

[ES] Dismissal of Appeals Against Resolutions on Cable Carrier Broadcasting Services

IRIS 2001-9:1/16

Alberto Pérez Gómez
Entidad pública empresarial RED.ES

In Spain there is considerable legal uncertainty as regards cable services. Lately, the Comisión del Mercado de las Telecomunicaciones (Commission for the Telecommunications Market - CMT) has been involved in a controversy concerning the licensing regime in this field.

Cable services were regulated in 1995 by the Cable Telecommunications Act. It divided the country into local or regional geographic areas and in each area, up to two concessionaires were authorised to provide cable services (cable TV, Internet access and voice communications). One concession was reserved for Telefónica Cable (a subsidiary of the Telefónica Group) and the other (the so-called "second concession") was to be assigned through a call for tenders.

In 1998, the Spanish Parliament approved a new Telecommunications Act, which liberalised the telecommunications sector. Although this new Act abrogated the 1995 Cable Telecommunications Act, the latter was applied throughout the licensing process and its broadcasting provisions remain in force today. Since the approval of the 1998 Telecommunications Act, the provision of telecommunications services via cable and the establishment or operation of cable telecommunications networks have been liberalised. However, cable TV broadcasting remains a public service, which can only be provided by the cable TV concessionaires.

As an exception to this regime, cable operators which were providing cable TV services in Spain before the legal framework for cable services was established in 1995, and which were not awarded cable concessions when the available ones were assigned through calls for tenders, have been temporarily authorised to maintain the provision of cable TV broadcasting services by some transitional legal provisions, although this temporary authorisation will expire soon.

In order to remain active, some of these companies have decided to continue using their networks for the provision of telecommunications services liberalised by the 1998 Telecommunications Act. For this purpose, they asked the CMT for individual licences (within the meaning of the Directive 97/13/EC on a common framework for general authorizations and individual licences in the field of telecommunications services and the 1998 Telecommunications Act) for the

provision of several telecommunications services, including cable broadcasting carrier services. In October 2000, the CMT awarded these companies the individual licences they had requested. Some of these companies have subsequently been awarded general authorisations for the transmission of information, text, images and sound by means of public fixed networks, which allow them to provide, through their networks, services such as video-on-demand, video-conferencing or Internet access.

The CMT Resolutions of October 2000 awarding these companies several individual licenses were appealed, first by some cable concessionaires, and then also by the General Director of Telecommunications and Information Technologies of the Ministry for Science and Technology. They argued that the CMT was not entitled to allow any company to provide cable broadcasting services, as the CMT did not have the power to award cable concessions within the meaning of the 1995 Cable Telecommunications Act. They also posited that even if the CMT did have the power to award individual licences, this kind of telecommunications permit did not cover, according to the 1998 General Telecommunications Act, the provision of broadcasting services.

In April and July 2001, the CMT rejected these appeals on the grounds that its Resolutions complied fully with the 1995 Cable Telecommunications Act and the 1998 General Telecommunications Act, as the individual licences awarded by the CMT only cover the provision of broadcasting carrier services (which were fully liberalised by the 1998 General Telecommunications Act) and not the provision of broadcasting services as such.

Resolución del Consejo de la Comisión del Mercado de las Telecomunicaciones de 19 de abril de 2001 por la que se resuelven los recursos potestativos de reposición interpuestos por Cádiz de Cable y Televisión, S.A. y otras entidades contra tres resoluciones del Consejo de fecha 19 de octubre de 2000 y una resolución de 14 de diciembre de 2000, por las que se otorgaron a TV por cable Santa Pola, S.L. y otras entidades, licencias individuales de tipo C1 habilitantes para el establecimiento y explotación de una red pública de telecomunicaciones que no implique el uso del dominio público radioeléctrico sin que su titular pueda prestar el servicio telefónico disponible al público

<http://www.cmt.es/cmt/document/decisiones/RE-01-04-19-21.html>

Resolution of the Council of the CMT of 19 April 2001, in the appeal against its Resolutions of 19 October 2000 and 14 December 2000, awarding TV por cable Santa Pola and others several Individual Licences

Resolución del Consejo de la Comisión del Mercado de las Telecomunicaciones de 12 de julio de 2001 por la que se da contestación al requerimiento de anulación planteado por el Ilmo. Sr. Director General de Telecomunicaciones y Tecnologías de la información respecto de la Resolución del Consejo del Mercado de las Telecomunicaciones de 19 de abril de 2001

<http://www.cmt.es/cmt/document/decisiones/RE-01-07-12-06.html>

Resolution of the Council of the CMT of 12 July 2001, answering a request made by the General Director of Telecommunications and Information Technologies by which he asked the CMT to declare its Resolution of 19 April 2001 void

