

**JOSH NELSON AND JORGE BLANCO, IN THEIR OWN RIGHT
AND ON BEHALF OF TELE FÁCIL MÉXICO, S.A. DE C.V.**

Claimants

and

THE UNITED MEXICAN STATES

Respondent

NOTICE OF INTENT TO SUBMIT A CLAIM UNDER NAFTA CHAPTER ELEVEN

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Pursuant to Articles 1116, 1117 and 1119 of the North American Free Trade Agreement (“NAFTA”), and with a view to settling this dispute through consultation or negotiation as encouraged under Article 1118, Josh Nelson and Jorge Blanco hereby submit this Notice of Intent to Submit a Claim to Arbitration to the Government of the United Mexican States.

I. NAMES AND ADDRESSES OF DISPUTING INVESTORS AND THEIR ENTERPRISE

1. Josh Nelson is a national of the United States who has made an investment in Mexico. He serves as a founding partner of Tele Fácil México, S.A. de C.V. He also serves as Chief Executive Officer of Great Lakes Communications Corp. located in Spencer, Iowa in the United States and can be contacted at the following business address:

Great Lakes Communication Corp.
1713 McNaughton Way
Spencer, Iowa 51301
USA

2. Jorge Blanco is a national of the United States who has made an investment in Mexico. He also serves as a founding partner of Tele Fácil México, S.A. de C.V. His business address is:

825 Brickell Bay Drive, #848
Miami, Florida 33131
USA

3. Tele Fácil México, S.A. de C.V., a corporation organized under the laws of Mexico, is majority owned and controlled by Josh Nelson. The company’s principal place of business is:

Calz. de Tlalpan 4585-104
Col. Toriello Guerra, Del. Tlalpan
C.P. 14050
Mexico

4. Legal counsel for Josh Nelson and Jorge Blanco are Timothy J. Feighery and Lee M. Caplan of Arent Fox LLP, 1717 K Street, NW, Washington DC, 20006, and G. David Carter of Innovista Law PLLC, 1200 18th Street, NW, Suite 700, Washington DC, 20036.

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II. FACTUAL BACKGROUND

(a) Establishment of the Business Venture

5. Tele Fácil, S.A. de C.V. (“Tele Fácil”) was created with the aim of entering the Mexican telecommunications market to provide local and long distance wireline telephone, local and long distance wireless telephone, Internet and cable television services to customers in Mexico. The business venture was conceived of and developed in 2009 by three individuals with significant experience in the telecommunications business: Josh Nelson, Jorge Blanco, and Miguel Sacasa.
6. Josh Nelson was then and continues to serve as Chief Executive Officer of Great Lakes Communications Corp., a privately owned telecommunications company that provides wireline and Internet services to consumers in the United States, and that handles nearly ten billion minutes of telecommunications traffic annually. Jorge Blanco is a telecommunications expert with 28 years of experience in the telecommunications industry, specializing in business development, first with MCI in New York City and then as a consultant/business partner in various projects, including development of a client base for various telecommunications corporations. Miguel Sacasa is a leader in the telecommunications industry with significant expertise in accessing Latin American telecommunication markets, having served for many years as Vice President and CEO of The S Group USA, Inc.

7. After careful assessment of the business prospects and regulatory framework in Mexico's telecommunications market, the decision was made to seek a targeted investment opportunity in Mexico.
8. To further this business plan, Josh Nelson and Jorge Blanco formally partnered with Miguel Sacasa, a Mexican national, with the aim of forming a telecommunications company for investment purposes in Mexico. At the time, Mexican telecommunications law restricted foreign ownership in the telecommunications sector to 49%.¹ Consequently, the partners agreed that Josh Nelson and Jorge Blanco would own 40% and 9% of the new enterprise, respectively, and Miguel Sacasa would own 51%.
9. On January 7, 2010, the partners organized Tele Fácil under the laws of Mexico to serve as the investment and operating company.² By formal agreement between the partners, Josh Nelson provided all of the start-up capital and committed to fund the venture fully until it was self-sustainable. He also provided all of the technical and engineering support to actualize the business plan. Jorge Blanco assumed responsibility for negotiating the necessary interconnection agreements with relevant carriers in the Mexican telecommunications market. Miguel Sacasa was appointed to serve as Director General of Tele Fácil to oversee the day-to-day operations of the company.
10. Based on the partners' respective responsibilities and assumptions of economic risk, it was agreed that Josh Nelson would receive 60% of Tele Fácil's profits, and that Jorge Blanco and Miguel Sacasa would each receive 20%. It was also agreed that Nelson would assume majority control of Tele Fácil once anticipated reforms in Mexican law permitted him to do so. These changes in fact occurred on June 11, 2013, when the

¹ Article 12 of the Federal Telecommunications Law establishes: "Concessions referred to in this Law are only granted to Mexican individuals or companies. Under no circumstances may foreign investment participation exceed 49 percent, except for cellular telephony. In this case, favorable resolution from the National Foreign Investment Commission is required, so that foreign investment has a larger percentage."

² As evidenced by public deed number 16,778, dated January 7, 2010, granted before Mr. Marco Tulio González Rodríguez, Notary assigned to Notary Public 1 in the City of Metztlán, Hidalgo, and which first transcript was duly registered before the Public Registry of Commerce of Mexico City under electronic number 410108-1.

Mexican constitution was amended to eliminate restrictions on foreign ownership and control in the telecommunications sector.³

11. With the partners' agreement in place, on May 27, 2011, Tele Fácil applied for a concession to operate as a telecommunications provider in Mexico. Although the Mexican government delayed consideration of Tele Fácil's application for nearly two years, Tele Fácil was ultimately awarded a concession on May 17, 2013.⁴ The concession entitled Tele Fácil to offer "quadruple-play" services in Mexico, which included rights to provide (1) local and long distance wireline telephone, (2) local and long distance wireless telephone, (3) Internet, and (4) cable television services in key markets, including in Mexico City, Guadalajara and Monterrey.
12. To give effect to this concession—and thereby begin the process of operating in the Mexican telecommunications market—on August 7, 2013, Tele Fácil requested interconnection with Teléfonos de México, S.A.B. de C.V. and Teléfonos del Noroeste (collectively "Telmex"). These sister companies are the incumbent, dominant providers of telecommunications services in Mexico and collectively constitute Mexico's largest (and monopolistic) telecommunications provider. Telmex is part of América Móvil, the fourth largest international mobile network operator in terms of subscribers and one of the largest corporations in the world. It is led by Mr. Carlos Slim Helú, who, for several years, was ranked as the richest person in the world and whose business empire, which is influential in every sector of the Mexican economy, reportedly accounts for as much as 40% of the listings on the Mexican Stock Exchange.
13. Given its stranglehold over the telecommunications market in Mexico, interconnection with Telmex is indispensable to the operation of any new entrant in the Mexican telecommunications market; Telmex handles approximately 70% of telecommunications services in Mexico. However, *direct* connection with Telmex is highly problematic because of its proven monopolistic practices of delaying access to telecommunications

³ The Fifth Transitory Article of the 2013 Constitutional Reform stated: "Once the Decree is enacted, foreign investment will be allowed up to one hundred percent in telecommunications and satellite communications."

⁴ Concession to install, operate and exploit a public telecommunications network, granted by the Federal Government of Mexico through the Ministry of Communications and Transportation, in favor of Tele Fácil México, S.A. de C.V., on May 17, 2013.

infrastructure.⁵ It was therefore crucial that Tele Fácil be able to connect *indirectly* with Telmex through a third-party provider like Nextel México. To that end, Tele Fácil entered into negotiations with Nextel México to make all of the necessary arrangements for indirect interconnection, as permitted under Mexican law.

14. On August 26, 2013, Telmex responded to Tele Fácil's request for indirect interconnection by offering it a framework agreement for interconnection through 2017. The interconnection agreement included terms, among others, establishing interconnection rates at United States dollars ("USD") \$0.00975 per minute of use ("MOU"). After extensive negotiations, the parties reached agreement with respect to all but two of the terms for interconnection. The two terms that remained open were Tele Fácil's request to include indirect interconnection, and the elimination of local number portability charges (*i.e.*, the fees charged by Telmex as a cost recovery for expenses incurred after the adoption of number portability in Mexico).
15. To resolve the disagreement over these two remaining interconnection terms, on July 7, 2014, Tele Fácil initiated a process before Mexico's telecommunications regulator, the Federal Institute of Telecommunications ("IFT"), pursuant to Article 42 of the Federal Telecommunications Law.⁶
16. On November 26, 2014, the IFT ruled unanimously to resolve the disagreement in Tele Fácil's favor on all counts.⁷ The IFT's decision, embodied in Resolution 381, rejected Telmex's terms on portability charges and determined that Tele Fácil was entitled to indirectly interconnect with Telmex.

⁵ Resolution P/IFT/EXT/060314/76 by which the Plenary of the Federal Telecommunications Institute declares as Preponderant Economic Agent the Economic Interest Group, including America Movil, S.A.B. de C.V., Telefonos de Mexico, S.A.B. de C.V., Telefonos del Noroeste, S.A. de C.V., Radiomovil Dipsa, S.A.B. de C.V., Grupo Cardo, S.A.B. de C.V. and Grupo Financiero Inbursa, S.A.B. de C.V.

⁶ Article 42 of the Federal Telecommunications Law. "Public telecommunication network concessionaires shall interconnect their networks and for such purposes they shall execute an agreement no later than 60 calendar days from the date one of them requests it. If such term goes by without the parties executing the agreement, or before, if both parties request it, the Minister, within the next 60 calendar days, will solve the conditions that were not agreed upon."

⁷ Resolution by which the Plenary of the Federal Telecommunications Institute determines the interconnection conditions that were not agreed between Tele Fácil México, S.A. de C.V. and the companies Teléfonos de México, S.A.B. de C.V., and Teléfonos del Noroeste, S.A. de C.V., dated November 26, 2014, under Resolution number P/IFT/261114/381.

17. The IFT also rejected Telmex's claim that the parties had never agreed to interconnection rates. This aspect of the decision was critical to Tele Fácil. Under Mexico's newly reformed telecommunication regime, Telmex had been designated a "preponderant economic agent" on account of its longstanding and pervasive anti-competitive conduct.⁸ As a measure to promote competition in the telecommunications industry, the new law prohibits a preponderant economic agent (in this case, Telmex) from charging other carriers for terminating telecommunications traffic on its network. This change in law made the original interconnection terms generally less profitable for Telmex. In an attempt to get out of the freely negotiated rate terms that, due to changes in Mexican law, were no longer as lucrative for it as a preponderant economic agent, Telmex argued to the IFT (ironically given its circumstances) that the rate terms were no longer consistent with the new telecommunications regime.
18. The IFT expressly dismissed this argument in Resolution 381 and ruled in Tele Fácil's favor. First, it found that "the only interconnection conditions not agreed to by the parties during the negotiation process to execute the corresponding interconnection agreement" were with respect to portability charges and indirect interconnection.⁹ Second, it found unequivocally that "the interconnection rates were fully established" and that "Tele Fácil has full knowledge of and consented to these rates."¹⁰ The IFT therefore concluded: "having an agreement between Tele Fácil, Telmex and Telnor [Telmex's local affiliated sister company that provides service in the northern part of Mexico] such concessionaires are obliged to provide the interconnection requested by Tele Fácil."¹¹ Thus, the terms of interconnection were set.
19. Having dismissed all of Telmex's arguments categorically and having found in Tele Fácil's favor on all counts, the IFT ordered Telmex and Tele Fácil to execute the

⁸ Resolution by which the Plenary of the Federal Telecommunications Institute declares as Preponderant Economic Agent the Economic Interest Group, of which America Movil, S.A.B. de C.V., Telefonos de Mexico, S.A.B. de C.V., Telefonos del Noroeste, S.A. de C.V., Radiomovil Dipsa, S.A.B. de C.V., Grupo Cardo, S.A.B. de C.V. and Grupo Financiero Inbursa, S.A.B. de C.V. are part of, and it imposes the necessary measures to avoid affecting the competition and free concurrence. Such resolution may be found at:

http://www.ift.org.mx/sites/default/files/p_ift_ext_060314_76_version_publica_hoja.pdf.

⁹ Page 14, paragraph 3 of the Resolution 381.

¹⁰ Page 13, last paragraph of Resolution 381; Page 14, second paragraph of Resolution 381; Page 16, last paragraph of Resolution 381.

¹¹ Page 16, paragraphs 2 and 3 of Resolution 381.

interconnection agreement, as determined by the IFT, and to interconnect their systems within ten business days after notification of the ruling.

20. As a consequence of Resolution 381, Tele Fácil was entitled under Mexican law to begin handling telecommunications traffic in Mexico under its concession, and had already lined up strong commitments from many other providers, both in Mexico and internationally, in order to begin quickly offering substantial telecommunications services to Mexican customers.

(b) The IFT's Failure to Enforce Resolution 381

21. Telmex did not comply with Resolution 381 within ten business days, as required by Resolution 381. Instead, on December 10, 2014, Telmex responded by sending Tele Fácil a new interconnection agreement. While including the correct terms regarding portability charges, indirect connection, and interconnection rate, as required by Resolution 381, that agreement also set forth a series of unauthorized terms, including terms that dramatically reduced the duration of the contract. Whereas the original interconnection agreement extended through 2017, Telmex proposed interconnection ending in 2014—even though there were only 21 days remaining in 2014.
22. On December 16, 2014, Tele Fácil responded by transmitting to Telmex for signature a signed, notarized and official certified copy of the interconnection agreement that reflected the terms approved by the IFT pursuant to Resolution 381.
23. On December 19, 2014, Tele Fácil also requested that the IFT take action to enforce Resolution 381. Tele Fácil followed up with similar requests on January 28, 2015, and March 15, 2015. The IFT took no meaningful action and never responded to Tele Fácil's written requests for enforcement.

24. During the same period, upon information and belief, Telmex representatives met with IFT officers and petitioned them to reopen its decision in Resolution 381.¹²

(c) The IFT's Dramatic and Illegal Reversal of Resolution 381

25. After Resolution 381 was rendered, rather than enforcing its legal conclusions, the IFT unexpectedly and dramatically reversed course completely, undoing its prior rulings, stripping Tele Fácil of its rights under the interconnection agreement, and taking unlawful steps that destroyed Tele Fácil's business prospects while boosting Telmex's economic position.
26. On April 8, 2015, without providing any notice to Tele Fácil or opportunity to present its views, the IFT rendered Decree 77 which purported to provide an interpretation of Resolution 381.¹³ In fact, that decision was directly contrary to Resolution 381 and clawed back the IFT's critical prior rulings in Tele Fácil's favor.
27. Decree 77 reversed the IFT's decision concerning its own authority to determine the scope and contents of an interconnection in a single proceeding. In Resolution 381, the IFT had rendered a decision on the *entire* scope and contents of the interconnection agreement between Telmex and Tele Fácil—not only with respect to disputed terms—and ordered the parties to interconnect on that basis within ten business days. In stark contrast, Decree 77 now found that “the IFT does not have the authority to opine on terms and conditions in which [telecommunications providers] must execute their [interconnection] agreement[; its] competencies are restricted to resolving the conditions not agreed upon by the parties [in this case, regarding portability and indirect connection].”¹⁴

¹² Based on available information, at least two meetings were held, one on February 6 and one on February 23, 2015, between the legal representatives of Telmex and IFT officers, regarding a confirmation of criteria of the scope of Resolution 381.

¹³ Decree by which the Plenary of the Federal Telecommunications Institute establishes the scope of the “resolution by which the Plenary of the Federal Telecommunications Institute determines the interconnection conditions that were not agreed between Tele Fácil México, S.A. de C.V. and the companies Teléfonos de México, S.A.B. de C.V., and Teléfonos del Noroeste, S.A. de C.V.”, dated April 8, 2015, under Decree number P/IFT/EXT/080415/77.

¹⁴ Page 10, paragraph 3 and 4 of Decree 77.

28. Decree 77 also reversed the essential principle of unity of contract execution and physical interconnection. In Resolution 381, the IFT ordered the parties to modify the interconnection agreement to effectuate its conclusions regarding indirect interconnection and portability charges, and then to execute the agreement and physically interconnect within ten business days.¹⁵ In Decree 77, the IFT ordered the parties to interconnect their systems physically within ten business days, but obligated the parties to execute “the corresponding [interconnection] agreement” without specifying any deadline for doing so.¹⁶ This ruling not only defied established Mexican law and Supreme Court jurisprudence, but it also placed Tele Fácil in the untenable and precarious position of having to interconnect physically with Telmex, a proven monopolist, without the critical commercial terms in place to govern the parties’ relationship.
29. Decree 77 also eliminated rights of interconnection previously granted to Tele Fácil. In Resolution 381, the IFT obliged the parties to carry out the terms of the original interconnection agreement, including the agreed rates of USD \$0.00975/MOU, through 2017. Decree 77 now declared that “the rights of each party are untouched with respect to items that were not the subject of Resolution 381,” such as interconnection rates.¹⁷ It went further and decided that all previously agreed terms, including with respect to interconnection rates, were no longer valid, finding “[t]he rights of the parties are held harmless as regards the conditions that were not a matter of the Interconnection Resolution [381].”¹⁸
30. The practical consequences of the IFT’s ruling are not only inconsistent with Mexican telecommunications law and policy, but are also absurd. If the IFT lacks authority to determine all of the parties’ terms of interconnection in a single proceeding, including those that are undisputed, then the parties’ interconnection agreement would never be completely settled until every single term was individually litigated before the IFT. More worrisome, any party to an interconnection agreement could reopen any term that had not been previously resolved by the IFT simply by initiating a new disagreement process.

¹⁵ Page 17, first resolution of Resolution 381.

¹⁶ Page 13, third resolution of Decree 77.

¹⁷ Page 10, last paragraph of Decree 77.

¹⁸ Page 13, fourth resolution of Decree 77.

Such an approach would have devastating consequences for the Mexican telecommunications sector by destabilizing every existing interconnection agreement in the industry.

31. Notably, unlike Resolution 381, which was rendered unanimously in favor of Tele Fácil, the critical ruling in Decree 77 eliminating Tele Fácil's interconnection rights was passed by a slim 4-3 vote.¹⁹
32. In the period following Decree 77, Tele Fácil was subjected to an unusually high frequency of enforcement actions by the IFT. Whereas the IFT did not appear to inspect or to inspect Telmex effectively following Resolution 381, Tele Fácil was inspected twice within five months. It is rare that a carrier would be subject to two enforcement actions in a period of five years, let alone five months.
33. It is even more unusual that the two inspections yielded contradictory results. Following the first inspection on June 9 and 10, 2015,²⁰ the IFT concluded that no irregularities were found regarding Tele Fácil's compliance with Decree 77.²¹ Notwithstanding this favorable result, a second inspection in connection with Tele Fácil's compliance with Decree 77 was performed on October 20, 21 and 27, 2015.²² This time, the IFT reversed its prior conclusion and found that some irregularities existed.²³ On March 16, 2016, the IFT notified Tele Fácil that the company would be subject to sanctions as a result of these irregularities.²⁴ The matter is now before the IFT's Compliance Unit.
34. On June 16, 2015, Telmex submitted a purported new interconnection disagreement to the IFT for resolution, claiming that because Tele Fácil had not signed the

¹⁹ Page 14, penultimate paragraph of Decree 77.

²⁰ Verification IFT/DF/DGV/562/2015.

²¹ Document IFT/225/UC/DG-VER/3661/2015 dated September 15, 2015.

²² Verification IFT/DF/DGV/988/2015.

²³ Document IFT/225/UC/DG-VER/222/2016 dated February 3, 2016.

²⁴ Document dated March 14, 2016 issued by the Compliance Unit of the IFT, on file E-IFT.UC.DG-SAN.II.0009/2016. Tele Fácil is currently challenging the IFT's notification on the basis that the asserted irregularities are no longer relevant under subsequent IFT regulation.

interconnection agreement it had proposed, a disagreement with Tele Fácil existed regarding, among other things, the applicable interconnection rates for 2015.²⁵

35. The IFT accepted Telmex's application to resolve the purported interconnection disagreement on June 19, 2015.
36. On August 5, 2015, Tele Fácil submitted another request to the IFT to enforce Resolution 381 against Telmex.
37. On October 19, 2015, the IFT issued Resolution 127, which resolved Telmex's manufactured interconnection disagreement decidedly in Telmex's favor.²⁶ That decision overruled Tele Fácil's strong objections that the IFT lacked jurisdiction because it had previously decided all matters in Resolution 381.
38. Resolution 127 reiterated the rulings in Decree 77 that, as noted above, had effected a complete reversal of the IFT's rulings in Resolution 381, and went even further. As in Decree 77, the IFT also found in Resolution 127 that the parties were not bound by the original interconnection agreement between Telmex and Tele Fácil. However, the IFT now ruled that the original interconnection agreement had never existed. According to the IFT, it was invalid because it was never signed by Telmex.²⁷
39. The IFT also determined the applicable interconnection rates in Telmex's favor. Despite Resolution 381, the IFT now found that the applicable interconnection rate was Mexican pesos ("MXN") \$0.004179/MOU (USD \$0.000253/MOU), approximately *one fortieth* of the rate previously agreed to between the parties and approved by the IFT, USD \$0.00975/MOU.²⁸
40. Resolution 127 also completely contradicted the IFT's prior decision in Resolution 381 on indirect interconnection. In Resolution 381, the IFT expressly resolved a

²⁵ As stated in Background XI of the Resolution 127.

²⁶ Resolution by which the Plenary of the Federal Telecommunications Institute determines the interconnection conditions that were not agreed between Teléfonos de México, S.A.B. de C.V., Teléfonos del Noroeste, S.A. de C.V. and Tele Fácil México, S.A. de C.V., applicable from January 1 to December 31, 2015", dated October 7, 2015, under Decree number P/IFT/EXT/071015/127.

²⁷ Page 19, paragraph 4 of Resolution 127.

²⁸ Page 35, first resolution of Resolution 127.

disagreement between the parties over indirect interconnection and ruled, consistent with Tele Fácil's rights under Mexican law, that Tele Fácil was entitled to interconnect indirectly with Telmex. In Resolution 127, the IFT ignored and completely reversed that prior ruling.

41. Both IFT Commissioners who are lawyers, Ms. Adriana Sofia Labardini Inzunza and Mr. Adolfo Cuevas Teja, dissented from Resolution 127 on the basis that the decision was inconsistent with Mexican law.
42. On October 27, 2015, Tele Fácil submitted a letter to the IFT explaining that it could not comply with the terms of Resolution 127 because they directly conflicted with the terms of Resolution 381.

(d) Mexican Courts Have Failed to Address Properly the IFT's Misconduct

43. The events described above have given rise to three amparo actions challenging the constitutionality of the IFT's conduct: one by Telmex in connection with Resolution 381 and two by Tele Fácil in connection with Decree 77 and Resolution 127, respectively. District Court rulings have been issued in all three cases and appeals are pending. While the District Courts appear to have generally ruled in favor of Tele Fácil on the issue of indirect interconnection, at the same time, they have failed to correct the IFT's misconduct that has denied Tele Fácil the higher interconnection rate as originally agreed with Telmex.
44. On January 22, 2016, the First District Court for Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, dismissed Tele Fácil's amparo action challenging the constitutionality of Decree 77.²⁹ Tele Fácil filed an appeal of that decision with the Circuit Collegiate Court in Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, on February 18, 2016.

²⁹ Resolution items First and Second on page 16 of Resolution to Amparo trial 1381/2015, issued by the First District Judge for Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, on January 22, 2016.

45. On March 11, 2016, the Second District Court for Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, dismissed Telmex's amparo action challenging the constitutionality of Resolution 381.³⁰ The court upheld the IFT's ruling in favor of Tele Fácil regarding indirect interconnection. However, the court also determined that the IFT only had authority to resolve disputed interconnection terms and lacked the power to declare agreed terms final and binding on the parties. In essence, therefore, the court condoned the IFT's actions which allowed Telmex a second bite at drastically reducing the interconnection rates previously agreed to with Tele Fácil.
46. Both Tele Fácil and Telmex have appealed aspects of the court's decision.
47. On March 15, 2016, Tele Fácil received a second ruling from the Second District Court for Administrative Matters, rejecting its constitutional challenge to Resolution 127.³¹ That decision, while confusing, appears to confirm Tele Fácil's right to indirect interconnection. The court found that the IFT's contradictory rulings on indirect interconnection—indirect interconnection was permitted under Resolution 381, but denied under Resolution 127—were both simultaneously valid. In addition, the court reiterated its interpretation that the IFT only has authority to resolve disputed interconnection terms. Tele Fácil plans to appeal the court's decision.

(e) The IFT's Refusal to Convert Tele Fácil's Concession

48. On August 4, 2015, Tele Fácil applied to the IFT for the conversion of its original public telecommunications network concession into a sole concession for commercial use. This application was necessary because Mexico's new telecommunications law no longer covers public telecommunication network concessions. In addition, the sole concession has substantial business advantages: it is a much simpler document with fewer obligations, and it corresponds to Mexico's reformed regulatory framework.

³⁰ Resolution to Amparo trial 351/2014, issued by the Second District Judge for Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, on March 11, 2016.

³¹ Resolution to Amparo trial 1694/2015, issued by the Second District Judge for Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, on March 15, 2016.

49. According to Mexican law, the IFT must authorize the transition to the sole concession within 60 calendar days of a telecommunications provider's request.³² To date—eight months after Tele Facil filed its application—the IFT has failed to take action to convert the company's concession. The IFT's significant delay raises serious concerns. Based on information and belief, the IFT has made the concession conversion process a high priority and, with respect to all other applicants, has converted concessions in a timely manner. Its failure to treat Tele Fácil on a similar basis is inexplicable.

* * *

50. Based on the IFT's acts and omissions described above, Tele Fácil has been rendered commercially unviable and has been denied access to the Mexican telecommunications market, resulting in significant losses for the company and its U.S. shareholders, Josh Nelson and Jorge Blanco.

III. MEXICO'S VIOLATIONS OF NAFTA CHAPTER ELEVEN

51. Mexico, through the acts and omissions of the IFT, is responsible for, among other things, the failure to enforce Resolution 381 and the subsequent issuance of Decree 77 and Resolution 127, which illegally reversed Resolution 381 and irreparably harmed Josh Nelson's and Jorge Blanco's investments in Mexico. These measures, at a minimum, breached Mexico's obligations under Article 1110 (Expropriation and Compensation), Article 1105 (Minimum Standard of Treatment), and Article 1102 (National Treatment).³³

(a) Article 1110 (Expropriation and Compensation)

52. Mexico has breached Article 1110 of the NAFTA, which provides: "No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except: (a) for a public purpose; (b) on a non-

³² Article 73 of the Federal Law of Telecommunications and Broadcasting.

³³ Josh Nelson and Jorge Blanco, in their own right and on behalf of Tele Fácil, reserve the right to raise additional claims of breach of Chapter Eleven of the NAFTA.

discriminatory basis; (c) in accordance with due process of law and Article 1105(1); and (d) on payment of compensation in accordance with paragraphs 2 through 6.”

53. In Resolution 381, the IFT resolved the only disputed interconnection terms regarding portability charges and indirect interconnection decidedly in Tele Fácil’s favor, and it expressly ruled that all other interconnection terms, including those relating to interconnection rates, were effective as having been agreed to between Tele Fácil and Telmex. Consequently, the IFT found that the parties were obliged to execute the interconnection agreement reached by the two companies, as modified in Tele Fácil’s favor, and physically interconnect their systems within ten business days. Resolution 381 vested Tele Fácil with significant and valuable rights under Mexican law.
54. Rather than take steps to enforce Resolution 381, in a series of subsequent decisions—Decree 77 and Resolution 127—the IFT stripped Tele Fácil of its rights under the interconnection agreement, declaring the interconnection agreement invalid by formal administrative decree. As a result, one of Tele Fácil’s principal assets was deprived of all value and all related rights of Tele Fácil’s U.S. shareholders were correspondingly extinguished. Further, by imposing interconnection rates that were one fortieth of the value of the rates originally agreed to by Telmex and Tele Fácil, the IFT decimated Tele Fácil’s business prospects in Mexico generally. Unable to operate at a commercially viable rate, the entire business venture has been taken.
55. The actions of the IFT constitute a clear taking of property under the international law standards set forth in NAFTA Chapter Eleven. The IFT’s taking of Tele Fácil’s property was not for a public purpose, nor on a non-discriminatory basis, nor with due process of law. Nor was Tele Fácil offered any compensation for its considerable losses. Nor can the IFT’s conduct be justified as any form legitimate regulation aimed at protecting public welfare objectives.
56. As a result of the IFT’s acts and omissions, Josh Nelson, Jorge Blanco and Tele Fácil have suffered significant damages.

(b) Article 1105 (Minimum Standard of Treatment)

57. Mexico has breached Article 1105 of the NAFTA, which provides: “Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.”
58. After the IFT issued Resolution 381, it was responsible for a series of acts and omissions that individually or collectively amounted to either a gross denial of justice, manifest arbitrariness, blatant unfairness, a complete lack of due process, evident discrimination, and/or a manifest lack of reasons.
59. Following Resolution 381, something highly unusual occurred within the IFT that caused it to dramatically and unjustifiably reverse all of its prior rulings against Telmex.³⁴ Not only did the IFT refuse to enforce Resolution 381 against Telmex, despite having been requested repeatedly by Tele Fácil to do so, but it also tolerated and eventually endorsed Telmex’s plan to re-open and reverse the IFT’s prior rulings.
60. On December 10, 2014, when Telmex failed to execute the original interconnection agreement as modified, and to physically interconnect with Tele Fácil, the IFT did nothing meaningful. On December 19, 2014, January 28, 2015, March 15, 2015, and August 5, 2015, when Tele Fácil requested enforcement of Resolution 381, the IFT stood idle.
61. The fact that the IFT had turned against Tele Fácil was never clearer, however, than when the Head of the IFT’s Legal Unit, Carlos Silva Ramirez, initiated an unprecedented procedure to interpret the IFT’s rulings in Resolution 381. This procedure had no basis in Mexican law. It was also highly prejudicial to Tele Fácil interests, resulting, through the issuance of Decree 77, in the indirect expropriation of the company’s previously confirmed rights under the original interconnection agreement and the related rights of its U.S. shareholders.

³⁴ Recall that Telmex met at least twice with the IFT officers on February 6 and 23, 2015 to confirm the criteria of the scope of Resolution 381. Tele Fácil was not present nor invited to these meetings.

62. More shockingly, the process, which began and ended in one Special Session of the IFT on April 8, 2015, afforded Tele Fácil no opportunity to present its views, in written or oral form. Consequently, before being stripped of all of its rights under the interconnection agreement, Tele Fácil had no ability to address fundamental issues of Mexican telecommunications law and policy that directly affected its commercial interests. These issues included that the IFT has authority to resolve a disagreement in a single proceeding and that when it does so all resolved *and* undisputed terms are final and binding on the parties. Having concluded in Decree 77 in the negative on both counts, the IFT irreparably damaged Tele Fácil's legal rights and effected a profound change in Mexico's telecommunications regime, without allowing Tele Fácil any chance to inform the proceeding.
63. To add insult to injury, in the months following Decree 77, the IFT subjected Tele Fácil to two site inspections, an unusually high number of inspections in light of the IFT's general practice and, in particular, its failure to subject Telmex to any inspections following Resolution 381. Further, the two inspections of Tele Fácil inexplicably yielded opposite results: the first stated that the company was in compliance with Decree 77, while the second reached the opposite conclusion, although without any change in Tele Fácil's conduct.
64. The IFT's mistreatment of Tele Fácil continued on June 16, 2015, when it accepted Telmex's request for resolution of an alleged disagreement with Tele Fácil. Ignoring Resolution 381 and capitalizing on Decree 77, Telmex now alleged that Tele Fácil had not agreed to the terms of the new interconnection agreement it proposed after Resolution 381 was rendered. Telmex therefore claimed that, among others, terms relating to interconnection rates and direct interconnection were in dispute.
65. In Resolution 127, the IFT gave Telmex another bite at the apple, allowing it to re-litigate previously determined issues to reach an outcome that was detrimental to Tele Fácil. Whereas in Resolution 381, the IFT determined the interconnection rates to be USD \$0.00975/MOU, now the IFT imposed a rate of MXN \$0.004179/MOU (USD

\$0.000253/MOU), one fortieth the amount of the prior rate, to Telmex's great benefit and Tele Fácil's great loss.

66. More astoundingly still, the IFT reversed itself on the issue of direct connection, a term that by the IFT's own prior reasoning was resolved and thus survived Decree 77. The IFT provided no credible reasons for why it granted Tele Fácil the right to connect indirectly to Telmex in Resolution 381 and then granted Telmex the right to connect directly to Tele Fácil in Resolution 127.
67. As a result of the IFT's acts and omissions described above, Josh Nelson, Jorge Blanco and Tele Fácil have suffered significant damages.

(c) Article 1102 (National Treatment)

68. Mexico has also breached Article 1102 of the NAFTA.³⁵ That article provides that Mexico must accord U.S. investors and their investments "treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."
69. The IFT's acts and omissions resulted in clearly less favorable treatment of Tele Fácil, a U.S.-controlled telecommunications provider, in relation to Telmex, a Mexican telecommunications provider that competes in the same industry.
70. The IFT's dramatic reversal of its rulings in Resolution 381 effected a brazen transfer of market benefits from Tele Fácil to Telmex, Mexico's national champion. Whereas in Resolution 381, the IFT determined the interconnection rate to be freely negotiated at USD \$0.00975/MOU, in Resolution 127, the IFT imposed a much lower rate of MXN \$0.004179/MOU (USD \$0.000253/MOU) to Tele Fácil's great detriment. Whereas in Resolution 381, the IFT granted Tele Fácil indirect connection rights—a term crucial to Tele Fácil's market access—in Resolution 127, the IFT inexplicably reversed its prior decision and allowed Tele Fácil only to connect directly with Telmex. The benefit of the

³⁵ Josh Nelson and Jorge Blanco, in their own right and on behalf of Tele Fácil, assert a national treatment violation to the extent not precluded by Mexico's Annex II exception on Telecommunication Transport Networks.


bargain that Tele Fácil had struck with Telmex in the original interconnection agreement, as modified by the IFT in Tele Fácil's favor, was completely transferred to Telmex, with the effect of denying Tele Fácil access to Mexico's telecommunications market.

71. In effect, and ironically in contravention of new market reforms in Mexico aimed at sanctioning Telmex for its monopolistic behavior, the IFT bolstered the economic position of Mexico's national champion by excluding a new U.S.-controlled competitor from the Mexican telecommunications sector.
72. As a result of the IFT's acts and omissions, Josh Nelson, Jorge Blanco and Tele Fácil have suffered significant damages.

IV. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

73. Josh Nelson and Jorge Blanco, in their own right and on behalf of Tele Fácil, seek through consultations to have their rights under the terms of interconnection previously approved by the IFT in Resolution 381 restored and to receive full compensation for the losses suffered as a result of the IFT's acts and omissions.
74. In the event consultations are unsuccessful, Josh Nelson and Jorge Blanco will submit, in their own right and on behalf of Tele Fácil, a claim in arbitration seeking compensation for damages by reason of, or arising out of, Mexico's measures that are inconsistent with its obligations in Part A of Chapter Eleven of the NAFTA, along with interest and costs. Josh Nelson and Jorge Blanco estimate damages to be in an amount no less than USD \$500 million.

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