

**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. 10

Tribunal

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

Secretary of the Tribunal

Ms. Marisa Planells-Valero

4 September 2018

I. Procedural history

A. Production of the CDRs and the deadline for submission of Respondent's Rejoinder

1. By Procedural Order No. 8 dated 9 August 2018, the Tribunal ordered, *inter alia*, that the Claimants produce the CDRs (based on Respondent's document production request No. 9) and invited the Parties to agree on procedures to ensure their confidentiality and inform the Tribunal of any agreement by no later than 20 August 2018.
2. On 16 August 2018, Respondent requested a 3-week extension for the filing of its Rejoinder based on different grounds, including the fact that Claimants had yet to produce the CDRs.
3. On 22 August 2018, Claimants objected to Respondent's request and, among other things, explained that the parties had not reached an agreement regarding the production of the CDRs. Claimants indicated that they were willing to accept a filing of Respondent's rejoinder by the scheduled date (28 August 2018) with an opportunity for Respondent to address the CDRs at a later date through an amendment of the Rejoinder.
4. On 21 August 2018, Claimants informed the Tribunal of a proposal sent to Respondent regarding the production of the CDRs. On that same day, Respondent sent its comments on Claimants' proposal. From the Parties' submissions, the Tribunal understood that the Parties were still working to reach an agreement.
5. On 27 August 2018, the Tribunal issued Procedural Order No. 9, which (i) suspended the deadline for filing the Rejoinder until further notice by the Tribunal; (ii) invited the Parties to reach an agreement on the applicable procedure to produce the CDRs by no later than 31 August 2018 and; (iii) informed the Parties that in the absence of an agreement by 1 September 2018, the Tribunal would take the corresponding decisions regarding the production of the CDRs and set a new date for the filing of the Rejoinder.
6. On 29 August, the Parties reported to the Tribunal that they had reached an agreement on the terms of production of the CDRs and on the deadline for the submission of Respondent's Rejoinder. They also requested the Tribunal to formalize the Parties' agreement in a procedural order and confirmed that on that same date the CDRs had been transferred to Respondent via an IronBox shared site link.
7. The terms of the Parties' agreement are the following:
 - *Claimants agree to produce in CSV file format redacted CDRs that do not include full destination numbers;*
 - *Respondent agrees that access to the CDRs and the information contained therein will be restricted to Respondent's counsel and its damages experts, and no other individual or entity shall have access to them, including without limitation Telmex, Telnor, Telcel, or any other entity directly or indirectly*

associated with America Movil, or any other Mexican or foreign telecommunications or billing company;

- *Respondent expressly agrees that the CDRs and/or the information contained therein will not be shared in any way with any official or employee of the IFT under any circumstances;*
- *Respondent agrees to use the CDRs and the information contained therein solely for the purpose of the present arbitration;*
- *Respondent agrees to destroy the CDRs and/or the information contained therein after the arbitration terminates; and*
- *The parties agree that the deadline for the submission of Respondent's Rejoinder shall be September 10, 2018.*

B. The request from the United States of America for an extension to file non-disputing Party submissions pursuant to Article 1128 of the North American Free Trade Agreement (NAFTA)

8. On 17 August 2018, the United States of America requested an extension of the deadline for the filing of non-disputing Party submissions pursuant to Article 1128 of the North American Free Trade Agreement (NAFTA). Specifically, it requested that the date for filing these submissions be set for 26 October 2018.
9. The United States explained that the request was being made because “the office within the State Department that is responsible for preparing such submissions will be engaged in preparing for and conducting hearings in two separate cases in The Hague from September 10-18 and October 8-12, 2018.” It was also stated that “[t]he United States has been in communication with counsel for both parties concerning the present request, and both have indicated that they have no objection.”
10. Since neither the Parties nor the Tribunal object to such an extension, the Tribunal will grant the extension.

III. The Tribunal's decision

1. Based on the Parties' request, the Tribunal:
 - a. Accepts and by this Procedural Order formalizes the Parties' agreement in relation to both, the terms of production of the CDRs and the deadline for the submission of Respondent's Rejoinder which has been set for 10 September 2018;
 - b. Lifts the suspension for filing Respondent's Rejoinder;
 - c. Sets the date for filing non-disputing Party submissions pursuant to Article 1128 of the North American Free Trade Agreement (NAFTA) for 26 October 2018;

- d. Amends the Procedural Time Table as reflected in Annex 1 attached hereto.

On behalf of the Tribunal,

 [*Signed*]
Dr. Eduardo Zuleta
Presiding Arbitrator
Date: 4 September 2018

ANNEX 1

| Submission | Term | Due Date |
|---|---|-------------------|
| Statement of Claim | 16 weeks from the date of Procedural Order No. 1 | 7 November 2017 |
| Statement of Defense | 16 weeks from the due date of the Statement of Claim | 13 March 2018 |
| Reply | 14 weeks from the due date of the Statement of Defense | 5 June 2018 |
| Rejoinder | 14 weeks from the due date of the Reply | 10 September 2018 |
| Applications to file Non-Disputing party Submissions | 3 weeks from the publication of the Rejoinder | TBD |
| Parties' comments on Non-Disputing party Applications | 2 weeks from the date of the Non-Disputing Party application | TBD |
| Submissions by the Non-Disputing NAFTA Parties | - | 26 October 2018 |
| Comments on submissions by Non-Disputing NAFTA Parties | 2 weeks from the date of the filing of the Non-Disputing NAFTA Parties submissions | 9 November 2018 |
| Tribunal's decision on Non-Disputing Party Applications | Within a reasonable time period from the date of the Parties' comments on the Non-Disputing Party Application | TBD |
| Comments on submissions by non-disputing party (if any were admitted by the Tribunal) | 2 weeks from the date of the Tribunal's decision on the Non-Disputing Party Application | TBD |
| Hearing | | April 22-26, 2019 |