

**In an Arbitration under the Arbitration Rules of the United Nations Commission on
International Trade Law and the North American Free Trade Agreement**

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

Claimants

and

THE UNITED MEXICAN STATES

Respondent

AMENDED NOTICE OF ARBITRATION

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I. INTRODUCTION

1. Claimants Joshua Dean Nelson, in his own right and on behalf of Tele Fácil México, S.A. de C.V., and Jorge Luis Blanco (collectively “Claimants”), hereby amend their prior demand, submitted on September 26, 2016, that their dispute with the Government of the United Mexican States (“Mexico” or “Respondent”) be referred to arbitration pursuant to Article 3 of the Arbitration Rules of the United Nations Commissions on International Trade Law (“UNCITRAL”) and Articles 1116(1), 1117(1) and 1120(c) of the North American Free Trade Agreement (“NAFTA”).
2. The Notice of Arbitration is amended solely to include the additional related claim that Mexico violated Article 1105 of the NAFTA when its courts denied justice to Claimants in connection with their constitutional challenge to one of the key measures at issue in the dispute.
3. The salient events in connection with the submission of Claimants’ claims are as follows:
4. On April 21, 2016, Claimants submitted a Notice of Intent to Submit a Claim to Arbitration to Mexico (“Notice of Intent”), with a request to engage in amicable settlement discussions as soon as possible, pursuant to Article 1118 of the NAFTA. On April 26, 2016, Mexico acknowledged receipt of the Notice of Intent via email. On June 1, 2016, the parties met in Mexico City to discuss the merits of Claimants’ claims. Respondent was unable to offer a second meeting within 90 days of the submission of the Notice of Intent and provided no indication of the possibility of an appropriate settlement. Consequently, the parties were unable to settle the dispute. Pursuant to Articles 1119 and 1120(1), Claimants submitted the Notice of Arbitration on September 26, 2016, more than 90 days after delivery of their Notice of Intent and more than six months after the events giving rise to their claims.
5. The Notice of Arbitration submitted on September 26, 2016 included the Notice of Intent with respect to the new claim of denial of justice, along with a request to consult regarding the new claim pursuant to Article 1118 of the NAFTA. On September 27, 2016, Mexico acknowledged receipt of the Notice of Arbitration, along with the Notice of Intent with respect to the new claim. Through a subsequent exchange of emails between the parties, Mexico indicated that while it was willing to consult generally, there was no possibility of any financial settlement with respect to any aspect of the dispute,

including the new claim. Consequently, the parties have been unable to settle any aspect of the dispute.

6. Pursuant to Articles 1119 and 1120(1), Claimants' demand to arbitrate their new claim of denial of justice, along with all prior claims, is submitted more than 90 days after delivery of their Notice of Intent with respect to such claim and more than six months after the events giving rise to such claim.

II. PARTIES TO THE DISPUTE

7. Mr. Joshua Nelson and Mr. Jorge Blanco are claimants in the arbitration who are bringing claims in their own right pursuant to Article 1116(1) of the NAFTA.

8. Mr. 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.
1501 35th Avenue W.
Spencer, Iowa 51301
USA

9. Mr. 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

10. Proof of Mr. Nelson's and Mr. Blanco's U.S. nationality is included in Annex A of this Notice of Arbitration.

11. Pursuant to Article 1117(1), Mr. Nelson brings claims in arbitration on behalf of Tele Fácil México, S.A. de C.V. ("Tele Fácil"), a corporation organized under the laws of Mexico, which is majority owned and controlled by Mr. Nelson. The company's principal place of business is:

Calz. de Tlalpan 4585-102
Col. Toriello Guerra, Del. Tlalpan
C.P. 14050, Mexico

12. Legal counsel for Mr. Nelson and Mr. 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. All correspondence should be directed to:

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13. Respondent is the Government of the United Mexican States. Pursuant to Article 1137(2) and Annex 1137.2 of the NAFTA, delivery of notices and documents to Respondent should be made to the following address:

Secretaría de Economía
Dirección General de Inversión Extranjera
Av. Insurgentes sur No. 1940, Piso 8,
Col. Florida, Del Ávaro Obregón,
C.P. 01030, México, D.F.

III. ARBITRATION AGREEMENT

14. Claimants and Respondent have consented to arbitration under the NAFTA. Respondent has consented to the submission of a claim to arbitration pursuant to NAFTA Article 1122(1). Claimants have consented to arbitration by submitting a claim to arbitration against Respondent pursuant to NAFTA Articles 1116(1), 1117(1) and 1120(1)(c).
15. Claimants have satisfied all waiver requirements under the NAFTA. Pursuant to Article 1121, Mr. Nelson, in his own right and on behalf of Tele Fácil, and Mr. Blanco submit, in writing in Annex B to this Notice of Arbitration, their consent and waiver of their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the

measure of Mexico that is alleged to be a breach referred to in NAFTA Articles 1116 and 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of Mexico.

16. As Claimants are hereby adding a new claim of denial of justice to its overall claim, they have updated their respective consent and waiver letters, previously enclosed with the Notice of Arbitration, to cover their new claim.
17. Claimants have submitted their claims in accordance with all time periods under the NAFTA. Pursuant to NAFTA Articles 1116(2) and 1117(2), claimants have submitted their own claims and, in the case of Mr. Nelson, claims on behalf of Tele Fácil, within three years from the date on which they first acquired, or should have first acquired, knowledge of Respondent's breach and knowledge that they had incurred loss or damage. Pursuant to NAFTA Article 1119 and Article 1120(1), Claimants have submitted their claims more than 90 days after delivery of their Notice of Intent and more the six months after the events giving rise to their claims have elapsed.

IV. DESCRIPTION OF CLAIMS

18. This dispute arises from a series of measures by Mexico's Federal Institute of Telecommunications ("IFT") that eviscerated Claimants' investment in Mexico's telecommunications sector. The facts of this case are straightforward and irrefutable. After officially recognizing and expressly validating Claimants' legitimate investment rights, the IFT dramatically, unjustifiably, and illegally reversed its own rulings. The IFT's reversal destroyed Claimants' key investment, its interconnection agreement, and, with it, all prospects of entering the Mexican telecommunications market—a move that greatly benefitted Mexico's incumbent and dominant telecommunications provider. Respondent's measures not only directly undermine recent reforms in Mexico's telecommunications market, but they also constitute clear violations of the protections afforded to U.S. investors under Chapter Eleven of the NAFTA.

A. Factual Background

1. Establishment of the Business Venture

19. 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: Mr. Joshua Nelson, Mr. Jorge Blanco, and Mr. Miguel Sacasa.
20. Mr. 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. Mr. 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. Mr. Sacasa, a Mexican national, 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.
21. 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.
22. To further this business plan, Mr. Nelson and Mr. Blanco formally partnered with Mr. Sacasa 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 Mr.

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

Nelson and Mr. Blanco would own 40% and 9% of the new enterprise, respectively, and Mr. Sacasa would own 51%.

23. 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, Mr. 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. Mr. Blanco assumed responsibility for negotiating the necessary interconnection agreements with relevant carriers in the Mexican telecommunications market. Mr. Sacasa was appointed to serve as Director General of Tele Fácil to oversee the day-to-day operations of the company.
24. Based on the partners' respective responsibilities and assumptions of economic risk, it was agreed that Mr. Nelson would receive 60% of Tele Fácil's profits, and that Mr. Blanco and Mr. 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 Mexican constitution was amended to eliminate restrictions on foreign ownership and control in the telecommunications sector.³
25. 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

Commission is required, so that foreign investment has a larger percentage." As noted in paragraph 19 of the Notice of Arbitration, on June 11, 2013, the Mexican constitution was amended to eliminate restrictions on foreign ownership and control in the telecommunications sector.

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 Metztitlán, Hidalgo, and which first transcript was duly registered before the Public Registry of Commerce of Mexico City under electronic number 410108-1.

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.

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 Mexico City, Guadalajara and Monterrey.

26. 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 the América Móvil Group, 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.
27. 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 the company’s proven monopolistic practices of delaying access to telecommunications 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.
28. 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

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.

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 related to indirect interconnection and local number portability charges. Consistent with Telmex’s proven monopolistic practices, it refused to allow indirect interconnection and would not eliminate 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).

29. 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 IFT, pursuant to Article 42 of the Federal Telecommunications Law.⁶
30. 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—a ruling that was critical to Tele Fácil’s market viability.
31. 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 Federal

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.

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.

Telecommunications and Broadcasting Law⁹ 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.

32. 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.¹⁰ Second, it found unequivocally that "the interconnection rates were fully established" and that "Tele Fácil has full knowledge of and consented to these rates."¹¹ 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."¹² Thus, the terms of interconnection were set.
33. 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 interconnection agreement, as determined by the IFT, and to interconnect their systems within ten business days after notification of the ruling.¹³ In accordance with Resolution 381, within ten business days, Tele Fácil entered into an interconnection agreement with Nextel México to permit indirect interconnection with Telmex.¹⁴

⁹ Published in the Federal Official Gazette on July 14, 2014.

¹⁰ Page 14, paragraph 3 of the Resolution 381.

¹¹ Page 13, last paragraph of Resolution 381; Page 14, second paragraph of Resolution 381; Page 16, last paragraph of Resolution 381.

¹² Page 16, paragraphs 2 and 3 of Resolution 381.

¹³ Page 17, first resolution of Resolution 381.

¹⁴ Nextel México was a much larger company than Tele Fácil and thus had more leverage vis-à-vis Telmex. Over the years, Nextel México had been able to secure significant capacity for the exchange of traffic with Telmex and

34. As a consequence of Resolution 381, Tele Fácil was entitled under Mexican law to begin handling telecommunications traffic in Mexico under its concession (indirectly through Nextel México) pursuant to the agreed rates, 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.

2. The IFT's Failure to Enforce Resolution 381

35. 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 with only 21 days remaining in 2014.

36. 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.

37. 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.

therefore had the ability to offer Tele Fácil a reliable interconnection option for the indirect exchange of its traffic with Telmex. Tele Fácil's interconnection agreement with Nextel México was thus its only viable avenue to quickly and efficiently access the Mexican telecommunications network, 70% of which is dominated by Telmex, without fear that Telmex would delay the provisioning of circuits necessary for Tele Fácil to exchange traffic directly with Telmex. Since the time the agreement between Tele Fácil and Nextel México was negotiated, Nextel México has been acquired by AT&T.

38. During the same period, upon information and belief, Telmex representatives met with IFT officers and petitioned them to reopen its decision in Resolution 381.¹⁵

3. The IFT's Dramatic and Illegal Reversal of Resolution 381

39. 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.

40. 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 381.¹⁶ In fact, that decision was directly contrary to Resolution 381 and clawed back the IFT's critical prior rulings in Tele Fácil's favor.

41. Decree 77 reversed the IFT's decision concerning its own authority to determine the scope and contents of an interconnection agreement 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].”¹⁷

¹⁵ 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.

¹⁶ 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.

¹⁷ Page 10, paragraph 3 and 4 of Decree 77.

42. 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.¹⁸ 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.¹⁹ 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.
43. 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.²⁰ 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].”²¹
44. 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 separately 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 at any time simply by initiating a new disagreement

¹⁸ Page 17, first resolution of Resolution 381.

¹⁹ Page 13, third resolution of Decree 77.

²⁰ Page 10, last paragraph of Decree 77.

²¹ Page 13, fourth resolution of Decree 77.

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

45. 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.²²
46. 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.
47. It is even more unusual that the two inspections yielded contradictory results. Following the first inspection on June 9 and 10, 2015,²³ the IFT concluded that no irregularities were found regarding Tele Fácil's compliance with Decree 77.²⁴ 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, 2015.²⁵ This time, the IFT reversed its prior conclusion and found that some irregularities existed.²⁶ On March 16, 2016, the IFT notified Tele Fácil that the company would be subject to sanctions as a result of these irregularities.²⁷
48. 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

²² Page 14, penultimate paragraph of Decree 77.

²³ Verification IFT/DF/DGV/562/2015.

²⁴ Document IFT/225/UC/DG-VER/3661/2015 dated September 15, 2015.

²⁵ Verification IFT/DF/DGV/988/2015.

²⁶ Document IFT/225/UC/DG-VER/222/2016 dated February 3, 2016.

²⁷ Document dated March 14, 2016 issued by the Compliance Unit of the IFT, on file E-IFT.UC.DG-SAN.II.0009/2016. Tele Facil 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 2015.²⁸

49. The IFT accepted Telmex's application to resolve the purported interconnection disagreement on June 19, 2015.
50. On August 5, 2015, Tele Fácil submitted another request to the IFT to enforce Resolution 381 against Telmex. The IFT took no meaningful action.
51. On October 19, 2015, the IFT issued Resolution 127, which resolved Telmex's manufactured interconnection disagreement decidedly in Telmex's favor.²⁹ That decision overruled Tele Fácil's strong objections that the IFT lacked jurisdiction because it had previously decided all matters in Resolution 381.
52. 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.³⁰
53. 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.³¹
54. Resolution 127 also completely contradicted the IFT's prior decision in Resolution 381 on indirect interconnection. In Resolution 381, the IFT expressly resolved a

²⁸ As stated in Background XI of the Resolution 127.

²⁹ 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.

³⁰ Page 19, paragraph 4 of Resolution 127.

³¹ 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.

55. Both IFT Commissioners who are lawyers, Ms. Adriana Sofía Labardini Inzunza and Mr. Adolfo Cuevas Teja, dissented from Resolution 127 on the basis that the decision was inconsistent with Mexican law.³²
56. 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.

4. The Mexican Courts' Failure to Address the IFT's Misconduct Properly

57. 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 one appeal is pending. In all cases, the Mexican courts have failed to correct the IFT's misconduct that has denied Tele Fácil the higher interconnection rate as originally agreed with Telmex.
58. 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, without providing sufficient reasoning.³³ 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.

³² According to the stenographic record of the IFT's plenary meeting held on October 7, 2015, Commissioner Labardini voted against the entire Resolution because she considered the rates to have already been agreed upon and resolved by the plenary (see http://apps.ift.org.mx/publicdata/Estenografica_36Ext_071015.pdf, pages 40 and 41). In addition, Commissioner Cuevas voted against setting the rates because they were already resolved by the plenary and they were already defined in the draft agreement sent by Telmex to Tele Fácil (see http://apps.ift.org.mx/publicdata/Estenografica_36Ext_071015.pdf, page 59).

³³ 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.

59. On April 21, 2016, after Tele Fácil had been improperly denied physical access to the courthouse to file its notice appeal, the Circuit Court dismissed Tele Fácil's appeal, with prejudice, and without addressing the merits of Tele Fácil's arguments.
60. 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 381.³⁴ 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.
61. Both Tele Fácil and Telmex have appealed aspects of the court's decision. However, on July 13, 2016, Tele Fácil withdrew from the proceedings in preparation for initiating this NAFTA claim.
62. On March 15, 2016, Tele Fácil received a second ruling from the Second District Court for Administrative Matters, rejecting its constitutional challenge to Resolution 127.³⁵ That decision is quite confusing. 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 appealed that decision with the Circuit Collegiate Court in Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, on April 7, 2016.
63. On July 13, 2016, Tele Fácil withdrew its appeal from the court's consideration in preparation for initiating this NAFTA claim.

³⁴ 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.

³⁵ 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.

5. The IFT's Unjustified Delay in Converting Tele Fácil's Concession

64. On August 4, 2015, Tele Fácil was the first concessionaire to apply to the IFT for the conversion of its original public telecommunications network concession into a sole concession for commercial use. This application was important 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.
65. According to Mexican law, the IFT must authorize the transition to the sole concession within 60 calendar days of a telecommunications provider's request.³⁶ The IFT failed to take action to convert the company's concession for over a year. It was not until January 30, 2017 that Tele Fácil's conversion to the sole concession was finally granted. 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.

6. Unjustified Sanctions Against Tele Fácil Following Resolution 127

66. To add to Tele Fácil's injury, on August 25, 2016, the IFT's Compliance Unit notified Tele Fácil that it was initiating a sanction process against the company for failure to comply with Resolution 127.³⁷ This action followed information requests sent by the IFT, respectively, to Tele Fácil on November 24, 2015³⁸ and January 19, 2016,³⁹ and to Telmex on November 20, 2015.⁴⁰ According to the IFT, the reason for initiating the sanctions process against Tele Fácil was the company's failure to execute a new interconnection agreement, which Telmex had proposed on October 28, 2015.⁴¹

³⁶ Article 73 of the Federal Law of Telecommunications and Broadcasting.

³⁷ Page 29, third resolution of document number E-IFT.UC.DG-SAN.II.0168/2016.

³⁸ Document IFT/225/UC/DG-SUV/5461/2015 dated November 24, 2015.

³⁹ Document IFT/225/UC/DG-SUV/090/2016 dated January 19, 2016.

⁴⁰ Documents IFT/225/UC/DG-SUV/5459/2015 and IFT/225/UC/DG-SUV/5460/2015, both dated November 20, 2015.

⁴¹ Page 29, third resolution of document number E-IFT.UC.DG-SAN.II.0168/2016.

67. On April 3, 2017, the IFT unjustifiably imposed a fine of \$2,571.94 pesos on Tele Fácil for not complying with Resolution 127.⁴²
68. The IFT's actions are nothing short of egregious. As explained, Decree 77 reversed the IFT's prior ruling that the interconnection rate was agreed between the parties through 2017. In doing so, the IFT illegitimately permitted Telmex a second bite at the apple, which Telmex capitalized on by manufacturing a new disagreement over the 2015 interconnection rate. The IFT then handed Telmex an unwarranted victory by resolving the interconnection rate in Telmex's favor at one fortieth the amount of the rate previously agreed to by the parties, as acknowledged in Resolution 381.
69. Under these circumstances, Tele Fácil had no alternative but to reject Telmex's newly proposed interconnection agreement that contravened Mexican law, violated Resolution 381, and destroyed the company's profitability. The IFT's recent decision to sanction Tele Fácil—after placing it in an untenable situation—is unconscionable. It is also arbitrary and discriminatory. While the IFT never took meaningful action to enforce Resolution 381 against Telmex, as it was lawfully required to do, it now has decided to take the extreme step of enforcing Resolution 127 against Tele Fácil.

* * *

70. 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, Mr. Nelson and Mr. Blanco.

B. Mexico's Violations of NAFTA Chapter Eleven

71. 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 investments in Mexico owned by Mr. Nelson, Mr. Blanco and Tele Fácil. These

⁴² Resolution issued by the IFT's Compliance Unit on April 3, 2017, by which it concludes the administrative procedure to impose a fine contained in file No. E-IFT.UC.DG-SAN.II.0168/2016.

investments include the interconnection agreement resolved by the IFT in Tele Fácil's favor in Resolution 381, the Claimants' interests in Tele Fácil that entitled them to share in the income and profits of Tele Fácil, the concession to provide telecommunications services, various telecommunications equipment, and other interests arising from the commitment of capital and resources in Mexico.

72. The IFT's acts and omissions, at a minimum, breached Mexico's obligations under Article 1110 (Expropriation and Compensation) and Article 1105 (Minimum Standard of Treatment).⁴³

1. Article 1110 (Expropriation and Compensation)

73. 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-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."

74. 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.

75. 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

⁴³ Claimants reserve the right to bring additional claims under NAFTA Chapter Eleven, including claims pursuant to NAFTA Articles 1102 (National Treatment) and 1103 (Most-Favored-Nation Treatment), subject to any of Mexico's applicable Annex I and II exceptions.

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.

76. 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.
77. As a result of the IFT's acts and omissions, Mr. Nelson, Mr. Blanco and Tele Fácil have suffered significant damages.

2. Article 1105 (Minimum Standard of Treatment)

78. 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."
- a. Misconduct by the IFT
79. After the IFT issued Resolution 381, it was responsible for a series of offensive and egregious acts and omissions that individually or collectively amounted to a breach of the minimum standard of treatment.
80. 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.⁴⁴ Not only did the IFT refuse to enforce Resolution 381 against Telmex, despite having been

⁴⁴ 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.

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.

81. 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.
82. 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.
83. 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 the IFT's authority to resolve a disagreement fully in a single proceeding, thereby allowing a new entrant like Tele Fácil the certainty of a resolution ordering the parties to interconnect, within a short time period, on the basis of all resolved *and* undisputed terms. 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.
84. 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.

85. 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.
86. 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.
87. 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.
88. The IFT's dramatic reversal of its rulings in Resolution 381 was highly discriminatory as it 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 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.

89. As a result of the IFT's acts and omissions described above, Mr. Nelson, Mr. Blanco and Tele Fácil have suffered significant damages.

a. Misconduct by the Mexican Courts

90. Mexico has committed an additional breach of the NAFTA arising separately out of the mistreatment of Tele Fácil's amparo challenge to Decree 77. Through a series of actions, Mexico's specialized telecommunications court system has denied Tele Fácil and its U.S. investors meaningful consideration of its legal claims and access to justice.

91. At the level of the court of first instance, the First District Court for Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, ("District Court") dismissed Tele Fácil's amparo action challenging the constitutionality of Decree 77, without sufficient analysis of Tele Fácil's legal arguments. In that action, Tele Fácil argued that IFT did not properly enforce Resolution 381 pursuant to its legal obligations and that the IFT lacks authority to reverse its prior resolutions as occurred with Decree 77.

92. The District Court, however, failed to consider Tele Fácil's case meaningfully, despite the serious nature of its claims, their significance for proper implementation of Mexico's new telecommunications reforms, and their important ramifications for Mexico's telecommunications industry generally. In effect, the District Court simply rubber-stamped Decree 77, without providing adequate judicial review.

93. Further, Tele Fácil was improperly denied the opportunity to pursue its appeal of the District Court's decision. As mentioned, on February 12, 2016, Tele Fácil appealed the decision of the District Court to the Circuit Collegiate Court in Administrative Matters ("Circuit Court"). However, on April 21, 2016, the Circuit Court dismissed Tele Fácil's

appeal, with prejudice, but without addressing the substance of Tele Fácil's claim.⁴⁵ The events culminating in that dismissal are unsettling.

94. On February 11, 2016, one day before the appeal was due, Tele Fácil's counsel arrived at the courthouse to make the filing before it closed at midnight. Court rules and practice guarantee a party's access to the courthouse until midnight on the day of a deadline. In an unprecedented event, the courthouse security guard denied counsel's access to the court's filing office; instead, he placed two calls to the office but received no answer. Eventually, at midnight, another call was placed successfully, but the court official refused to file Tele Fácil's appeal, claiming it was untimely.
95. The following day, Tele Fácil's counsel promptly raised the matter with the relevant judges and administrative officials. After reviewing electronic evidence of counsel's valid attempt to file, the Chief Justice of the Circuit Court recognized the Court's fault and Tele Fácil was permitted to make its filing.⁴⁶ On March 9, 2016, the Circuit Collegiate Court formally accepted the appeal.
96. Despite these decisions, on April 21, 2016, the Circuit Court dismissed Tele Fácil's appeal as untimely, without any reasonable justification.⁴⁷ Inexplicably, it dismissed the appeal based on the misapplication of a generic timing rule allowing litigants to file within the first business hour following an early closure of the courts, *e.g.*, for an official holiday. According to the Circuit Court, because Tele Fácil did not file within the Circuit Court's first business hour on the morning after it was denied access to the filing office, its appeal was untimely. This decision not only misapplies a timing rule intended for different circumstances, but it also fails to consider any of the unique circumstances surrounding Tele Fácil's attempted filing: it took Tele Fácil's counsel well over an hour to obtain evidence proving his denial of access, to discuss the situation with the Chief

⁴⁵ Resolution to Amparo Revision trial R.A. 35/2016, issued by the First Circuit Collegiate Court for Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, on April 21, 2016.

⁴⁶ Interlocutory resolution on Amparo Revision trial R.A. 35/2016 dated March 9, 2016, issued by Justice Patricio González-Loyola Pérez, Chief of the First Circuit Court in Administrative Matters specialized in Economic Competition, Broadcasting and Telecommunications.

⁴⁷ Resolution to Amparo Revision trial R.A. 35/2016, issued by the First Circuit Collegiate Court for Administrative Matters, specialized in Economic Competition, Broadcasting and Telecommunications, on April 21, 2016.

Justice of the Circuit Court, and to obtain an order issuing the Administrative Record necessary to justify the late filing.

97. Under Mexican law, Tele Fácil has no right or ability to appeal the decision of the Circuit Court's decision.

98. In sum, the actions of the District Court and the Circuit Court denied Tele Fácil justice.

C. Devastating Consequences for Mexico's Telecommunications Sector

99. The IFT's approach to interconnection, if applied beyond Tele Fácil's situation, has the potential to bring down Mexico's competitive telecommunications industry. If the IFT's resolutions resolving interconnection disagreements are not final and binding, except with respect to disputed terms, then any provider could re-open an interconnection agreement at virtually any time during its period of application. This potential would severely undermine the core principle of sanctity of contract and create tremendous unpredictability and instability in Mexico's telecommunications sector.

100. Moreover, the IFT's approach flies in the face of Mexico's recent attempts to reform its telecommunications sector, particularly with respect to Telmex's monopolistic practices which have stifled competition in the industry for years. Allowing Telmex, in particular, to re-open and re-litigate issues previously settled in Tele Fácil's favor unduly delays interconnection and creates market barriers, in violation of Mexican law. Moreover, it also allows Telmex to litigate interconnection terms endlessly until it obtains its desired result, with the aim of improperly enhancing its market position or even driving a competitor out of the market completely, as in the case of Tele Fácil. Ironically, were the IFT to apply its approach to interconnection industry wide, it would be handing Telmex another potent means of abusing its market position, despite Mexico's telecommunications reforms.

101. The absurdity of the IFT's approach to interconnection only confirms the fact that Mexico breached the NAFTA. The IFT's actions are so patently arbitrary, illogical, and expropriatory—and so blatantly inconsistent with Mexico's own telecommunications reforms—as to raise serious concerns about whether Tele Fácil was singled out for

mistreatment under pressure from Telmex. In the end, the record is clear that the IFT's unjustifiable acts and omissions worked to bolster the economic position of Mexico's national champion, Telmex, by destroying the business prospects of a new U.S.-controlled competitor.

V. RELIEF SOUGHT

102. Claimants respectively request an award of damages arising from Respondent's breaches of the NAFTA in the approximate amount of USD \$500 million, together with interest calculated from the date of the breach until the date of payment, and the costs of this arbitration including, without limitation, attorney's fees and other expenses.

VI. NUMBER AND APPOINTMENT OF ARBITRATORS

103. The parties agreed that the Tribunal shall be comprised of three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. On October 31, 2016, Claimants appointed Mr. V.V. Veeder, QC. On December 23, 2016, Respondent appointed Mr. Mariano Gomezperalta Casali. On May 1, 2017, Dr. Eduardo Zuleta was appointed as chair of the Tribunal pursuant to Article 1124 of the NAFTA.

VII. PROPOSAL AS TO LANGUAGE AND PLACE OF ARBITRATION

104. Claimants propose that the proceedings be conducted in the English language and that the seat of the arbitration be Washington, DC.

Date: June 9, 2017



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