

**IN THE MATTER OF AN ARBITRATION UNDER THE
NORTH AMERICAN FREE TRADE AGREEMENT**

- and -

**THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

- between -

**JOSHUA DEAN NELSON, IN HIS OWN RIGHT AND ON BEHALF OF TELE FÁCIL
MÉXICO, S.A. DE C.V., AND JORGE LUIS BLANCO**

(the “Claimants”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

ICSID Case No. UNCT/17/1

PROCEDURAL ORDER NO. 6

Tribunal

Dr. Eduardo Zuleta (President)
Mr. V.V. Veeder, QC (Arbitrator)
Mr. Mariano Gomezperalta Casali (Arbitrator)

Secretary of the Tribunal

Ms. Sara Marzal Yetano

9 May 2018

I. INTRODUCTION

1. On 3 April 2018 Claimants submitted to Respondent their second request for documents.
2. On 17 April 2018 Respondent submitted its responses to Claimants' second request for documents.
3. On 24 April 2018 Claimants submitted their replies to Respondent's responses. By that time, Respondent had already produced certain undisputed documents and Claimants were looking forward to receiving more. No Redfern Schedule was presented to the Tribunal at that time.
4. On 1 May 2018 Claimants requested that the Redfern Schedule be transmitted to the Tribunal because outstanding disputes between the parties were still pending in connection with requests No. 1, 2, 6 and 7.
5. The Tribunal has reviewed Claimants' requests for document production, Respondent's responses and Claimants' replies, all of which appear in the Redfern Schedule attached to this Procedural Order.

II. GENERAL CONSIDERATIONS TO DECIDE ON THE DISPUTED DOCUMENT PRODUCTION REQUESTS

6. Respondent did not object to Claimants' requests No. 3, 4 and 5 of the Redfern Schedule. Therefore, the Tribunal is not required to issue a decision on the aforementioned requests and will only decide on requests No. 1, 2, 6 and 7 (the "Disputed Document Requests").
7. Pursuant to Article 3.7 of the IBA Rules, the Tribunal may order the production of documents if it determines, *inter alia*, that:
 - (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome;
 - (ii) none of the reasons for objection set forth in Article 9.2 [of the IBA Rules] applies;
 - and (iii) the requirements of Article 3.3 [of the IBA Rules] have been satisfied.¹
8. The inquiry into the relevance and materiality of the documents requested must be performed on a case by case basis, considering the information available. After carefully conducting this analysis, the Tribunal is not persuaded that Claimants' document requests No. 1 and 2 are sufficiently relevant and material to the present case.

¹ 2010 IBA Rules on the Taking of Evidence in International Arbitration, Article 3.7 ("*IBA Rules*").

9. Claimants' justification for document requests 1 and 2 is that Respondent has raised issues of Mexican law (specifically, the prohibition of "double transit" and the non-discrimination principle) and that if Respondent pretends to rely on them, it must produce all documents supporting that law, including documents showing that the laws have been put in practice and documents describing the same conclusion that Respondent reached.²
10. The Tribunal does not agree with Claimants. Respondent has presented a legal defense and has invoked norms and principles to support such legal defense. It is therefore a matter of determining whether these norms and the principles apply in the manner invoked by Respondent. Claimant does not explain why the documents mentioned in requests 1 and 2 are relevant and material to the legal defense presented by Respondent. In addition, the Tribunal agrees with Respondent in that requests 1 and 2 lack specificity and do not comply with Article 3.3(a) of the IBA Rules.
11. As to requests 6 and 7, the Tribunal considers that such requests, as clarified by Claimants in the Redfern Schedule, could be relevant and material to the case and comply with the specificity requirement of Article 3.3(a) of the IBA Rules.

III. THE TRIBUNAL'S DECISION

12. In light of the above, after having reviewed carefully the observations submitted by the Parties and having considered each document request in light of Respondent's legitimate interest and the reasonableness of the burden placed on the latter, taking into account all the relevant circumstances, including the fundamental principle of the integrity of the arbitral process, the Tribunal unanimously decides to:
13. Accept, in accordance with the foregoing reasons, Claimants' document production requests No. 6 and 7 with the scope provided for in the attached Redfern Schedule.

² Redfern Schedule, Claimants' Justification of Request No. 1 (stating that "Respondent argues in its Statement of Defense (¶ 387) that 'current laws do not allow . . . 'double transit.' . . . Having taken this position in formal pleadings, Respondent should be required to produce all evidence of the IFT's actions, opinions, reports and other information in this regard"); Redfern Schedule, Claimants' Reply to Request No. 1 (arguing that "Respondent has made a legal argument" and therefore "Respondent should be able to produce the very documents Respondent itself relied upon to make these assertions, as well as documents that evidence the claimed prohibition"); Redfern Schedule, Claimants' Justification of Request No. 2 (stating that "Respondent argues in its Statement of Defense in ¶ 386 that in the event that Tele Facil obtained a rate with a non-preponderant carrier that was lower than the "Telmex Rate," "Telmex would have been able to request the same rate to Tele Facil under the non-discrimination principle." Having taken this position in formal pleadings, Respondent should be required to produce evidence of the IFT's actions, opinions, reports and other information in this regard"); Redfern Schedule, Claimants' Reply to Request No. 2 (arguing that "Respondent has made a legal argument" and therefore, "Respondent should be able to produce the documents Respondent relied upon to support that argument, as well as those document that either show that argument put in practice by the IFT or that describe that same conclusion.").

14. Reject Claimants' document production requests No. 1 and 2 for the reasons explained above.
15. Respondent shall have until 31 May 2018 to produce to Claimants the documents that they must produce under this Procedural Order.
16. The procedural calendar for the phase following this document production shall be that established in the Procedural Time Table and Document Production Schedule in Annexes 1 and 2 of Procedural Order No. 1, as amended by the Parties.

[*Signed*]

Mr. Eduardo Zuleta Jaramillo
(President)
On behalf of the Tribunal

Respondent's Objection to Claimants' Second Request for Production of Documents

Joshua Dean Nelson, in his own right and on behalf of Tele Fácil México, S.A. de C.V. and Jorge Luis Blanco v. The United Mexican States

ICSID Case No. UNCT/17/1

Respondent's Responses and Objections to Claimants' Second Request for Production of Document

Introduction

Pursuant to Items 18.7 to 18.9 of Procedural Order No. 1 (PO 1), the Respondent hereby submits its response to the Claimant's second Request for Documents (RFD) submitted on 3 April 2018.

As noted in the Respondent's objections to the Claimants' First RFD, Item 18.5 of P01 provides that each request shall comply with the requisites established in Article 3(3) of the IBA Rules on the Taking of Evidence in International Arbitration dated 29 May 2010 (IBA Rules). Additionally, the description of a category of documents shall include a date or range of dates and the subject matter insofar as possible. Furthermore, under Item 18.9 of P01 objections to the production of a document or category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules.

The Respondent objections are based on Article 9(2) subparagraph(s) (a) and (c) of the IBA Rules. The following grounds of objection are raised in the Redfern Schedule and rather than repeating these objections in each category of documents, the reference to the following grounds of objection in the Redfern Schedule should be read together with narrative that follows below.

1. Lack of specificity and unreasonable burden to produce

The Respondent objects to Requests 1, 2 on the grounds that they lack the specificity required by Item 18.5 of the PO1 which embodies article 3(3)(a)(ii) of the IBA Rules.

The category of documents in Requests 1 and 2 is described as "*Any documents in IFT's possession [...] regarding [...]*" certain matters. These requests do not describe a "*narrow and specific category of documents that are reasonably believed to exist*". There are no references to dates or date ranges, authors, recipients, type of documents sought³, subject matter or any other parameter that would enable the Respondent to narrow the search.

Thus, in order to comply with these requests, the Respondent would have to review practically all documents within IFT's possession (thousands of documents) in order to determine whether they

³ The requests state that they "include" certain types of documents such as "orders, fines, administrative procedures, reports, memoranda, internal communications, emails, notes and any other documents in any form".

contain references to the matters identified in such requests. This would be overly burdensome for the Respondent and an impossible task to accomplish within the established timeframe for document production. The Respondent therefore also objects to these requests under Article 9(2)(c) (unreasonable burden to produce the requested evidence).

2. Lack of materiality

The Claimant purports to justify requests 1 and 2 by stating as follows:

“Having taken this position in formal pleadings, Respondent should be required to produce evidence of the IFT’s actions, opinions, reports and other information in this regard”

Put simply, this does not explain why the request for a broad category of documents is necessary for the Claimants’ Reply or material to the outcome of the case. Put another way, it is nothing more than a fishing expedition.

Redfern Schedule

Request No.	1
Document / Category of Documents:	Any documents in the IFT’s possession, including orders, fines, administrative procedures, reports, memoranda, internal communications, emails, notes and any other documents in any form, regarding “double transit” (as this term is used by Respondent in its Statement of Defense) prohibition.
Justification:	The requested documents are relevant to the case and material to its outcome. Respondent argues in its Statement of Defense (¶ 387) that “current laws do not allow indirect interconnection through more than one intermediary, which is informally known as “double transit.” Respondent further relies on the Witness Statement of Mr. Sostenes Diaz Gonzalez who states in ¶ 98 of his Statement that “in Mexico, double transit is not allowed, this is, traffic of one network being indirectly delivered through two or more intermediaries.” To support his argument, Mr. Diaz statement cites Section 8.7 of the “DECREE by which the Plenary of the Federal Telecommunications Institute issues the Rules of Number Portability and modified the Fundamental Technical Plan of Numbering, and the Fundamental Technical Plan of Signaling and the operative specifications for the implementation of portability of geographic and non-geographic numbers.” Having taken this position in formal pleadings, Respondent should be required to produce all evidence of the IFT’s actions, opinions, reports and other information in this regard.

	<p>The requested documents are not in the possession, custody or control of the Claimants. The requested documents, if they exist, would be in the possession, custody and control of the Respondent.</p>
Objections:	<p>The Respondent objects to the requests on the grounds of lack of specificity (i.e., failure to comply with Article 3(3)(a)), and lack of materiality (i.e objection based on Article 9(2)(a)) as explained in the general objections to this Request for Documents.</p> <p>Notwithstanding this objection, after a diligent search, the Respondent has identified the following responsive documents and has no objection to their disclosure:</p> <ol style="list-style-type: none"><i>1. Acuerdo mediante el cual el Pleno del Instituto Federal de Telecomunicaciones establece las condiciones técnicas mínimas para la interconexión entre concesionarios que operen redes públicas de telecomunicaciones y determina las tarifas de interconexión resultado de la metodología para el cálculo de costos de interconexión que estarán vigentes del 1 de enero al 31 de diciembre de 2018.</i><i>2. Acuerdo mediante el cual el Pleno del Instituto Federal de Telecomunicaciones emite las Reglas de Portabilidad Numérica y modifica el Plan Técnico Fundamental de Numeración, el Plan Técnico Fundamental de Señalización y las especificaciones operativas para la implantación de portabilidad de números geográficos y no geográficos.</i>

Reply:	<p>Respondent’s objection regarding lack of specificity is unfounded. The request for documents in the IFT’s possession regarding “double transit” (as used in Respondent’s Statement of Defense) does not imply “hav[ing] to review practically all documents within IFT’s possession (thousands of documents) in order to determine whether they contain references to the matters identified in such request.”</p> <p>Respondent has made a legal argument at ¶ 387 of its Statement of Defense that “current laws do not allow indirect interconnection through more than one intermediary, which is informally known as “double transit.” Respondent’s witness, Sostenes Diaz Gonzalez, makes a similar argument in his witness statement at ¶ 98 (“However, in Mexico, double transit is not allowed, that is, the traffic of one network is delivered indirectly to another through two or more intermediaries.”) Respondent should be able to produce the very documents Respondent itself relied upon to make these assertions, as well as documents that evidence the claimed prohibition.</p> <p>Respondent objects that there are no dates or date ranges. However, the temporal range of the documents is defined by Respondent’s own assertion. As noted above, Respondent cites Section 8.7 of the “DECREE by which the Plenary of the Federal Telecommunications Institute issues the Rules of Number Portability and modified the Fundamental Technical Plan of Numbering, and the Fundamental Technical Plan of Signaling and the operative specifications for the implementation of portability of geographic and non-geographic numbers” in support of its assertion. The date of this Decree thus establishes the beginning of the date range. Logically, the end of the date range is the date Claimants submitted their Notice of Arbitration, namely, September 26, 2016.</p> <p>Respondent’s objection regarding lack of materiality is implausible in light of the fact that Respondent itself raised the issue of “double transit” as part of its defense. Respondent has argued in its Statement of Defense in ¶ 387 and through its witness Mr. Diaz Gonzalez at ¶ 98 of his Witness Statement, among other places, that Claimants’ claim for damages ignores a supposed double transit prohibition. If Claimants’ request is not material, then neither is Respondent’s defense.</p> <p>Respondent’s document production is a hollow gesture. Both documents listed by Respondent above are publicly available and already in possession of Claimants.</p>
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Tribunal's decision:	Denied. The Tribunal is not convinced that the documents requested are sufficiently relevant to the case and material to its outcome (IBA Rules, Arts. 3.7(i) and 9.2(a)). Moreover, this request lacks specificity (IBA Rules, Article 3.3(a)).
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Request No.	2
Document / Category of Documents:	Any documents in the IFT’s possession, including orders, fines, administrative procedures to impose sanctions, reports, memoranda, internal communications, emails, notes and any other documents, regarding the “principle of non-discriminatory treatment” (as that phrase is used by Respondent in its Statement of Defense).
Justification:	<p>The requested documents are relevant to the case and material to its outcome. Respondent argues in its Statement of Defense in ¶ 386 that in the event that Tele Facil obtained a rate with a non-preponderant carrier that was lower than the “Telmex Rate,” “Telmex would have been able to request the same rate to Tele Facil under the non-discrimination principle.” Having taken this position in formal pleadings, Respondent should be required to produce evidence of the IFT’s actions, opinions, reports and other information in this regard.</p> <p>The requested documents are not in the possession, custody or control of the Claimants. The requested documents, if they exist, would be in the possession, custody and control of the Respondent.</p>
Objections:	<p>The Respondent objects to the requests on the grounds of lack of specificity (i.e., failure to comply with Article 3(3)(a)) and lack of materiality (i.e. objection based on Article 9(2)(a)), as explained in the general objections to this Request for Documents.</p> <p>Notwithstanding this objection and the fact that the principle of non-discriminatory treatment is embodied in the LFTyR, after a diligent search, the Respondent has identified the following responsive documents and has no objection to their disclosure:</p> <ol style="list-style-type: none"> 1. <i>Acuerdo P/IFT/271016/592 mediante el cual el Pleno del Instituto Federal de Telecomunicaciones emite respuesta a la solicitud de confirmación de criterio presentada por Megacable, S.A. de C.V. en relación con las tarifas de interconexión de fecha 27 de octubre de 2016</i> 2. <i>Acuerdo P/IFT/050717/369 mediante el cual el Pleno del Instituto Federal de Telecomunicaciones emite respuesta a la solicitud de confirmación de criterio presentada por Megacable Comunicaciones de México, S.A. de C.V. en relación con las tarifas de interconexión de fecha 5 de julio de 2017.</i>

Reply:	<p>Respondent’s objection regarding lack of specificity is unfounded. The request for documents in the IFT’s possession regarding the principle of “non-discriminatory treatment” (as used in Respondent’s Statement of Defense) does not imply “hav[ing] to review practically all documents within IFT’s possession (thousands of documents) in order to determine whether they contain references to the matters identified in such request.”</p> <p>Respondent has made a legal argument a number of paragraphs, including ¶ 386, of its Statement of Defense, that “Telmex would have been able to request the same rate to Tele Facil under the non-discrimination principle.” Respondent should be able to produce the documents Respondent relied upon to support that argument, as well as those document that either show that argument put in practice by the IFT or that describe that same conclusion.</p> <p>The date of the requested documents is limited by its very nature. As Respondent concedes, the relevant non-discriminatory principle is embodied in the FTBL. The FTBL was enacted in July 14, 2014, and marks the beginning of the date range. As with Request No. 1, logically, the end of the date range is the date Claimants submitted their Notice of Arbitration, namely, September 26, 2016.</p> <p>Respondent’s objection regarding lack of materiality is implausible in light of the fact that Respondent itself raised the issue of “non-discriminatory treatment” as part of its defense. Respondent has argued in its Statement of Defense in ¶¶ 14 and 386, and through its witness Mr. Diaz Gonzalez at ¶ 63 of his Witness Statement, as well as through its legal expert Mr. Rodrigo Buj Garcia at ¶49, among other places, that Claimants’ claim for damages ignores the non-discrimination principle. If Claimants’ request is not material, then neither is Respondent’s defense.</p> <p>Respondent’s document production is a hollow gesture. Both documents listed by Respondent above are publicly available and already in possession of Claimant.</p>
Tribunal’s decision:	<p>Denied.</p> <p>The Tribunal is not convinced that the documents requested are sufficiently relevant to the case and material to its outcome (IBA Rules, Arts. 3.7(i) and 9.2(a)). Moreover, this request lacks specificity (IBA Rules, Article 3.3(a)).</p>

Request No.	3
Document / Category of Documents:	<p>All documents relied upon by Analysys Mason in preparation of their expert report, in their native versions. In cases where there is an Excel version of the document, please provide the Excel version. These documents include, but are not limited to, the following information listed in Exhibit B of Analysys Mason’s report:</p> <ol style="list-style-type: none"> 1. <i>Anexo Analysys Mason-021. (Anexo B) Análisis de datos de tráfico Free Conferencing Corporation, a partir del anexo 23.</i> 2. <i>Anexo Analysys Mason-022. (Anexo B) Análisis de datos de tráfico SIP Meeting Conference, a partir del anexo 29.</i> 3. <i>Anexo Analysys Mason-023. (Anexo B) Análisis de datos de tráfico SIP Meeting Chat, a partir del anexo 30.</i> 4. <i>Anexo Analysys Mason-024. (Figura 4.3) Análisis de datos de tráfico No Cost Conference, a partir del anexo 31.</i> 5. <i>Anexo Analysys Mason-025. (Anexo B) Análisis de datos de tráfico AudioNow, a partir del anexo 32.</i> 6. <i>Anexo Analysys Mason-029. (see Anexo 22 in Anexo B)</i> 7. <i>Anexo Analysys Mason-030. (see Anexo 23 in Anexo B)</i> 8. <i>Anexo Analysys Mason-031. (see Anexo 24 in Anexo B)</i> 9. <i>Anexo Analysys Mason-032. (see Anexo 25 in Anexo B)</i>
Justification:	<p>All documents relied on by the Respondent’s experts are <i>ipso facto</i> relevant to the case and material to its outcome. They are necessary to properly understand, evaluate and corroborate assertions made in the expert report and the expert’s assessment of damages.</p> <p>Moreover, pursuant to Article 5(2) of the IBA Rules (which apply in this case as per section 20.3 of Procedural Order No. 1) the expert reports <i>shall</i> contain <i>inter alia</i>: the “[d]ocuments on which the Party-Appointed Expert relies that have not already been submitted shall be provided.” This includes all the documents listed in Exhibit B of Analysys Mason’s report entitled “<i>Anexo B Fuentes documento Analysys Mason.</i>”</p> <p>The requested documents are not in the possession, custody or control of the Claimants. The requested documents should be in the possession, custody and control of the Respondent.</p>

Objections:	<p>The Respondent has identified and does not object to the production of the following responsive documents:</p> <ol style="list-style-type: none">1. <i>Documento de uso interno con propuesta de actualización del Redfern Schedule en control de cambios [Redfern], documento Word ('UPDATED Claimants' Second Request for Documents (Redfern Schedule) 4_3_18')</i>2. <i>Documento de uso interno con indicación de errores tipográficos en anexo B, documento PDF ('180312 Informe Experto Joan --- Anexos')</i>3. <i>Volúmenes de tráfico de Free Conferencing Corporation por país [CLAIMANT0003325], documento Excel ('Anexo AM 13 – CLAIMANT0003325_Native')</i>4. <i>Datos de tráfico SIP Meeting Conference [CLAIMANT0003327], documento Excel ('Anexo AM 17 – CLAIMANT0003327_Native')</i>5. <i>Datos de tráfico SIP Meeting Chat [CLAIMANT0003329], documento Excel ('Anexo AM 18 – CLAIMANT0003329_Native')</i>6. <i>Datos de tráfico No Cost Conference [CLAIMANT0003330], documento Excel ('Anexo AM 19 – CLAIMANT0003330_Native')</i>7. <i>Datos de tráfico AudioNow [CLAIMANT0003331], documento Excel ('Anexo AM 20 – CLAIMANT0003331_Native')</i>8. <i>Análisis de datos de tráfico Free Conferencing Corporation, a partir del anexo 13, documento Excel ('Anexo AM 21 – 3325_FreeConf Corp data_International Growth Analysis')</i>9. <i>Análisis de datos de tráfico SIP Meeting Conference, a partir del anexo 17, documento Excel ('Anexo AM 22 – 3327_SIP Meeting Conf data_Conference 6-2013 - 8-2017')</i>10. <i>Análisis de datos de tráfico SIP Meeting Chat, a partir del anexo 18, documento Excel ('Anexo AM 23 – 3329_SIP Meeting Chat data_Monthly DID reports for chat 2010-17')</i>11. <i>Análisis de datos de tráfico No Cost Conference, a partir del anexo 19, documento Excel ('Anexo AM 24 – 3330_No Cost Conf data_NERA NCC monthly 2009-2017')</i>12. <i>Análisis de datos de tráfico AudioNow, a partir del anexo 20, documento Excel ('Anexo AM 25 – 3331_AudioNow data_US historical')</i>
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	<p>13. <i>Modelo de demanda del mercado fijo y móvil de telecomunicaciones para el IFT, documento Excel ('modelo-de-mercado_1')</i></p> <p>14. <i>Módulo de red fija del modelo LRIC fijo y móvil para el cálculo del precio de interconexión, tránsito y SMS fijos en una red fija en México, documento Excel ('modelo-fijo')</i></p> <p>15. <i>Modelo de cálculo de costos de terminación móvil bajo la metodología CITLP para el IFT, documento Excel ('modelo-movil')</i></p> <p>16. <i>Modelo para determinar los precios orientados a costos para el servicio de coubicación fija en la infraestructura pasiva fija del AEP 2018, documento Excel ('modelocoubicacion2018_1')</i></p> <p>17. <i>Modelo de demanda del mercado fijo y móvil de telecomunicaciones para el IFT 2018, documento Excel ('modelodemercado2018-cs (1)')</i></p> <p>18. <i>Módulo de red fija del modelo CTILP fijo y móvil para el cálculo del precio de interconexión y tránsito en una red fija en México 2018, documento Excel ('modelofijo2018-cs (3)')</i></p> <p>19. <i>Modelo para el cálculo del costo de enlaces activos y pasivos de interconexión cruzada 2018, documento Excel ('modelointerconexioncruzada2018')</i></p> <p>20. <i>Módulo de red móvil del modelo CTILP fijo y móvil para el cálculo del costo de terminación móvil 2018, documento Excel ('modelomovil2018-cs')</i></p> <p>Under P01 production of undisputed documents are due four weeks from the date of the request, consequently the Respondent has until 1st May to produce the above mentioned documents.</p> <p>Counsel for the Claimant requested the Respondent to expedite Claimant's request for production of the files on which Analysys Mason's valuation report is based. The Claimant's Counsel proposed to follow Article 5(2)(e) strictly going forward and acknowledged the importance of having the documents in which the valuation is based as available for opposing party.</p> <p>The Respondent agreed to produce the request for documents related to Analysys before 1st May.</p>
Reply:	Claimants provide no reply at this time.
Tribunal's decision:	Considering Respondent's Response and Claimants' Reply, no decision from the Tribunal is required.

Request No.	4
Document / Category of Documents:	<p>All international interconnection agreements relied upon by Analysys Mason in preparation of their expert report, contained in Exhibit A (<i>Anexo A-Acuerdos de tarifas de terminación internacional</i>). These documents include, but are not limited to, the following information listed in Exhibit A of Analysys Mason’s report:</p> <ul style="list-style-type: none"> i. International Interconnection Agreement executed by and between TV Rey de Occidente, S.A. de C.v. and Comunicaciones Rey, LLC, authorized on February 25, 2016; ii. International Interconnection Agreement executed by and between Qualtel, S.A. de C.V. and Procom, Inc., authorized on October 13, 2016; iii. International Interconnection Agreement by and between Telefonos de Mexico, S.A.B. de C.V. and T-Mobile USA, Inc., authorized on September 1, 2016; and iv. International Interconnection Agreement by and between Telefonos de Mexico, S.A.B. DE CV and Instituto Costarricense de Electricidad; authorized on September 13, 2016.
Justification:	<p>All documents relied on by the Respondent’s experts are <i>ipso facto</i> relevant to the case and material to its outcome. They are necessary to properly understand, evaluate and corroborate assertions made in the expert report and the expert’s assessment of damages. The requested documents are not publicly available in the IFT’s Public Registry of Concessions, or could not be found pursuant to the information provided by Analysys Mason.</p> <p>Moreover, pursuant to Article 5(2) of the IBA Rules (which apply in this case as per section 20.3 of Procedural Order No. 1) the expert reports <i>shall</i> contain <i>inter alia</i>: the “[d]ocuments on which the Party-Appointed Expert relies that have not already been submitted shall be provided.” This includes all the documents listed in Exhibit A of Analysys Mason’s report entitled “Anexo A Acuerdo de tarifas de terminación internacional.”</p> <p>The requested documents are not in the possession, custody or control of the Claimants. The requested documents should be in the possession, custody and control of the Respondent.</p>

Objections:	<p>The Respondent has identified and does not object to the production of the following responsive documents:</p> <ol style="list-style-type: none">1. <i>Interconexión Pegaso–ACN Communication, documento PDF ('Pegaso vs ACN Communication_del 151117 al 151118')</i>2. <i>Interconexión Qualtel–Procom, documento PDF ('Qualtel vs Procom_071117')</i>3. <i>Interconexión Servnet–Procom, documento PDF ('Servnet vs Procom_del 020317 al 311217')</i>4. <i>Interconexión Talktel–Computertel, documento PDF ('Talktel vs Computertel_021214')</i>5. <i>Interconexión Telcel–Business Telecom, documento PDF ('Telcel vs Business Telecom_311214')</i>6. <i>Interconexión Telcel–A1 Telekom Austria, documento PDF ('Telcel vs A1 Telekom Austria_261114')</i>7. <i>Interconexión Telcel–Belgacom, documento PDF ('Telcel vs Belgacom_261114')</i>8. <i>Interconexión Telcel–Communications Global, documento PDF ('Telcel vs Communications Global_261114')</i>9. <i>Interconexión Telcel–Deutsche Telekom, documento PDF ('Telcel vs Deutsche Telekom_261114')</i>10. <i>Interconexión Telcel–IPBTELL, documento PDF ('Telcel vs IPBTELL_060115')</i>11. <i>Interconexión Telcel–KDDI Global, documento PDF ('Telcel vs KDDI Global_060115')</i>12. <i>Interconexión Telcel–Laibson Trade, documento PDF ('Telcel vs Laibson Trade_311215')</i>13. <i>Interconexión Telcel–Latino Telecom, documento PDF ('Telcel vs Latino Telecom_261114')</i>14. <i>Interconexión Telcel–Orange Espagne, documento PDF ('Telcel vs Orange Espagne_060115')</i>15. <i>Interconexión Telcel–T Mobile USA, documento PDF ('Telcel vs T Mobile USA_060715')</i>16. <i>Interconexión Telcel–TATA, documento PDF ('Telcel vs TATA_060115')</i>
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| | <p>17. <i>Interconexión Telcel–Telecom Italia, documento PDF ('Telcel vs Telecom Italia_261114')</i></p> <p>18. <i>Interconexión Telcel–Vodafone, documento PDF ('Telcel vs Vodafone_311216')</i></p> <p>19. <i>Interconexión Telmex–Business Telecom, documento PDF ('Telmex vs Business Telecom_261114')</i></p> <p>20. <i>Interconexión Telmex–A1 Telekom Austria, documento PDF ('Telmex vs A1 Telekom Austria_261114')</i></p> <p>21. <i>Interconexión Telmex–Belgacom, documento PDF ('Telmex vs Belgacom_261114')</i></p> <p>22. <i>Interconexión Telmex–Communications Global, documento PDF ('Telmex vs Communications Global_261114')</i></p> <p>23. <i>Interconexión Telmex–Deutsche Telekom, documento PDF ('Telmex vs Deutsche Telekom_261114')</i></p> <p>24. <i>Interconexión Telmex–Empresa de Telecom Cuba, documento PDF ('Telmex vs Empresa de Telecom Cuba_011215')</i></p> <p>25. <i>Interconexión Telmex–IDT DOMESTIC, documento PDF ('Telmex vs IDT DOMESTIC_110215')</i></p> <p>26. <i>Interconexión Telmex–Instituto Costarricense, documento PDF ('Telmex vs Instituto Costarricense_del 051216 al 311217')</i></p> <p>27. <i>Interconexión Telmex–KDDI Global, documento PDF ('Telmex vs KDDI Global_0110215')</i></p> <p>28. <i>Interconexión Telmex–Latino Telecom, documento PDF ('Telmex vs Latino Telecom_261114')</i></p> <p>29. <i>Interconexión Telmex–Orange Espagne, documento PDF ('Telmex vs Orange Espagne_110215')</i></p> <p>30. <i>Interconexión Telmex–T Mobile USA, documento PDF ('Telmex vs T Mobile USA_fecha autorización 010916')</i></p> <p>31. <i>Interconexión Telmex–TATA, documento PDF ('Telmex vs TATA_110215')</i></p> <p>32. <i>Interconexión Telmex–Telecom Italia, documento PDF ('Telmex vs Telecom Italia_261114')</i></p> <p>33. <i>Interconexión Telmex–IBTELL, documento PDF ('Telmex vs IBTELL_110215')</i></p> |
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	<p>34. <i>Interconexión TV Rey–Comunicaciones Rey, documento PDF ('TV Rey vs Comunicaciones Rey_180316')</i></p> <p>35. <i>Interconexión UC Telecom–ETECSA, documento PDF ('UC Telecom vs ETECSA_170517')</i></p> <p>36. <i>Interconexión Unefon–ATT, documento PDF ('Unefon vs ATT_ del 010415 al 300615')</i></p> <p>37. <i>Interconexión Grupo de Telecomunicaciones Mexicanas, S.A. de C.V. – EKOFON, INC, documento PDF.</i></p> <p>38. <i>Interconexión Grupo de Telecomunicaciones Mexicanas, S.A. de C.V. – Telehispanic Services, LLC, documento PDF.</i></p> <p>39. <i>Interconexión UC Telecomunicaciones, S.A.P.I. de C.V. – IPBTELL, LLC, documento PDF.</i></p> <p>Under P01 production of undisputed documents are due four weeks from the date of the request, consequently the Respondent has until 1st May to produce the above mentioned documents.</p> <p>Counsel for the Claimant requested the Respondent to expedite Claimant's request for production of the files on which Analysys Mason's valuation report is based. The Claimant's Counsel proposed to follow Article 5(2)(e) strictly going forward and acknowledged the importance of having the documents in which the valuation is based as available for opposing party.</p> <p>The Respondent agreed to produce the request for documents related to Analysys before 1st May.</p>
Reply:	Claimants provide no reply at this time.
Tribunal's decision:	Considering Respondent's Response and Claimants' Reply, no decision from the Tribunal is required.

Request No.	5
Document / Category of Documents:	<p>All international interconnection agreements relied upon by Sostenes Diaz Gonzalez in preparation of his witness statement. These documents include, but are not limited to, the following information listed in Exhibit 2 of Mr. Diaz’s witness statement:</p> <ul style="list-style-type: none"> i. International Interconnection Agreement executed by and between TV Rey de Occidente, S.A. de C.v. and Comunicaciones Rey, LLC, authorized on February 25, 2016; ii. International Interconnection Agreement executed by and between Radiomovil DIPSA, S.A. de C.V. and Vodafone Limited, authorized on August 17, 2015; iii. International Interconnection Agreement executed by and between Radiomovil DIPSA, S.A. de C.V. and Laibson Trade, S.A., authorized on September 13, 2016; iv. International Interconnection Agreement executed by and between Qualtel, S.A. de C.V. and Procom, Inc., authorized on October 13, 2016; v. International Interconnection Agreement by and between Telefonos de Mexico, S.A.B. de C.V. and T-Mobile USA, Inc., authorized on September 1, 2016; and vi. International Interconnection Agreement by and between Telefonos de Mexico, S.A.B. DE CV and Instituto Costarricense de Electricidad; authorized on Septmeber 13, 2016. vii. International Interconnection agreement executed by and between Servnet Mexico, S.A. de C.V. and Procom, Inc., authorized on February 9, 2016; viii. International interconnection agreement executed by and between UC Telecomunicaciones, S.A.P.I. de C.V. and Empresa de Telecomunicaciones de Cuba, S.A.P.I. de C.V., authorized on March 15, 2017; and ix. International interconnection agreement executed by and between Pegaso PCS, S.A. de C.V. and CAN Communication Services, LLC., authorized on September 29, 2017.
Justification:	<p>All documents relied on by the Respondent’s experts are <i>ipso facto</i> relevant to the case and material to its outcome. They are necessary to properly understand, evaluate and corroborate assertions made in the expert report and the expert’s assessment of damages. The requested documents are not publicly available in the IFT’s Public Registry of Concessions, or could not be found pursuant to the information provided by Analysys Mason.</p> <p>The requested documents are not in the possession, custody or control of the Claimants. The requested documents should be in the possession, custody and control of the Respondent.</p>

Objections:	The Respondent does not object to the production of documents responsive to this request (same documents offered in response to Request 4).
Reply:	Claimants provide no reply at this time.
Tribunal's decision:	Considering Respondent's Response and Claimants' Reply, no decision from the Tribunal is required.

Request No.	6
Document / Category of Documents:	<p>Documents containing a description of the following variables contained in the IFT's Market Model for interconnection rates 2015-2016 (http://www.ift.org.mx/politica-regulatoria/modelo-de-costos-utilizado-para-determinar-las-tarifas-de-interconexion-aplicables-al-ano-2015-2016):</p> <ul style="list-style-type: none"> • Modeled operator: Origination Fix to Fix off-net (%) (<i>Operador modelado: Origenación fija a fija off-net (%)</i>) • The other operator: Origination Fix to Fix off-net (%) (<i>El otro operador: Origenación Fija a Fija off-net (%)</i>) • Origination of voice traffic: Fix to Fix off-net (minutes) (<i>Origenación de tráfico de voz: Fijo a fijo off-net (min)</i>) • Termination Fix to Fix – percentage –off-net: Total market (%) (<i>Terminación Fija a Fija - porcentaje off-net: Total del mercado (%)</i>) • Summary of voice termination: fix to fix off net (minutes) (<i>Resumen de terminación de voz: Fijo a fijo off-net (min)</i>) • Services of fixed market: outbound local calls to other fixed operators (minutes) (<i>Servicios del mercado fijo: Llamadas salientes Local a otros operadores fijos (min)</i>) <p>The description should include information to identify to what operator the traffic corresponds to, what operator originates the traffic, and what operator terminates the traffic.</p>
Justification:	<p>All documents relied on by the Respondent's experts are <i>ipso facto</i> relevant to the case and material to its outcome. They are necessary to properly understand, evaluate and corroborate assertions made in the expert report and the expert's assessment of damages.</p> <p>Moreover, pursuant to Article 5(2) of the IBA Rules (which apply in this case as per section 20.3 of Procedural Order No. 1) the expert reports <i>shall</i> contain <i>inter alia</i>: the “[d]ocuments on which the Party-Appointed Expert relies that have not already been submitted shall be provided”. This includes all the documents listed in Exhibit 2 of Mr. Sostenes Diaz' witness statement.</p> <p>The requested documents are not in the possession, custody or control of the Claimants. The requested documents should be in the possession, custody and control of the Respondent.</p>

Objections:	<p>To the extent that the request refers to documents relied upon by the Respondent’s experts, those documents are already covered by Request 3 (“<i>All documents relied upon by Analysys Mason in preparation of their expert report [...]</i>”) and will be provided in response to that request. In particular, the following three documents relate to IFT’s Market Model for interconnections rates 2015-2016:</p> <ol style="list-style-type: none">1. <i>Modelo de demanda del mercado fijo y móvil de telecomunicaciones para el IFT, documento Excel ('modelo-de-mercado_1')</i>2. <i>Módulo de red fija del modelo LRIC fijo y móvil para el cálculo del precio de interconexión, tránsito y SMS fijos en una red fija en México, documento Excel ('modelo-fijo')</i>3. <i>Modelo de cálculo de costos de terminación móvil bajo la metodología CITLP para el IFT, documento Excel ('modelo-movil')</i> <p>To the extent that the request refers to other documents, the Respondent objects on the grounds that:</p> <ol style="list-style-type: none">(i) the Claimants have failed to justify their request as required under Article 3(3)(b);(ii) Lack of specificity and unreasonable burden to produce (see general explanation) <p>The Respondent will further observe that this appears to be a request for information, hence, the clarification that “[t]he description <u>should include information to identify to what operator the traffic corresponds to, what operator originates the traffic, and what operator terminates the traffic</u>”. The Claimants are not entitled to request information, but rather existing <u>documents</u> in possession of the Respondent.</p>
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<p>Reply:</p>	<p>Respondent wrongfully categorizes Claimants' request as a request for information, instead of a request for documents. Claimant is clearly requesting "Documents containing a description of the following variables contained in the IFT's Market Model for interconnection rates 2015-2016..."</p> <p>Analysys Mason's report contains several assumptions deriving from its interpretation of those variables by giving them definitions and/or values that are not contained in the model. Specifically, Analysys Mason criticizes Dr. Mariscal's report in ¶¶ 100-103 by giving a different definition of the abovementioned variables. However, Analysys Mason provides no support for those allegations, and the models it relies on provide no distinct interpretation.</p> <p>Claimants' damages experts have indicated that the IFT cost models relied on by Analysys Mason do not contain information that allows them to understand the meaning of the referred variables in accordance to Analysys Mason's interpretation. It is worth mentioning that Analysys Mason is the consulting firm contracted by IFT in past years to develop the market studies and costs models that IFT uses to determine regulated rates in case of interconnection disagreements. Analysys Mason's report contains interpretations of the mentioned variables with no documentary support, or at least not publicly available documentary support.</p> <p>Accordingly, Claimant is hereby requesting any document that would support Analysys Mason's interpretation or definition of the variables. This documentation is relevant for Claimants' experts to be able to reply to Analysys Mason's criticism of their damages estimation. Unless Analysys Mason discloses the non-public information relied on to interpret the above-mentioned variables, it is not possible to respond to the criticisms contained in their report.</p> <p>Claimants maintain that its request is sufficiently specific and relevant, since Respondent has conceded that Analysys Mason relied on that model for its damages report, and should be able to produce documents that contain descriptions to support the expert's assumptions.</p>
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Tribunal's decision:	<p>Granted to the extent that the request refers to documents relied upon by the Respondent's experts.</p> <p>The Tribunal agrees with Respondent in that Claimants are only entitled to request existing documents. Moreover, the Tribunal notes that Respondent has already identified a number of responsive documents to this request. The Tribunal requests Respondent to confirm that it has undertaken and will undertake a good faith effort to search for all documents that are responsive to this request and inform Claimants and the Tribunal accordingly.</p>
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Request No.	7
Document / Category of Documents:	<p>Regarding the IFT's Market Model for interconnection rates 2018 (http://www.ift.org.mx/politica-regulatoria/modelos-de-costos-utilizados-en-el-acuerdo-de-condiciones-tecnicas-minimas-2018):</p> <ul style="list-style-type: none">• Analysys Mason in its expert report ¶ 100 references that Telmex's off-net traffic represents 27% of the total traffic for 2018. Claimants request documents containing information to support the conclusion that Telmex's off-net traffic represents 27% of the total traffic for 2018.• Claimants request documents confirming whether the 2018 Market Model contains real data (updated and observed data in the market) for prior years, or whether the data contained in this model are estimates or projected information.
Justification:	<p>All documents relied on by the Respondent's experts are <i>ipso facto</i> relevant to the case and material to its outcome. They are necessary to properly understand, evaluate and corroborate assertions made in the expert report and the expert's assessment of damages.</p> <p>Moreover, pursuant to Article 5(2) of the IBA Rules (which apply in this case as per section 20.3 of Procedural Order No. 1) the expert reports <i>shall</i> contain <i>inter alia</i>: the "[d]ocuments on which the Party-Appointed Expert relies that have not already been submitted shall be provided". This includes all the documents listed in Exhibit 2 of Mr. Sostenes Diaz' witness statement.</p> <p>The requested documents are not in the possession, custody or control of the Claimants. The requested documents should be in the possession, custody and control of the Respondent.</p>

Objections:	<p>To the extent that the request refers to documents relied upon by the Respondent’s experts, those documents are already covered by Request 3 (“<i>All documents relied upon by Analysys Mason in preparation of their expert report [...]</i>”) and will be provided in response to that request. In particular, the Respondent identifies the following documents regarding the IFT’s Market Model for interconnection rates 2018</p> <ol style="list-style-type: none">1. <i>Modelo para determinar los precios orientados a costos para el servicio de coubicación fija en la infraestructura pasiva fija del AEP 2018, documento Excel ('modelocoubicacion2018_1')</i>2. <i>Modelo de demanda del mercado fijo y móvil de telecomunicaciones para el IFT 2018, documento Excel ('modelodemercado2018-cs (1)')</i>3. <i>Módulo de red fija del modelo CTILP fijo y móvil para el cálculo del precio de interconexión y tránsito en una red fija en México 2018, documento Excel ('modelofijo2018-cs (3)')</i>4. <i>Modelo para el cálculo del costo de enlaces activos y pasivos de interconexión cruzada 2018, documento Excel ('modelointerconexioncruzada2018')</i>5. <i>Módulo de red móvil del modelo CTILP fijo y móvil para el cálculo del costo de terminación móvil 2018, documento Excel ('modelomovil2018-cs')</i> <p>To the extent that the request refers to other documents, the Respondent objects on the grounds that:</p> <ol style="list-style-type: none">(i) the Claimants have failed to justify their request as required by Article 3(3)(b) of the IBA Rules; and(ii) lack of specificity and unreasonable burden to produce (see general objection). <p>The Respondent has no further documents falling within this request.</p>
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<p>Reply:</p>	<p>Respondent wrongfully categorizes Claimants' request as a request for information instead of a request for documents. Claimant is requesting "<i>documents</i> containing information to support the conclusion that Telmex's off-net traffic represents 27% of the total traffic for 2018"; and "<i>documents</i> confirming whether the 2018 Market Model contains real data (updated and observed data in the market) for prior years, or whether the data contained in this model are estimates or projected information."</p> <p>Analysys Mason's report contains several assumptions deriving from the IFT's Market Model for interconnection rates 2018. Specifically, Analysys Mason criticizes Dr. Mariscal's report in ¶¶ 100-103 due to a different interpretation of the variables and data contained in the model. However, Analysys Mason provides no support for those allegations, and the models it relies on provide no distinct interpretation. As already mentioned, Analysys Mason is the consulting firm contracted by IFT in past years to develop the market studies and costs models that IFT uses to determine regulated rates in case of interconnection disagreements. Analysys Mason's report contains the referred assumptions with no documentary support, or at least not publicly available documentary support.</p> <p>Claimants' damages experts have indicated that the IFT cost models relied on by Analysys Mason do not contain information that allows them to conclude that "Telmex's off-net traffic represents 27% of the total traffic for 2018" nor clarification if the information contained in the 2018 Market Model uses real data or projected information.</p> <p>Accordingly, Claimants hereby request any document that would support Analysys Mason's interpretation or definition of these issues. This documentation is relevant for Claimants' experts to be able to reply to Analysys Mason's criticism of their damages estimation. Unless Analysys Mason discloses the non-public information relied on to interpret the above-mentioned variables, it is not possible to respond to the criticisms contained in their report.</p> <p>Claimants maintain that its request is sufficiently specific and relevant, since Respondent has conceded that Analysys Mason relied on that model for its damages report, and should be able to produce documents that contain descriptions to support the expert's assumptions</p>
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Tribunal's decision:	<p>Granted to the extent that the request refers to documents relied upon by the Respondent's experts.</p> <p>The Tribunal notes that Respondent has already identified the responsive documents to this request and that it has "no further documents falling within this request." The Tribunal requests Respondent to confirm that it has undertaken to search for the documents that are responsive to this request and inform Claimants and the Tribunal accordingly.</p>
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Claimants' Additional Note

During Claimants' review of Respondent's Statement of Defense, and after April 3, 2018 when Claimants submitted their second request for documents, Claimants noticed that Mr. David Gorra Flota's witness statement did not include copies of several confirmations of criteria that he references in paragraphs 13 to 16 of his witness statement, which, he stated, were publicly available via the IFT's website.

On April 20, 2018, Claimants invited Respondent to produce all documents cited by Mr. Gorra in paragraphs 14, 15 and 16 of his witness statement that are not, in fact, publicly available; namely, those referred to in paragraphs 14.d, 14.e, 14.f, 14.g, 14.h, 16.b, 16.c, 16.d, 16.e, 16.f, and 16.g of his witness statement.

Claimants appreciate Respondent's email message dated April 24, 2018 in which Respondent agreed to cooperate in satisfying Claimants' request. While we anticipate Respondent's full cooperation on this matter, we reserve the right to raise this issue before the Tribunal should its intervention become necessary.