

# COLOMBIA TELEFONICA CASE STUDY (Preliminary Findings May 2011)

## Overview

The Colombia Free Trade Agreement and the Action Plan for labor reforms pledge significant changes in the way all employers operate in Colombia. Current operations that will be illegal under Colombian law as called for by the Action Plan Related to Labor Rights include use of cooperatives and temporary service agencies to perform permanent core functions. This current practice allows companies to avoid a direct employment relationship with workers and has the effect of denying workers their right to form and join unions and to engage in collective bargaining.

Researchers looked at Telefonica as a case study for the challenges and opportunities laid out in this Action Plan. As the 5<sup>th</sup> largest international telecommunications company, and the major provider in Colombia, changes in their employment practices would be a real measure of how the Action Plan goals are being met. About 40% of Telefonica's total Colombian operations are outsourced and involve the use of cooperatives – workers for which Telefonica's Human Resources claim they have no responsibilities.

## Interpretation of the Language in the Action Plan

In Colombia, Telefonica uses private, third party agencies to effectively avoid compliance with Colombian labor laws, specifically, the prohibition on the use of cooperatives and other third party firms to perform core functions.

Telefonica's Human Resources Director stated to a UNI researcher that he does not believe that reforms to the country's law such as the Action Plan Related to Labor Rights will have any significant impact on the company. Once Telefonica outsources to the third party, he suggested, the company is not responsible for the actions of the third party. The HR Director's response may be a misunderstanding of the law or an insightful understanding of the weakness of the law.

## Cooperatives

Article 63 of Law 1429 specifically mentions cooperatives and has been interpreted to incorporate any outsourced entity that performs core functions. However, the language is open enough to interpret differently, as the Telefonica HR Director suggests.

## Core Functions

In addition, the law does not define core functions. Indeed, it is difficult to define core functions in a national law. Each industrial sector will have different functions which would be considered "core." But the lack of clarity within the law could be the basis of a

lot of interpretive debates, delaying effective implementation of the promise of the new laws. For example, within telecommunications, one can readily make the case that installation, maintenance and call centers are all core functions of a multinational communications company, unlike security and janitorial services, for example. In theory, a telecommunications firm would have to adhere to these reforms for the core functions, but not for non-core functions. Or it could take advantage of the vagueness of the law and force a protracted negotiation and court case.

**Testing the Limits of the Law**

It appears that Telefonica is testing the limits of the law on several fronts: the definition of core functions, the use of third parties to perform core functions and the use of third parties to contract with cooperatives. As a result the Action Plan goals will be circumvented by Telefonica. It is important to insist now that a multinational such as Telefonica honor the intent of labor law reforms in Colombia.

Telefonica operates in 25 countries and has 287.6 million customers worldwide. The company claims it is the 5<sup>th</sup> largest telecom company in the world in terms of market capitalization. More than 60% of its business is outside its home market, Spain. Telefonica acquired a majority share of Colombia Telecom in 2006, and thus became the major telecommunications provider in that country. Telefonica’s operation in Colombia is shown in Table 1.

<b>Table 1. Telefonica Markets in Colombia, as of December 2010</b>	
	Number of Access Lines of Subscribers
Fixed Telephony	1,587,000
Internet & Data	554,000
Mobile	10,005,000
Pre-paid	7,679,100
Contacts	2,325,500
Cable TV	205,000

Telefonica directly employed 11,421 workers in 2010, but another significant portion of the company’s operations are outsourced to third parties. Table 2 outlines the estimated outsourced jobs, about 40 percent of Telefonica’s total operations in Colombia. About 15 percent of that outsourced work is estimated to be directly performed by workers in cooperatives. These outsourced operations involve core telecommunications work, including landline, internet and cable installations and call center customer service work.

<b>Table 2. Telefonica Colombia Employees</b>				
	12/31/2008	12/31/2009	12/31/2010	Estimated Outsourced Workers

Movistar	1,656	1,476	1,740	3,000
Telecom	2,280	2,272	1,998	5,000
Atento Colombia	275	479	7,636	na
Terra	39	52	47	na
<b>Total</b>	<b>4,250</b>	<b>4,279</b>	<b>11,421</b>	<b>8,000</b>

It is interesting to note the difference in strategies at Telefonica's Atento division and its Telecom division. Previously, Atento outsourced to cooperatives and temp agencies. Beginning in 2010, Atento now directly employs mostly young, college students who provide a very fluid workforce. Atento now does a large percentage of Telefonica's call center work.

Telefonica engages a number of third party operators -- including cooperatives, private businesses and temp agencies -- to perform essential functions. The predominance of these employees creates an atmosphere in which Telefonica employees feel easily expendable.

Telefonica has directly contracted with cooperatives such as Ayudamos, but in some cases, the third party firm or agency subcontracts to cooperatives. For example, Armando Pezzano and ICOTEC, each subcontracts with cooperatives for services they are under contract with Telefonica to provide.

In the past, CoopServimos had direct contractual ties with Telefonica to provide technical support and external operations support. Telefonica severed those ties in 2010. Currently, ICOTEC has a contract with Telefonica to provide the technical support and external operations support formerly provided by CoopServimos. In turn, ICOTEC re-contracts with CoopServimos to provide the same work. In fact, the Director of CoopServimos has reported that he has little contact with ICOTEC and that his cooperative continues to work on a day-to-day basis directly with Telefonica. CoopServimos has about 150 associates to perform this work. They are paid about US \$380 to US\$480 monthly. (This compares to the minimum monthly salary in Colombia of US \$299.72). Table 3 in appendix 1 outlines some of the complicated outsourcing and co-op relationships.

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While cooperatives are required to register with the Ministry of Social Protection, they are not required to list their clients or their associates. This lack of transparency makes it difficult to track down specific information on the relationship between cooperatives and third party contractors. To assure full transparency, companies that use outsourcers, third parties and cooperatives should be required to provide information including name, location, number of employees, employee job titles and wages, etc.

In addition, Telefonica uses the third parties as a threat to workers who might support unionization. Telefonica has effectively kept its workplace virtually union-free by creating an overall climate of fear and job insecurity. Workers hired by outsourcing and temp agencies as well as those hired directly by Telefonica under short-term contracts face the effective elimination of their organizing and bargaining rights through the nature of their short term contracts. Workers are often hired under rotating short term (3-6 month) contracts that are renewed over and over again, sometimes for years. Employers can use short term contracts as a way to ensure that workers have no access to Freedom of Association and Collective Bargaining. Should workers demonstrate some interest in union activity employers do not have to fire them for organizing (which would be a violation of FOA) because they can just not renew the contracts. It makes an anti-union dismissal unnecessary while providing the employer the same result. Thus FOA is nullified with no consequence to the employer.

The heavy use of cooperatives, third party agencies and short term contracts is a powerful antidote to worker unionization. One worker told UNI researchers “knowing that any day could be my last and that there are other workers out there who could easily replace me, makes me afraid to put myself out there for the union.”

### **Managers Use Union-Busting Tactics**

Management at Telefonica uses a variety of tactics to deter worker organizing, including clamping down on workers’ discussions about the union or distributing union materials, questioning workers about their union support and conducting one-on-one as well as group meetings to disparage the union.

Another powerful tactic is terminations and firings. In 2010, Telefonica terminated, on average, 70 workers per month. Thus, workers fears of job loss are not unfounded. In June last year, Telefonica fired 432 employees without justification and without notice.

Telefonica’s strategy of combining of a ready pool of willing workers through its contracted outsourcers and the regular terminations of employees creates an effective and intimidating tool to prevent unionization and to hold down labor costs. Thus, the Action Plan Related to Labor Rights is not sufficient to keep this major multinational company in compliance with the intent of the law.

Appendix 1

<b>Table 3. Telefonica Outsourcing Firms, Type of Work and Relationship to Cooperatives -- Preliminary information</b>		
<b>Outsourcing Firms</b>	<b>Type of Work</b>	<b>Outsourcer- Cooperative Relationships</b>
FRANCISCO COLLAVINI	Distribution, Maintenance , installation, LL, cable, internet, tv	
ARMANDO PEZZANO	Distribution, Maintenance , installation, LL, cable, internet, tv	Asecomumitel, Coopsertal, Coopservitel, one more
OPEGIN	Distribution, Maintenance , installation, LL, cable, internet, tv	
COBRA	Distribution, Maintenance , installation, LL, cable, internet, tv	
ICOTEC	Distribution, Maintenance , installation, LL, cable, internet, tv	Coopservimos;
NETWORK TEST AMERICA	Distribution, Maintenance , installation, LL, cable, internet, tv	
DICO TELECOMUNICACIONES S.A.	Distribution, Maintenance , installation, LL, cable, internet, tv	
ICOTEC	Center of Electric Power, generators, special crew that maintains, operates, etc	
TECNOCOM	Center of Electric Power, generators, special crew that maintains, operates, etc	
EIA	Center of Electric Power, generators, special crew that maintains, operates, etc	
TELCOT	Maintenance , installation, LL, cable, internet - TELECOM	
INTERACTIVO	Technical support, CALL CENTER, MOVISTAR	
INDRA	Technical Support and Datacenter - MOVISTAR - TELECOM	
RELACOM (ERICSSON)	Maintenance, Technical support, Hardware, Network - MOVISTAR	
HUAWEI	Maintenance, Technical support, Hardware, Network - MOVISTAR	
OESIA	Technical support, Hardware, Network - TELECOM	

**Table 3 Continued. Telefonica Outsourcing Firms, Type of Work and Relationship to Cooperatives -- Preliminary information**

<b>Cooperatives (CTAs)</b>		
AYUDAMOS	Call Center - MOVISTAR	
COOPSERVIMOS	Technical support, maintenance, installations, LL, cable internet	Contract w/ ICOTEC
COOPSERTEL	Technical support, maintenance, installations, LL, cable internet	Contract w/ ICOTEC
ASECOMUNITEC	Technical support, maintenance, installations, LL, cable internet	Contract w/ Armando Pezzano
COOPSERVITEL	Technical support, maintenance, installations, LL, cable internet	Contract w/Armando Pezzano
COOPERAL	Technical support, maintenance, installations, LL, cable internet	Contract w/Armando Pezzano
<b>Temp Agencies</b>		
EFICACIA		
<b>Other Service Contractors</b>		
SEGURIDAD		
ASEO / MANTENIMIENTO EDIFICIOS		
PROCESOS NOMINAS		
PROCESOS FACTURACION		