

TELECOMMUNICATIONS LAWS OF THE WORLD

Colombia



Downloaded: 10 May 2024

COLOMBIA



Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

The telecommunications industry in Colombia is highly regulated, as it is considered a public service under State ownership. However, public or private corporations legally incorporated in Colombia could be entitled to provide telecommunications services after registering as telecommunication network operators and service providers. Other prerequisites, permits or authorizations may be required to provide specific services or to install certain infrastructure, as the case may be.

Law 1341 of 2009 establishes the general policies and regulations that every telecommunications company must comply with, regarding user protection, competition principles and the quality and coverage of telecommunications services. Further regulation is included in Decree 1078 of 2015 and Resolution 5050 of 2016 of the Communications Regulation Commission.

The Communications Regulation Commission, also known as Comisión de Regulación de Comunicaciones (CRC), regulates communications by promoting fair competition, issuing regulations and permits to operators, determining standards for equipment and monitoring services, and resolving conflicts among consumers and operators.

The Ministry of Information Technologies and Communications (MinITC) regulates network and service provider markets.

On the other hand, both MinITC and the Superintendency of Industry and Commerce are the entities entitled to supervise compliance with the applicable regulations.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary telecommunications law in Colombia is Law 1341 of 2009, which defines the main principles, concepts and legal guidance for providing telecommunication services in Colombia.

On the other hand, Law 1978 of 2019, issued on July 28 of 2019, modified some provisions of Law 1341 of 2009 with the primary objective to modernize and adequate the telecommunications regulation towards the global and national industry challenges.

Regulatory Framework

The regulatory framework for telecommunications in Colombia has a wide scope and includes different sectors and topics:

- **Decree 1078 of 2015 - Sole Regulatory Decree of the ICT sector:** This decree compiles the core regulations governing the ICT sector in Colombia, and includes legally binding dispositions regarding (i) information technology policies and guidelines, (ii) the compensation system applicable for service providers, (iii) the registration procedure before MinITC, and (iv) the structure of the telecommunication sector.

- **Resolution CRC 5050 of 2016:** This resolution compiles CRC regulations, concerning the protection of final users, technical aspects regarding access and interconnection of telecommunications networks, and efficiency criteria of telecommunications services, among others.
- **Law 1680 of 2013:** By which people with visual disabilities or impairment are guaranteed access to information and communications technologies.
- **Law 1507 of 2012:** This law regulates television services.
- **Resolution MinICT 415 of 2010:** It regulates the provision of broadcasting services.
- **Law 1369 of 2009:** This law includes the general regime for the provision of postal services.
- **Law 527 of 1999:** Regulation of access and use of data messages, e-commerce and digital signatures.
- **Law 335 of 1996:** Private television regulation.
- **Law 182 of 1995:** It regulates the public television service.
- **Law 142 of 1994:** This law includes the general regulation for utilities.
- **Law 80 of 1993:** Colombian public procurement regulation.

REGULATORY BODIES OR AUTHORITIES

The main regulatory bodies:

MinTIC is the National Entity responsible for designing, adopting, and promoting the policies, plans, programs and projects of the Information Technologies and Communications sector. It also has some supervision powers, so it can impose penalties for the infringement of the law.

Address: Edificio Murillo Toro Carrera 8a entre calles 12 y 13, Bogotá D.C.

Phone: + 57-01-344 34 60

Website: www.MinTIC.gov.co

Communications Regulation Commission: This body is responsible for issuing technical regulations to ensure the appropriate provision of telecommunications services, including commercial public television. Such regulations shall facilitate access to the equipment, facilities, and other resources needed for the provision of telecommunications services, as well as foster competition in this sector.

Address: Calle 59 A bis No. 5-53, Piso 9. Bogotá D.C.

Phone: + 57-01-8000-919278

Website: www.crcom.gov.co

Superintendency of Industry and Commerce: This authority supervises compliance with competition-related matters and consumer protection matters in the telecom sector.

Address: Carrera 13 # 27-00

Phone: + 57-5870000

Website: www.sic.gov.co

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

Telecom Services Legal Definition

Law 1978 of 2019 defines telecommunications services as the resources, tools, equipment, software, applications, networks, and media that allow for the compilation, processing, storage, and transmission of information such as voice, data, text, video, and images. In accordance with article 2.2.6.2.1.2 of Decree 1078 of 2015, the provision of a telecommunication service encompasses the “emission, transmission and reception of information of any nature through telecommunication networks”.

These services are to be provided by legal persons which are duly constituted in Colombia.

Classification of Telecom Services

Law 1341 of 2009 classifies telecommunication services and networks into a single group. This group includes landline, mobile, data transmission, internet, mail and postal services, radio and television services.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

- All persons or entities who provide or attempt to provide telecommunication networks or services shall register before MinICT. This registry is an online public instrument. Once registered, any telecommunication company is authorized to provide services in Colombia, which is the general authorization rule. This general authorization allows for the installation, modification, operation, and use of networks to provide telecommunications services.¹ Except for certain services such as the satellite service and the use of the spectrum, a company is authorized to provide a telecommunication service in Colombia as long as it is registered in the ICT Registry.
- Decree 867 of 2010 and Law 1369 of 2009 regulate the Registry of Postal Operators. Registration and updating of information in this registry allow postal operators to operate legally.
- Resolution 376 of 2022 foresees the requirements and process for obtaining the permit for the use of the radio electric spectrum, associated with satellite radio communication services.
- Spectrum licenses allow their holders to use the electromagnetic spectrum in Colombia. A certain frequency will also be assigned for its use. These licenses are granted by the National Spectrum Agency (“**ANE**”). Spectrum Licenses are granted on a public procurement basis. The authorization will be valid for a period of 20 years.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

Law 80 of 1993 establishes that the companies that provide telecommunication services must be duly incorporated in Colombia. However, the legal system does not provide for any type of explicit restriction for companies that are not domiciled in the national territory.

Nonetheless, if a service is permanently offered in Colombia, for tax purposes it is important to have a company that is incorporated and domiciled in Colombia.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

There is a general obligation for telecommunications service providers in Colombia to allow other operators that request so to interconnect to their networks and access and use their essential facilities. This general requirement seeks to ensure the general principles of non-discriminatory treatment, transparency, cost-based prices plus a reasonable profit and the promotion of free and fair competition in the ICT sector. In particular, Resolution 6522 of 2022 foresees that network operators shall provide VoLTE (voice over 4G networks) access to other undertakings.

Resolution CRC 4424 of 2014 regulates roaming services in Colombia. This Resolution increases transparency, as operators should provide certain information to their users concerning International Roaming.

Colombia is an active participant and member of the Pacific Alliance along with Mexico, Chile, and Ecuador. According to the commitments of the Alliance, member states shall endeavor to cooperate in promoting transparent and reasonable rates for international mobile roaming services. Moreover, each Party shall adopt or maintain measures to (a) ensure that information on retail rates for international mobile roaming services is easily accessible to the public, and (b) minimize the impediments or barriers to the use of technological alternatives to roaming, which allow citizens of other member states to access telecommunications services using the devices of their choice.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Resolutions CRC 2066 of 2011 and 5111 of 2017 encompass the ICT user protection regime, including specific rights and obligations of communications service users and providers.

The following are the most relevant issues any provider or operator must consider in order to comply with the current regulation:

1. **Consumer Information:** Service providers shall provide all the information associated with the conditions of the provision of the services, including the rates at which the services are provided.

This information must be provided in a clear, transparent, truthful, sufficient, true, complete, timely, and not misleading manner, so that users make informed decisions regarding the service or services they require.

2. **Minimum Term Clauses:** The minimum term clauses are those contractual stipulations that are agreed upon only once, at the beginning of the contract, in accordance to which the user undertakes not to terminate in advance and without just cause his contract for the provision of communications services. Such clauses shall not be included in the contracts for the provision of mobile communications services, or in the contracts for the sale of mobile terminal equipment.
3. **Number Portability:** Number portability is the possibility that a user has of switching from one service provider to another, while retaining their telephone number. All users of mobile services have the right to carry their number, when switching to another service provider, whether in prepaid or postpaid mode. The change can be made at any time and does not require authorization by the current provider.

REGULATORY TAXES AND FEES

Main Taxes Levied Over Telecom Companies

Corporate Income Tax

Colombian companies are subject to corporate income tax of 33% on their worldwide income. Taxable basis will correspond to the gross income (ordinary and extraordinary) less costs and expenses authorized for tax purposes incurred in the income producing activity.

Corporate income tax rate will be gradually reduced as follows: (i) 2020: 32%; (ii) 2021: 31%; and (iii) as of 2022 to 30%.

Notwithstanding the above, the Colombian Tax Code sets a presumptive income system as an alternative method to determine corporate income tax, which is calculated annually at a 3.5% rate over taxpayer's net worth in the immediately preceding year. For 2019 and 2020, presumptive income must correspond to 1,5% of the net assets determined as of December 31st of the previous year. As of 2021, presumptive income system will no longer apply.

Tax incentives

Special corporate income tax rates:

- 27% for taxpayers that performs new investments (i.e. telecommunication sector) in fixed assets equal or exceeding 30,000,000 tax value unit (COP \$ 1,028,100,000,000 - US \$ 326,460,097 approx.) over 5 years and creates more than 250 direct employments;
- 20% corporate income tax rate for telecommunication services providers that qualifies as Free Trade Zone Industrial Users.
- Under certain conditions, income from: (i) Television programming and transmission services; and (ii) Radio broadcasting programming and transmission activities, could be exempted from corporate income tax for seven (7) years. obtained by companies carrying out. Entities carrying out these activities should be eligible by the Ministry of Culture.

Turnover tax / Industry and Commerce Tax (ICA)

The Industry and Commerce tax (ICA) is a local tax imposed on the gross revenue generated from industrial, commercial or service activities carried out in every corresponding municipality in which such services are provided.

Tax rates vary from 0.2% to 1.4% of the gross income depending on the tax code of the municipality where the activity is rendered. 100% of the Industry and Commerce tax paid during the relevant taxable year can be credited against corporate income tax liability.

Telecommunication activities are subject to industry, in order to determine the territoriality of the local tax the general rule is that income is understood to be perceived in the place where the provision of the service is executed, except for:

- TV and internet by subscription and fixed telephony is deemed to be performed in the subscriber's municipality according to the place informed in the services agreement.
- Mobile telephony, mobile navigation and data service: As of January 1, 2018; the services are deemed to be rendered in the municipality where the main domicile of the user that registers at the time of the subscription of the agreement or in the update document. The income that cannot be assigned to a municipality should be distributed proportionally in the total of municipalities, according to their participation in the income.

Special contribution over telecommunications networks and services provision

Entities subject to surveillance and regulation of the CRC must pay an annual contribution of 0,1% (For 2019 according to Resolution 5582 of 2018) on the gross income obtained in the year prior to that to which the contribution corresponds, for the provision of telecommunications networks and services (excluding terminals).

Main Taxes and Fees Levied Over Telecom Activities

VAT – Services

Unless it is an exempted VAT activity, telecom activities are subject to a general VAT rate of 19%. The following telecommunication activities are exempted VAT operations:

Internet access and connection services for residential users of strata 3.

- Internet access and connection services for residential users of strata 3.
- Internet access and connection services rendered from fixed networks to residential subscribers of strata 1 and 2 are VAT exempted operations. These services allow the paid VAT to be bimonthly reimbursed to the services provider. First 325 minutes of local telephone services rendered to users of 1, 2 and 3 strata, and the telephone services rendered from public telephones.
- Supply of web pages, servers (hosting) and cloud computing.
- Advertising services rendered by:

1. Newspapers that had registered total sales for less than 180,000 tax value units (2019: COP \$6,168,600,000) as of December 31 of the immediately preceding year.
2. Radio stations that had registered total sales for less than 30,000 tax value units (2019: COP \$1,028,100,000 as of December 31 of the immediately preceding year)
3. Programmers of Regional television channels that had registered total sales for less than 60,000 tax value units (2019: COP \$2,056,200,000 as of December 31 of the immediately preceding year).
4. The advertisement on radio stations whose sales are less than 30,000 tax value units (2019: COP \$ 1,028,100,000) as of December 31 of the immediately preceding year and programmers of regional television channels whose sales are less than 60,000 tax value unit (2019: COP \$2,056,200,000) as of December 31 of the year immediately previous.

VAT – Sales and imports of goods

Regarding Telecom activities, the following are goods excluded from VAT: (i) Personal computers: desktops and laptops whose value does not exceed 50 tax value unit (2019: COP \$1,714,000); and (ii) Smart mobile devices (tablets and cell phones) whose value does not exceed 22 tax value unit (2019: COP \$754,000).

National consumption tax

- Mobile phone, data, internet and mobile navigation services are subject to a 4% national consumption tax. The taxable basis will be applied on the entire service value, without including VAT.
- For data, internet and mobile navigation services, the national consumption tax is applicable on the portion of the services the exceeds 1.5 tax value units (2019: COP \$ 51,000).
- Unless exempted or excluded, additionally 19% VAT will apply on these services.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Law 1341 in article 64 establishes a series of behaviors that lead to sanctions. Some of these behaviors are:

- Not enrolling in the ICT registry.
- Using the radio spectrum without the corresponding permission.
- Failing to pay the consideration provided in the law.
- Refraining from presenting the required information to authorities or presenting it inaccurately or incompletely.
- Failing to comply with the quality and efficiency parameters issued by the CRC.

Additionally, article 65 of Law 1341, establishes that non-compliance with these obligations leads to penalties including reprimands, fines, suspension of the operation, expiration of the contract or cancellation of the license, authorization or permit.

KEY CONTACTS



María Claudia Martínez Beltrán

Partner

T +57 1 317 4720 x112

mcmartinez@dlapipermb.com

Simon Diaz Granados Guerra



Associate
T +57 1 317 4720
sadiaz@dlapiperm.com

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved.