

**Compendium of the comments received to the
general criteria published on July 17, 2015**



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INTRODUCTION

On July 17, 2015, the Ministry of Communications and Transportation (SCT) of the Mexican Government published the General Criteria for the *Red Compartida* (General Criteria) in order to disclose with further detail the conditions that will define the scope of this project with regards to the design, financing, deployment, operation and marketing of the network.

That same document provided the possibility for those interested in the *Red Compartida* project to submit to the SCT their comments on the General Criteria, so that these could serve as input for the drafting of the preliminary bidding rules. The deadline to receive comments was August 7.

The SCT appreciates the interest shown by companies, institutions and individuals of different parts of the world regarding the General Criteria. This interest resulted in more than 340 recommendations, opinions and requests for further clarification on certain items provided in the document. This will allow the SCT to strengthen the integration process and the publication of the preliminary bidding rules and, thereafter, of the final bidding rules for the *Red Compartida*. The profile of the applicants who submitted comments is very diverse and shows the great interest generated by the project not only in the telecommunication industry in Mexico but in other industries worldwide. Below is a list of the people and institutions who submitted their comments to the SCT:

Associations/academy	
1.	Asociación Iberoamericana de Centros de Investigación y Empresas de Telecomunicaciones (ASIET).
2.	Cámara Nacional de la Industria Electrónica, de Telecomunicaciones y Tecnologías de la Información.
3.	Dr. Enrique Melrose Aguilar, Consultor y Profesor del Departamento Académico de Sistemas Digitales del ITAM.
Business conglomerates	
4.	Comunicaciones Veta Grande, S.A.P.I. De C.V.
Consultants/consulting agencies	
5.	Alarcón – Espinosa Abogados, S.C. (Ae Abogados)
6.	Bello, Gallardo, Bonequi y García, S.C.
7.	Greenberg Traurig, S.C.
8.	Indra Business Consulting ALG México, S.A. de C.V.
9.	Merrill Lynch México S.A. de C.V. Casa De Bolsa.
Manufacturers of network equipment	
10.	Alcatel-Lucent.
11.	Cisco Systems De México, S. de R.L. de C.V.
12.	Ericsson de Mexico.
13.	Motorola Solutions Inc.
14.	Nokia de Mexico.
Telecommunications service operators	
15.	Alestra S. de R.L de C.V.
16.	Axtel, S.A.B. de C.V.
17.	Grupo de Telecomunicaciones de Alta Capacidad, S.A.P.I. de C.V.
18.	Pegaso Pcs, S.A. de C.V.
19.	Total Play Telecomunicaciones, S.A. de C.V.
Network Service Suppliers	
20.	Rivada Networks, Inc.
Government agencies	
21.	Specialized Committee on Satellite Communication for National Security (SEDENA-SEMAR- PGR-PF -CISEN).*

* The information is classified as confidential, in terms of Article 13, section I, of the Federal Law of Transparency and Access to Public Government Information.

The participation of telecommunication service operators, network equipment manufacturers and academia, who jointly issued around 70% of all of the recommendations, opinions and requests for information, was worth noting.

Several topics were covered regarding not only the General Criteria, but also the *Red Compartida* in general terms, including the following:

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| <ul style="list-style-type: none">• Government contributions to the Public-Private Partnership.• Lease of spectrum.• Minimum coverage of the <i>Red Compartida</i>.• Definition of the allocation criteria.• Influence in the network operation.• Payment for the use of the assigned spectrum. | <ul style="list-style-type: none">• Reserve for Virtual Mobile Operators.• Minimum technical requirements of the <i>Red Compartida</i>.• Specific regulatory burden for the <i>Red Compartida</i>.• Commercial agreements with mobile operators. |
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In order to promote a transparent process, below is a brief description of the comments received, so that their identification and review provides guidance on the interests, doubts and proposals that are under analysis by the SCT to consolidate the project for the benefit of the population.

COMMENTS TO SPECIFIC TOPICS

Below is a summary of the comments to the General Criteria divided into three groups: technical, financial and legal.

I. TECHNICAL COMMENTS

Several comments were received with regards to the deployment process of the *Red Compartida*, the technological neutrality and the minimum technological requirements of the *Red Compartida*.

Network Deployment

Several comments were received referring to the difficulties of defining accurately and *ex-ante* to the bidding, the dimensions of the *Red Compartida*. Some proposals recommend the establishment of a project of reference, with others recommending the consideration of exception scenarios in the deployment calendar, where risks may be assessed and dates may be extended where the provision of services is not possible due to causes beyond the control of the operator of the *Red Compartida*.

Regarding the deployment of the *Red Compartida*, several opinions were received that vary from prioritizing the deployment in rural areas where there is currently no coverage from any company, to providing complete freedom to operators in the design of their deployment strategy. Some of the participants indicated that this definition should be left at the discretion of the business conglomerate or company that wins the public tender, which would comply with the constitutional mandate, while at the same time providing financial feasibility to the project.

A general request was to provide further detail on the timing and the deployment schedule expected for the *Red Compartida*. With regards to the beginning of operations of the network, reference was made to the convenience of not setting it for the first quarter of 2018, since there is no legal obligation that demands it.

Technological Neutrality

On this subject, the SCT was required to clarify if the operator of the *Red Compartida* could execute contracts with several equipment suppliers notwithstanding if they were part of the winning business conglomerate, in order to speed up the deployment of the network. It was also stated that the deployment of a specific technology should not be promoted, but rather

guarantee that the deployed technology be totally interoperable with other systems, network elements and terminal equipment, promoting an environment of multiple suppliers. Likewise, it was requested to clearly establish each and all of the features that must be met to consider the equipment and systems interoperable.

A request was made to clarify if the acquisition of network equipment and/or terminals from a possible partner operating the *Red Compartida* would be allowed. It was also pointed out that the technological neutrality is rather perceived as a market decision than a regulatory provision.

Finally, it was also requested to clarify if the adoption of the LTE technology provided in the Technical Annex of the General Criteria of the *Red Compartida*, contradicts the technical neutrality principle.

Minimum requirements of the *Red Compartida*

It was mentioned that the General Criteria establish the minimum requirements for the *Red Compartida* which can be quite onerous. The design of the *Red Compartida* should have a high level of flexibility during its implementation. Likewise, several participants commented that there are many requirements that do not seem relevant for a wholesale network and therefore recommended to link the service levels to those established by the IFT, leaving the operator with the task of complying with or exceeding these minimum values.

Contribution of a pair of fiber optic strands

Regarding the pair of dark fiber optic strands of the Federal Electricity Commission (*Comisión Federal de Electricidad*) (CFE), some participants indicated that the *Red Compartida* must have as much flexibility as possible to determine the deployment of its infrastructure and the respective investments. In this regard, whilst the use of the dark fiber optic might make sense in some routes, there may be other routes where it would be preferable to lease the capacity of the Backbone Network (*Red Troncal*) or of other existing operator.

Other participants argued that the contribution of a pair of fiber optic strands is deemed adequate to facilitate their operations, as long as it does not create an additional burden of obligations for the operator of the *Red Compartida*.

A third group of participants recommended not to consider those fiber optic strands as an option for the development of the *Red Compartida* project, since the potential bidders would hardly know in detail their features, which could place them in disadvantage as opposed to

those who have participated in prior projects linked to the deployment of the Core Network. In this regard, some comments indicated that the *Red Compartida* should not include the Backbone Network (*Red Troncal*) project, due to its different and therefore independent nature and objectives.

Generally, the participants preferred that the government clarify which will be the prices, rights, obligations, terms and conditions whereby the rights of use of a pair of dark fiber optic strands would be granted to the *Red Compartida*.

II. ECONOMIC-FINANCIAL COMMENTS

The observations that were mostly submitted by the interested parties included: the criteria for the allocation of the spectrum, the possible lease of the *Red Compartida* spectrum, capacity reservation for mobile virtual network operators (MVNO), as well as restrictions on capital and shareholding structure that could be imposed to the winner of the public tender. Other relevant topics were the performance bonds that should be contemplated for the deployment of the network and the fees dictated by the Public Income Law (*Ley de Ingresos de la Federación*) for the use of the allocated spectrum.

Allocation rules

Several comments were received requesting further detail on the formula for the allocation of the project and proposing allocation schemes. Some of the main concerns received include the request for clarification on the definition of minimum coverage thresholds and the term for the deployment. Reference was also made to consider neither coverage nor payment as allocation variables, but to perform a “beauty contest” taking into account elements such as the promotion of competition, reduction of entry barriers into the market, rural coverage and deployment speed, among others.

It was also stated that the possibility of having “an initial payment offered by the bidder” as a criterion for the award of the contract contravened the deployment and operation targets of the *Red Compartida*.

Lease of the spectrum

With regards to the lease, several opinions were submitted by the applicants. Whilst some comments indicated the incompatibility of the lease of the spectrum with the targets of the *Red Compartida* and the current legal framework, others considered quite relevant to allow the winner of the public tender to decide on the most viable business model, including the

possibility of leasing of spectrum. Further detail was requested on the leasing mechanisms and specifically to clarify if the partners of the *Red Compartida* could also lease the spectrum.

Capacity reserve for MVNO

Most of the observations referred to the fact that the *Red Compartida* must have full authority to manage the spectrum as is best suited to its business model, and thus there should be no restriction whatsoever such as setting capacity reserves for MVNO. Moreover, it was suggested the possibility to reserve capacity for public safety MVNO. Should this criterion be followed, further information was requested on the way and rules on which the SCT and the IFT could reserve a percentage of the *Red Compartida* capacity.

Capital structure and changes in shareholding structure

With regards to this item, it was suggested to eliminate the restriction on the maximum leverage, leaving it to be determined by the preferences and possibilities of the bidder. It was also commented that these restrictions had no legal grounds.

As to the shareholding structure, reference was made that the restriction to purchase and sell shares before meeting the coverage and deployment targets could jeopardize the feasibility of the project by reducing the reaction and maneuver capacity to unexpected adversities. It was deemed necessary to have this possibility in order to face fortuitous events, such as an accelerated increase in costs (caused for example by a devaluation), natural disasters or an unexpected growth in demand.

Other interested parties indicated that there was no reason to allow changes in the shareholding or control structure of the specific purpose company and would only affect the financial model of the contestants. Some parties suggested the inclusion of restrictions to the transfer of control (change in control) at a higher level than that of the operating company, ie. at a shareholder level, to prevent the transfer of equity from occurring at this level. Overall, further clarity was requested on the criteria to be considered by the IFT before approving a change in the shareholding structure.

Performance Bonds and Sanctions

It was suggested that breaches to the obligations derived from the concession title should be sanctioned in accordance with the sanctions procedure set forth in the Federal Telecommunications and Broadcasting Act (*Ley Federal de Telecomunicaciones y Radiodifusión*), and that any other breach not provided in the concession title could be sanctioned through the

Public-Private Partnership Act (*Ley de Asociaciones Público-Privadas*). The foregoing, insofar as the performance bonds could discourage possible investors if there is no balance between obligations and the term for deployment or the provision of services in urban areas. Therefore, sanctions should be similar to those imposed by the regulators to mobile network operators (*operadores de redes móviles*) (MNO).

Another option that was suggested for performance purposes in a project of this scale, is to accept as guarantee an ISP-98 Standby Letter of Credit or similar instrument instead of a bond. Overall, further information was requested regarding the level of fines or sanctions for the breach of obligations or conditions under the Public-Private Partnership (PPP) contract.

Payment for the use of the allocated spectrum

Three types of general observations were received regarding this topic. First of all, several participants requested the elimination or a significant reduction of the payment of duties, considering that if they are kept as part of the project, they should be a contribution of the government to the PPP. A second recurrent comment requested the dosage of the spectrum as used by the *Red Compartida* from time to time, beginning to collect upon the provision of services in proportion to the used capacity. A third group referred to the fact that the payment of duties should be reduced as the coverage reached by the *Red Compartida* increased, reaching zero in high coverage levels.

III. LEGAL-REGULATORY COMMENTS

This chapter includes a great diversity of subjects regarding the General Criteria that were commented by the participants. The most relevant ones were: the distribution of risks between the government and the winning bidder within the PPP scheme, the contributions to be made by the Federal Government to the PPP, as well as the specific regulatory burden that would be most suited for the *Red Compartida* operator. The relevance of possible government clients for the project and the manner of participation of the applicants, particularly with regards to the need to include a telecommunications operator to be considered in the public tender, were also recurring topics.

Other subjects such as the definition of “influence” in the *Red Compartida* operation, the possibility for foreign government-owned companies or funds to participate as investors and the competitive neutrality that would have to meet the network, as well as the sale of wholesale and disaggregated services. These comments are described below in further detail.

Public-Private Partnership

With regards to the PPP scheme, comments were received in the sense that the project should not be considered as a self-financing PPP, but that the participation of the government with budget funds should be contemplated.

It was also requested to clarify in further detail the PPP structure. Concerns were submitted on the conformation of the new decentralized entity, requesting it to have at least one representative of the winning bidder, to grant more legal, operative and administrative certainty to the participants of the project with regards to their investments. Likewise, it was deemed necessary to clearly establish the allocation of risks of the PPP between the Mexican government and the operating company of the *Red Compartida*.

PPP Contributions

Overall, it was commented that it is convenient for the government to assume greater participation in the *Red Compartida*, through more involvement and participation in the risks of the project.

With regards to contributions to the PPP, there were mixed opinions. Some participants backed the determination that the government only support the PPP through the delivery of 90 MHz of the 700 MHz band. However, other participants indicated that the project should have the support of the authority regarding the procurement of permits, licenses, rights of way and access to infrastructure and real estate of the government, as well as any other asset necessary to ensure the operation of the *Red Compartida*. It was also deemed relevant that the government continue with the verification and compliance with the regulatory measures towards the Preponderant Economic Agents, as well as to treat roaming as an interconnection obligation. These support were deemed necessary by some participants during the implementation and startup stages of the *Red Compartida*, until it consolidates its position in the market and generates sufficient income to be self-sustainable.

Specific regulatory burden

Some applicants indicated the importance of defining what is understood as competition neutrality and suggested to eliminate everything that implies specific regulation for the network and that puts it in disadvantage in the market. It was requested to take into consideration that this network has a very important social component and that it should not receive a similar treatment than that of an agent that is economically preponderant (AEP) or an

economic agent with substantial power, insofar as an asymmetric regulation is established to the extent there is market power.

Below are the main stances on the relevant topics in matters of specific regulatory burden:

Pricing regulation

Several applicants considered appropriate not to impose a pricing and rates regulation to the *Red Compartida*. Some participants were against establishing the obligation to publish a reference offer. They requested further clarity on the mechanisms whereby the *Red Compartida* would seek to guarantee competitive prices. It was also suggested that this network should let the market decide on the price in each location.

Disaggregation (Unbundling) of the network and services

It was questioned if the infrastructure of the *Red Compartida*: radio equipment, sites, buildings, towers, core network, optical and microwave links, core equipment, etc., was subject to the same sharing/disaggregation obligations.

It was indicated that the requirement of disaggregating the services should be left to the criterion of the winning concession holder. Any access to its infrastructure should be derived from voluntary agreements between the parties, in market terms. On the other hand, the possibility for the network to be able to offer packages, in addition to disaggregated services, was also commented.

It was also requested to clarify the scope of the disaggregated sale of each element of the network, how would the dimensioning of each of the network components be determined, and to specify what could happen if there were network components that were not exclusively used by the *Red Compartida*, for example, if they were shared by other operators. The prohibition of any exclusivity agreement was deemed necessary.

Coverage

It was discussed that the level of final coverage for the *Red Compartida* should be defined shortly due to its high impact in the profitability of the project, as well as the weight of this parameter in the bidding or tender process.

Some parties asked for the specific coverage requirements in terms of KPI (at the edge of the cell, amongst others).

Quality

The importance for mobile virtual network operators who offer emergency and security services proving that the network quality complies with standards above market was also stressed. Likewise, some parties pointed out that there should not be a specific and imposed quality but rather general standards.

Discounts per volume

Participants valued the possibility that the *Red Compartida* could offer discounts per volume, reflecting comparable cost schemes in a non-discriminatory manner. It was indicated that discounts per volume should not imply a distortion in the free and open competition process.

Interconnection

The importance of establishing interconnection points of the *Red Compartida* was also mentioned, as well as the conditions to enter into interconnection agreements with the *Red Compartida*. On the other hand, it was required to clarify if the *network* could benefit from the asymmetric measures imposed to the preponderant economic agent in interconnection matters (interconnection zero).

Other obligations

Questions were raised as to if the *Red Compartida* could acquire spectrum in the secondary market prior approval from the IFT and the possibility to use it to offer services directly to the end user.

Governmental clients

Several applicants considered necessary that the government guarantees the *Red Compartida* a demand aiming to give certainty to its business plan. It was repeatedly referred that the government should work as an “Anchor Client”, at least during the first years of the network’s operation.

Ways of participation

The applicants stressed the importance that the companies supplying equipment and technology should be allowed to participate as part of multiple business conglomerates, thus favoring technological neutrality. In this regard, further clarification of the participation rules for this type of companies was requested.

Many applicants questioned the fact that the nature of “partner” must be granted to a telecommunications operator, since this is a restriction that is not provided in the Constitution.

Certain applicants emphasized the need to eliminate this requirement entirely to give bidders the freedom to give proof of their experience as operators, both prior and after the award of the public tender process.

On the other hand, in order to guarantee the efficiency and quality of the project, the advantages of having independent entities in the performance of the different activities involved in the beginning of operations of the *Red Compartida* were reiterated.

Influence in the operation of the network

There were several comments stressing the need of defining the term “influence” to give legal certainty to potential investors of the *Red Compartida* project, since this term could impose limits to telecommunication network operators who wish to participate in the project and who have or may acquire influence in the operation of the *Red Compartida*. On one hand, it was stated that the “influence” topic could be contested and required the SCT and the IFT to clarify such concept to provide participants with legal certainty. Likewise, it was suggested that “influence” in the operation of the *Red Compartida* should be the same as “influence of telecommunication service providers in the operation of the network”, which is the text of the constitutional reform, and some opinions indicated that, to the contrary, it would take away legal certainty from investors, since the broadness of the term influence leads to confusion.

Some applicants proposed to follow the classical form of limiting influence, which means the non-participation in any of the decisions that could lead to competition barriers or strengthens competitive advantages. On the other hand, joint ventures and wholesale contracts that are executed with operators should not be considered in the analysis and determination of the criteria that determine “significant influence”.

Finally, another group of comments focused on requesting the prohibition for Mexican operators to participate as partners of the project, since they would necessarily have some type of influence in the *Red Compartida*.

Foreign investment

Further clarity was requested on the restrictions regarding foreign investment. A specific request was made to clarify the possibility for companies with foreign government participation to submit bids in the public tender.

Wholesale services

Some participants mentioned that the wholesale model is the most efficient way to share infrastructure and a common strategy currently used in broadband networks, both fixed and mobile. It was also indicated that there are alternate schemes, such as the possibility to auction the available broadband.

Further definition was requested on the applicable conditions to preponderant operators, as well as to operators with substantial power in this market. Likewise, it was commented that in order for the *Red Compartida* to meet its objective of being self-sustainable at a business level, certain rules and/or schemes should be considered to minimize the business risk that the existing MNO do not purchase capacity.

It was stated that the lease of spectrum may not be considered a wholesale service and that, if implemented, a wholesale network per each lessee of the spectrum could be created.

Term of the concession titles and of the PPP contract

The duration of the PPP contract, the term of the concession and the possibility of extension in both cases was questioned. It was stated that the term should be equal to the maximum provided by law for radioelectric spectrum concessions since a different term would be inconsistent.

Further clarity was requested as to if obtaining the sole concession would be a process independent from the public tender process, or if it would be awarded to the winning bidder upon executing the PPP contract.

Further detail was also requested on how the continuity of the services in operation would be guaranteed, and on the use of the assets of the *Red Compartida* upon termination of the contract.