WTO to Investigate Mexican Telecoms*, WALL ST. J., Dec. 12, 2000, at A23.
 29. *Id.*
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will impede the Mexican economy.³⁰ This also gives Telmex a significant advantage in resisting the rate at which privatization is to take place in Mexico.

Long distance competitors have had to rely on market forces to open the way for greater privatization of Mexico's telecommunications market, rather than relying on the provisions in NAFTA. As soon as AT&T and MCI entered the Mexican market, disputes arose over Telmex's interconnection fees.³¹ This unveiled the ineffectiveness of NAFTA with regard to telecommunications. These legal disputes were to last four years.³²

III. The WTO Complaint

In 2000, the United States Trade Representative (USTR) decided to file a complaint with the WTO.³³ At the same time, Telmex was trying to enter the U.S. market by allying itself with Sprint and SBC.³⁴ Seeing that Telmex was not reducing its rate, the USTR resorted to trying to block Telmex's expansion into the U.S. market.³⁵ AT&T and MCI WorldCom pressured the USTR to file the WTO complaint against Mexico for failure to open its telecommunications market.³⁶ The complaint was specifically targeted at the Mexican government and not against Telmex. The complaint essentially raises three charges, but the main issue of dispute is the high interconnection rates Telmex charged its competitors.

First, it alleges that Mexico has allowed Telmex to maintain and abuse its position as the country's dominant carrier of telecommunications services.³⁷ In fact, Telmex has actually increased its market share since it was privatized.³⁸ It accuses the Mexican government of failing to enact regulations that would prohibit Telmex from denying U.S. competitors access to its phone lines, establishing predatory rates, and refusing to pay competitors their fees. This goes against the WTO Basic Telecommunications Agreement discussed below. Secondly, the complaint accuses Mexico of allowing Telmex to charge its U.S. competitors unreasonable interconnection fees to access Telmex's public networks.³⁹ Although the *Comision Federal de Telecomunicaciones* (COFETEL), Mexico's telecommunications regulatory agency, has ordered Telmex to cut its fees significantly, these rates have still been unsatisfactory to U.S. competitors. Related to this charge is the allegation that U.S. competitors have had to build their own telecommunications infrastructure in

30. *Id.*

31. See David Luhnnow, *Telmex, Rivals Trying to Reach Access Accord Before Tuesday*, WALL ST. J., Dec. 7, 2000, at A21.

32. See David Luhnnow, *Telmex to Get \$140 Million from Rivals*, WALL ST. J., Jan. 3, 2001, at A10.

33. *Id.*

34. See Elinor Mills, *FCC Rejects AT&T Request to Keep Mexican Phone Company out of U.S.* (Aug. 25, 1998), at <http://www.nwfusion.com/news/0825telmex.html>.

35. *Id.*

36. See *Telmex Reaches Agreement with Two Principal Competitors*, SOURCEMEX: ECON. NEWS & ANALYSIS ON MEX., Jan. 1, 2001, available at 2001 WL 10229481 [hereinafter *Telmex Reaches Agreement*].

37. See Kim Sunderland, *U.S. Brings Telecom Dispute with Mexico to WTO* (Sept. 15, 2000), at <http://www.phoneplusinternational.com/articles/091rnew1.html>.

38. *Id.* Telmex has increased its share of the market from 74% to 81%.

39. *Id.*

order to avoid using Telmex. Finally, there is a disagreement on what standard should be used in setting interconnection fees.⁴⁰

There are advantages to bringing a WTO complaint, rather than a NAFTA complaint against Mexico. The most forceful advantage involves external factors. A WTO complaint is designed to protect a country's industrial sector as a whole.⁴¹ NAFTA only creates a dispute resolution process between two parties.⁴² There are only three signatories under NAFTA. This dilutes the leverage that political pressure brings to another member state. A state involved in the dispute may also enlist other Member States that have similar concerns about the outcome of a trade dispute.⁴³ This puts significant political pressure on a party with adverse interests.

Another major advantage in bringing a complaint to the WTO is that its provisions over a wide range of subjects have already been tested.⁴⁴ Although WTO panel decisions cannot set precedent, they do provide for transparency and stability in trade disputes.⁴⁵ In contrast, NAFTA's dispute resolution provisions are relatively new and have only been tested in certain areas.⁴⁶ Furthermore, it may be the practice of a NAFTA dispute resolution panel to look at prior WTO panel decisions for guidance.⁴⁷

In Mexico's case, worry spread throughout Mexico as a result of the USTR's actions. Mexico's economic growth was due, in most part, to foreign investment.⁴⁸ A WTO complaint might scare off foreign investors who may see Mexico as incapable of providing a transparent system for doing business.⁴⁹ Also, both AT&T and MCI had threatened to pull millions of dollars in investments out of Mexico.⁵⁰ Mexico, in fear of the effects of such a pull out, decided to try and negotiate a settlement. These types of market forces have privatized Mexico's telecommunications industry.

IV. NAFTA

NAFTA does little to protect U.S. long distance providers because it does not specifically cover investment in basic telecommunications, which includes long distance service.⁵¹

40. *Id.*

41. See David A. Gantz, *Dispute Settlement Under the NAFTA and the WTO: Choice of Forum Opportunities and Risks for the NAFTA Parties*, 14 AM. U. INT'L L. REV. 1025, 1088 (1999) (stating that the WTO provides for broader "peer pressure" for compliance to the WTO provisions).

42. *Id.*

43. *Id.* at 1044.

44. *Id.* at 1088.

45. *Id.*

46. *Id.*

47. *Id.*

48. See John Ward Anderson, *MCI, AT&T Find Mexico a Bad Connection; Nation's Former Monopoly Phone Firm Proves Tough Rival to U.S. Giants in Deregulated Market*, WASH. POST, Feb. 2, 1998, at G01.

49. *Id.*

50. See Vannoy, *supra* note 4, at 328.

51. *Id.*

NAFTA allows each member to restrict foreign ownership in basic telecommunications services and their availability to international competition.⁵² Furthermore, NAFTA fails to protect a carrier's ability to interconnect to domestic networks.⁵³ NAFTA does have provisions directly addressing access to networks and services, but these provisions are undermined by the exceptions allowed to the NAFTA signatories.⁵⁴ These exceptions allow a member nation to restrict access to networks when public safety is involved, to ensure integrity of the telecommunications system, and to secure the privacy of individuals.⁵⁵ The overall effect of these exceptions is that NAFTA fails to protect a carrier's right to interconnect to a public network.

NAFTA does dedicate itself to protecting enhanced telecommunications services.⁵⁶ Enhanced telecommunications includes things such as voice mail, facsimiles, electronic communications, and pages. These enhanced telecommunications services can be domestic or international.⁵⁷ NAFTA states that these services must be provided on a reasonable and nondiscriminatory basis.⁵⁸ Any restrictions must be narrowly tailored so that the objectives of the restrictions are to provide safety and efficiency. NAFTA also requires that any regulations be transparent with regard to enhanced telecommunications.⁵⁹

The provisions covering enhanced telecommunications have had little effect on the telecommunications industry. Even with the backwardness of Telmex's technology, and U.S. hopes to enter Mexico and provide it with more advanced equipment, Telmex remained strong despite NAFTA. Telmex charged interconnection fees to its long distance competitors needing access to Telmex's local phone network.⁶⁰ The charges consisted of U.S. companies paying nineteen cents per minute if calls originated outside Mexico and 4.6 cents per minute if the calls originated within Mexico.⁶¹ This is in contrast to the six cents per minute that other countries charge to long distance providers.⁶² What U.S. companies also perceived unfair is that most calls originate in the United States and not in Mexico.⁶³ Telmex justified these high interconnection fees on the grounds that such fees were needed to modernize its telecommunications system.⁶⁴ As a result, AT&T's and MCI's joint venture companies had to give more than 70 percent of their revenues to Telmex.⁶⁵ With the excuse of trying to modernize the telecommunications standards in

52. *Id.*

53. *See* NAFTA, *supra* note 27, art. 904.

54. *Id.* art. 1301.

55. *Id.* art. 1302.

56. *Id.* art. 1303.

57. *Id.*

58. *See* NAFTA, *supra* note 27, art. 1302.

59. *Id.* art. 1303.

60. *See* Vineeta Shetty, *Fight Club*, COMM. INT'L 4852, Jan. 1, 2001, available at 2001 WL 11534630.

61. *See* Callers, *U.S. Companies in Common Cause against Mexican Phone Company* (Aug. 18, 2000), at <http://www.cnn.com/2000/WORLD/americas/08/18/mexico.us.phones.ap.html>.

62. *Id.*

63. *Id.*

64. *See* *Telmex Reaches Agreement*, *supra* note 36.

65. *See* Anderson, *supra* note 48.

Mexico, as required by NAFTA, Telmex was able to maintain a de facto monopoly.⁶⁶ As late as 1999, Telmex's cellular subsidiary, Telcel, controlled 60 percent of the cellular phone market. Telmex's prior monopoly in the cellular industry helped Telcel hold onto its dominance in the market.⁶⁷

The same holds true with regard to "enhanced" telecommunications. Although NAFTA's provisions have helped some in opening up the "enhanced" telecommunications industry, it will be up to market forces to further achieve privatization. Telcel's dominance has been, in most part, due to Telmex's inefficiency. Mexican consumers opted for cellular phones because they were dissatisfied with Telmex's basic services.⁶⁸ Market forces will play a greater role in privatization as foreign competition enters the market with better service and technology.

Furthermore, NAFTA's "enhanced" telecommunications distinction between "basic services" and "enhanced services" will become illusory.⁶⁹ As one commentator points out, "Value-added services depend on basic services, and in many ways, the two are becoming one."⁷⁰ Such distinctions in NAFTA between "enhanced" telecommunications and basic services are doomed to fail as technology in the telecommunications industry advances.⁷¹ As advances in telecommunications technology continue to grow, it will be up to the market and the telecommunications industry to make sure that these services are available and accessible.

Along with NAFTA came the promise of standardization in telecommunications technology.⁷² NAFTA eliminated non-tariff barriers that were used to protect domestic industries.⁷³ Elimination of non-tariff barriers is especially important in the telecommunications industry because the incompatibility between two products prevent foreign investment and competitors from entering the market.⁷⁴ NAFTA orders its signatories to make their products compatible in order to facilitate trade.⁷⁵ The compatibility standards for a product are to be judged by international standards.⁷⁶

NAFTA's international standardization provisions provide no real guidance and have had little effect on the telecommunications industry. International communications standards are established by the International Telecommunications Union (ITU) and the

66. See Julia Preston, *Competitors of Telmex Say It Still Acts Like a Monopoly*, N.Y. TIMES ABSTRACTS, Apr. 4, 2000, at 4, available at 2000 WL 21711770.

67. See Sara G. Cuesta, *Telecommunications under NAFTA* (Aug. 1999), at <http://www.du.edu/~scuesta/TELECOMMUNICATIONS%20UNDER%20NAFTA%20Final%20Version.html>.

68. *Id.*

69. See Vannoy, *supra* note 4, at 328.

70. *Id.*

71. *Id.*

72. See Karen E. Lee, Note: *Cooperative Standard-Setting: The Road to Compatibility or Deadlock? The NAFTA's Transformation of the Telecommunications Industry*, 48 FED. COMM. L.J. 487, 488 (1996) (arguing that NAFTA's goal in reducing different product standards is hindered by the numerous problems faced by international standard-setting organizations).

73. See NAFTA, *supra* note 27, art. 904.

74. See Lee, *supra* note 72, at 494.

75. See NAFTA, *supra* note 27, art. 904.

76. *Id.* art. 905.

International Organization for Standardization (ISO).⁷⁷ However, as one commentator points out, these two international bodies have inherent flaws. First, there is the problem of delay.⁷⁸ These organizations often take too long in procuring new standards because of the bureaucratic procedures involved in establishing these standards.⁷⁹ Second, countries are reluctant to follow these international standards.⁸⁰ These countries are fearful of foreign investors taking over their telecommunications industry and rather offer protection to their local telecommunications industry.⁸¹

However, the broad language of NAFTA's mandatory international standardization provisions may be beneficial, since it leaves it up to industry officials to fill in the gap with "self-help" measures.⁸² The testing standards for terminal attachment equipment such as telephones, facsimiles, and modems are the same in the United States and Canada, but fail to meet Mexican standards. As a result, the U.S. telecommunications industry cannot compete in Mexico. Additionally, compliance with Mexican standards becomes more costly.⁸³ This problem has been raised by one commentator in the context of terminal attachment equipment.⁸⁴ This potential for dispute was foreseen by the telecommunications industry and prompted industry representatives from all three NAFTA members to come together in 1997 to try and harmonize these standards.⁸⁵

V. Mexican Law

National laws were more effective than NAFTA in privatizing Mexico's telecommunications industry. As mentioned, NAFTA does not address cross-border services and foreign investment in basic communications. However, Mexico did choose to change its foreign investment laws. In 1993, Mexico passed its Foreign Investment Law (FIL), which, as mentioned, now allows 49 percent investment in wireline services and 100 percent foreign ownership in cellular and private leased lines.⁸⁶ Before the FIL, all foreign ownership of Mexican companies was limited to 49 percent.⁸⁷

77. See Lee, *supra* note 72, at 495.

78. *Id.* at 497.

79. *Id.*

80. *Id.* at 502.

81. *Id.*

82. See California Technology, Trade & Commerce Agency, *Case Study—Telecommunications*, at <http://www.commerce.ca.gov/international/nafta/Telecomm.html> (last visited Mar. 21, 2000).

83. See Glover & Lotvedt, *supra* note 15, at 28.

84. *Id.* (describing that unlike a Mexican manufacturer of terminal attachment equipment, a U.S. supplier of terminal attachment equipment must undergo mandatory inspections and is not allowed to share product certification; meeting with these Mexican requirements is a very costly process).

85. See *Case Study—Telecommunications*, *supra* note 82.

86. See FIL, *supra* note 21, at 1010.

87. See Zahralddin & Jones, *supra* note 1, at 907 (providing a brief history on Mexico's past foreign investment laws and regulations, which were designed to reconstruct Mexico's economy and to build up domestic industries).

Mexico's Secretariat for Communications and Transport (SCT) designed the laws that were to privatize the telecommunications industry.⁸⁸ It enacted the laws that privatized Telmex. Another independent agency within the SCT was created to further oversee Mexico's privatization of the telecommunications industry; this was COFETEL.⁸⁹ COFETEL is charged with overseeing the newly privatized telecommunications sector.⁹⁰ Additionally, COFETEL is responsible for implementing and enforcing regulations that affect competition.⁹¹ COFETEL has, on several occasions, ordered Telmex to reduce its interconnection rates.⁹² COFETEL has reduced long distance tariffs by half during the period 1996 through 1999.⁹³ But these measures have not been enough for U.S. long distance providers and Telmex has resisted any such regulations by COFETEL.⁹⁴

In January 2001, U.S. companies came into an agreement with the Mexican government over the interconnection fees. Under this agreement all legal actions by the parties involved must stop, including the WTO complaint launched against the Mexican government.⁹⁵ The interconnection rate would be at 1.25 cents per minute.⁹⁶ The year before the rate was 3.36 cents per minute.⁹⁷ This new rate is now similar to rates that other countries charge long distance providers.⁹⁸ Lower rates had been set by COFETEL in the past, but Telmex had resisted such rates with legal tactics in order to delay and stop the regulations setting these rates from ever taking effect.⁹⁹ Additionally, AT&T and MCI WorldCom agreed to pay Telmex \$450 million for past fees they had not paid due to the dispute.¹⁰⁰

VI. The WTO Basic Telecommunications Agreement

The complaint launched by the United States against Mexico was based on allegations that Mexico failed to comply with the WTO's Basic Telecommunications Services Agreement (Basic Telecom Agreement), which was signed in 1997.¹⁰¹ The Basic Telecom

88. See Glover & Lotvedt, *supra* note 15, at 24.

89. See Pisciotta, *supra* note 14.

90. *Id.*

91. *Id.*

92. See Graham Gori, *Taking on the Corporate Goliaths*, N.Y. TIMES ABSTRACTS, Oct. 29, 2000, at 12, available at 2001 WL 31869913.

93. See Shetty, *supra* note 60.

94. See Anthony DePalma, *U.S. Seeks W.T.O. Talks on Mexican Phone Market*, N.Y. TIMES ABSTRACTS, Oct. 29, 2000, at C2, available at 2000 WL 25027095 (the dissatisfaction by U.S. companies has been the inability by Mexican regulatory agencies to enforce the measures they have passed against Telmex).

95. See *Telmex Reaches Agreement*, *supra* note 36.

96. *Id.*

97. See Luhnow, *supra* note 31.

98. *Id.*

99. See *Telmex Reaches Agreement*, *supra* note 36.

100. *Id.*

101. The results of the WTO Basic Telecommunications Services April 30, 1996 negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS, 36 I.L.M. 366 (1997).

Agreement essentially makes the General Agreement on Trade in Services (GATS) applicable to the telecommunications sector.¹⁰²

As its name implies, the purpose of the agreement is to open domestic basic telecommunications markets to competitors. Under the Basic Telecom Agreement, nations must afford most-favored-nation (MFN) treatment to foreign competitors in accord with the GATS.¹⁰³ MFN status means that a host country must treat foreign suppliers as they would treat their own domestic suppliers.¹⁰⁴ The agreement covers voice telephone services, facsimiles, telex, packet switched data transmissions services, and circuit switched data transmissions services.¹⁰⁵ It also includes the modes of supplying these services. This covers long distance telecommunications where: (1) WTO member foreign suppliers offer their services to consumers of other nationals of another WTO member, (2) foreign suppliers deliver their services through a local agent in that host country, and (3) foreign suppliers deliver their services directly in that host country.¹⁰⁶

In order to ensure that the provisions of the Basic Telecom Agreement are implemented, the signatories agreed in writing to open their telecommunications industry to competition. These commitments are spelled out in what is called the "Reference Paper."¹⁰⁷ Unlike NAFTA, these provisions are specifically designed to protect long distance service providers like AT&T and MCI WorldCom.¹⁰⁸

When competitors enter a domestic market, they are to be ensured fair and nondiscriminatory treatment.¹⁰⁹ National governments must enact laws and regulations that ensure that their local state monopoly does not abuse its dominant position.¹¹⁰ Also, they are to pass measures requiring their local monopoly to provide interconnection to competitors, and that such interconnection rates are transparent and nondiscriminatory.¹¹¹ If a dispute between the new competitors and the local monopoly arises, an independent regulatory agency must take care of the dispute.¹¹² In order to ensure that

102. See Kelley Drye & Aileen A. Pisciotto, *Navigating New Telecom Trade Routes: The WTO Basic Telecommunication Agreement*, The Metropolitan Corporate Counsel, 1997, as cited on Nexus, October 1997.

103. *Id.*

104. See General Agreement on Tariffs and Trade—Multilateral Trade Negotiations (The Uruguay Round): General Agreement on Trade in Services (GATS), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Article XVII, 33 I.L.M. 44 (1994).

105. See Drye & Pisciotto, *supra* note 102.

106. *Id.*

107. See Reference Paper, Apr. 30, 1996, 36 I.L.M. 367, 369 (1997). The Reference Paper contains principles relating to competition safeguards, interconnection, universal service, transparency of licensing criteria, independence of the regulator, and allocation of scarce resources. The WTO Secretariat distributed the Reference Paper, but never formally issued it as a WTO document. The text has been published in 36 I.L.M. 367 (1997).

108. See Laura B. Sherman, "Wildly Enthusiastic" About the First Multilateral Agreement on Trade in Telecommunications Services, 51 FED. COMM. L.J. 61 (Dec. 1998).

109. See John J. Alissi, *Revolutionizing the Telephone Industry: The World Trade Organization Agreement on Basic Telecommunications and the Federal Communications Commission Order*, 13 CONN. J. INT'L L. 485, 493 (Spring 1999).

110. *Id.*

111. *Id.*

112. *Id.*

the regulatory agency is fair and neutral, the agreement calls for the regulatory agency to not be affiliated with any supplier of basic telecommunication services.¹¹³

Although the Basic Telecom Agreement is far more sweeping in the privatization of telecommunications, it is also similar to NAFTA in that the Reference Paper does not specify what measures are to be taken. Instead, it leaves these specifications to the individual signatories to implement.¹¹⁴ Additionally, restrictions on market access are allowed for monopoly telecommunications providers.¹¹⁵ Furthermore, restrictions are allowed on foreign ownership and the number of competitors.¹¹⁶ More importantly, the WTO fails to establish standards for basing interconnection rates.¹¹⁷ As it stands now, under Mexican law, interconnection fees are to be negotiated individually.¹¹⁸ This has been the case with Telmex and its competitors.¹¹⁹ Given Telmex's dominant position, high interconnection rates will obviously favor Telmex. The United States favors international interconnection fees, but Mexico prefers to adhere to a "mathematical model."¹²⁰ Overall, the Basic Telecom Agreement is more specific in that it mentions long distance providers. However, its broad goals and its failure to specify what measures are to be taken make it susceptible to dispute.¹²¹

VII. Conclusion

With regard to telecommunications, the advantages of an agreement such as NAFTA are that it establishes goals for its members to accomplish and it sets the stage for change to take place. However, it does not provide the means for how change is to take place. Much talk and praise was given to NAFTA, but upon a closer look at NAFTA's broad language, exceptions, and allowances for reservations, there was an apparent dilution as to any substantial impact it was to provide the telecommunications industry.

In contrast, a more detailed agreement such as the Basic Telecom Agreement provided incentives and enforcement mechanisms to help open the telecommunications market of countries that in the past had relied on monopolies for their telecommunications services. Even so, it too contained broad language that left a void as to interconnection rates.

The privatization of Mexico's telecommunications industry will continue to progress, but not thanks to NAFTA. External forces will achieve this extended privatization.

113. *Id.*

114. See Sherman, *supra* note 108, at 77.

115. See Sunderland, *supra* note 37.

116. *Id.*

117. See Alissi, *supra* note 109, at 496.

118. See Sunderland, *supra* note 37.

119. *Id.*

120. *Id.*

121. See Alissi, *supra* note 109, at 503-04 (explaining that the FCC issued an order to reduce settlement rates in order to fill the void left by the WTO Basic Telecom Agreement with regard to settlement rates. As a result, foreign countries protested arguing that the FCC order discriminates against foreign telecommunication carriers).

Mexico's new president has said all the right things to satisfy the telecommunications industry in the United States because he seems committed to further open competition.¹²² National laws will eventually determine the nature of Mexico's privatization and its regulatory agencies because telecommunications can only go as far as national law allows it.

The leading "trailblazer" in accessing new telecommunications markets has been the market itself. Traditional business practices combined with industry and political pressure has taken its toll on Mexico and Telmex. NAFTA has only had an indirect impact on the telecommunications industry in Mexico. In contrast, one must ask what message would have been sent had AT&T and MCI WorldCom pulled out of investing in Mexico. Such withdrawal or trade sanctions by the WTO would have created a cause for alarm in Mexico.

122. Jim Cicconi, News Release, AT&T, *AT&T Strongly Supports USTR Action Requesting WTO Consultations with Mexico for Failure to Meet Trade Commitments* (July 28, 2000), at <http://www.att.com/press/item/0,1354,3154,00.html>.
