

**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. 12

Tribunal

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

Secretary of the Tribunal

Ms. Sara Marzal Yetano

10 April 2019

Introduction

The Tribunal refers to:

- The draft agenda for the pre-hearing organizational meeting circulated by the Secretary of the Tribunal on 1 February 2019;
- The Parties' Joint Proposal for the pre-hearing organizational meeting submitted on 20 March 2019; and
- The Parties' communications of 29 March 2019 with additional observations on whether or not closing statements should be included in post-hearing briefs.

On the basis of the agreements reached by the Parties on the organization of the upcoming hearing, and having deliberated, the Tribunal now issues the present Order.

Order

I. Hearing Schedule and Allocation of Time

1. Daily Schedule:

- a. The hearing will take place from Monday 22 April 2019 to Friday 26 April 2019.
- b. The hearing will start at 9:00 a.m. each morning and end at 5:30 a.m. However the Tribunal may, in consultation with the Parties, extend the hearing until 6:30 p.m.
- c. Each day there will be a lunch break of 1 hour (at around 1:00 p.m.) and two coffee breaks of 15 minutes, one mid-morning and one mid-afternoon.

2. Allocation of time between the Parties:

- a. **Time allocated to the Parties:** There will be a total of 30 hours available for the Parties which will be distributed in equal parts between them, *i.e.* 15 hours each, including opening statements, witness and expert examination and any closing presentations determined by the Tribunal pursuant to section V(3) below. Additional hours resulting from extensions as per Section 1(b) above will be allocated equally between the Parties. The Parties may use their time as they see fit.
- b. **Time allocated for questions from the Tribunal:** The Tribunal will have 5 hours for questions, which it may use at any time during the hearing. Such time will not be deducted from the total time allocated to the Parties.

- c. **Time keeping:** The Secretary of the Tribunal will keep track of time using a three-way chess clock. Any dispute over time-keeping shall be settled by the Tribunal whose decision shall be final.
- d. **Sequence of the hearing (order of presentations, order of witnesses and experts, etc.):** The order of the hearing will be as follows: i) opening statements; ii) factual witnesses, iii) legal experts, and iv) damages experts. Claimants shall deliver its opening statement first, followed by the Respondent's opening statement, following the same order for the presentation of witnesses and experts. The parties shall specify the order in which they will call their witnesses and experts by **Friday April 12, including a joint tentative daily schedule for each day of the hearing**.

II. Witness and Expert Examination

1. **Scope and manner of witness and expert examination:** No proposed changes to Procedural Order No. 1 (Sections 21.4, 21.5 and 21.6 of Procedural Order No. 1).
2. **Length and format for direct-, cross- and redirect examination of witnesses/experts; possibility of re-cross:**
 - Direct: 10 minutes for witnesses; 15 minutes for experts
 - Cross: no time limit for cross-examination (45 minutes on average, as needed)
 - Redirect: no time limit for redirect examination (10 minutes on average, as needed)
 - Re-cross: Not necessary and only with leave from the Tribunal
3. **Witness sequestration:** Witnesses shall be sequestered until called to present testimony and will be allowed in the room after rendering testimony. The Parties have agreed to allow Messrs. Nelson and Blanco, and a representative from IFT to attend the opening presentations. In accordance with Section 21.7 of Procedural Order No. 1, experts shall be allowed in the hearing room at any time.

III. Hearing Materials

1. **Visual aids, including demonstrative exhibits and PowerPoint presentations:** Hard copies of visual aids should be distributed to each Tribunal Member, the Secretary of the Tribunal, the court reporters, the interpreters and the opposing party immediately before a presentation begins. Electronic versions of all visual aids should be provided to the Tribunal, the Secretary of the Tribunal and the opposing party as early as possible and no later than the end of each day by email or on a memory stick.

2. **Rules on the submission of new evidence/exhibits into the record during hearing:** Section 19.3 of Procedural Order No. 1 applies to any request to submit new evidence/exhibits into the record during the hearing.
3. **Hearing bundles:** A joint hearing bundle including the core documents in the case should be provided to the Tribunal and to the the Secretary of the Tribunal in hard copy at the start of the hearing. Electronic copies (with hyperlinked index) should be sent to each Member of the Tribunal and the Secretary of the Tribunal one week before the hearing, that is, **by 15 April 2019**.
4. **Cross-examination bundles:** If cross-examination bundles are used, they should be made available to each Tribunal Member, the Secretary of the Tribunal, the interpreters and opposing counsel immediately before each cross-examination in hard copy. Electronic copies should be provided to each Member of the Tribunal and the Secretary of the Tribunal as soon as possible and no later than at the end of each day.
5. **Electronic copies of case file:** Each party will produce a hyperlinked index to its pleadings, witness statements, expert reports, exhibits and authorities based on a common format. Each party's index will be uploaded by the parties to the Box by 12 April 2019 and sent in one common USB drive to the Tribunal Members and the Secretary of the Tribunal **by 12 April 2019**.

IV. Interpretation

1. Pursuant to Sections 12.8 and 12.9 of Procedural Order No. 1, the hearing will be conducted in Spanish and English. There shall be simultaneously Spanish-English and English-Spanish interpretation throughout the hearing.
2. Parties will specify who is going to testify in which language pursuant the IBA rules which were adopted in para. 20.3 of PO 1.
3. All of the Respondent's witnesses and experts will require interpretation services, they will testify in Spanish, except for Dr. Buccirrossi that will testify in English.
4. The following witnesses and experts for Claimants will testify in English: Mr. Nelson, Mr. Blanco, and Dr. Dippon. The following witnesses and experts for Claimants will testify in Spanish: Mr. Bello, Mr. Sacasa, Dr. Alvarez, Mr. Soria, and Dr. Mariscal, Dr. Marquez.

V. Post-Hearing Briefs and Statements of Costs/Submissions on Costs

1. The scope and extent of the post-hearing briefs shall be determined by the Tribunal, in consultation with the parties, at the end of the hearing.
2. Statements of costs/submissions on costs should be required within a reasonable time after conclusion of the hearing.

3. There will be no closing statements in the Hearing but the Tribunal reserves the right to request from the Parties oral presentations on the last day of the hearing on specific points raised by the Tribunal.

VI. Records of the Hearing

1. Pursuant to Section 24 of Procedural Order No. 1, sound recordings shall be made of all hearings and sessions. The sound recordings, as well as verbatim transcripts in the two procedural languages.
2. ICSID has made arrangements to have English and Spanish verbatim transcripts available in real-time using Living Note or similar software during the hearing.
3. Electronic versions of the transcripts will be provided to the parties and the Tribunal on a same-day basis.
4. The parties shall agree on any corrections to the transcripts within 30 days of the conclusion of the hearing. If the verbatim transcript is not provided at the end of the hearing, the parties shall agree on any corrections to the transcripts within 30 days once the verbatim transcripts are received by the parties. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.
5. The verbatim transcripts will be the only authoritative transcript for use in any other subsequent pleading or presentation.

VII. Other

1. At the end of the Hearing the Tribunal, in consultation with the Parties, will issue instructions on the matter of Mr. Nelson’s standing to claim on behalf of Tele FÁCil under Article 1117 of the NAFTA in light of Mr. Blanco’s bankruptcy case.

On behalf of the Tribunal,

[*Signed*]

Dr. Eduardo Zuleta
Presiding Arbitrator
Date: 10 April 2019