

**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. 2
(CONFIDENTIALITY ORDER)**

Tribunal

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

Secretary of the Tribunal

Ms. Sara Marzal Yetano

7 September 2017

Procedural history

Pursuant to Sections 26.2 and 26.5, of Procedural Order No. 1, the Tribunal will, *after consultation with the parties*, issue the Confidentiality Order that will establish *the procedures that shall govern the designation of confidential information and the preparation of redacted copies of documents for publication*.

In light of the above, on 11 August 2017, the Tribunal invited the parties to confer with each other and submit, by 30 August 2017, (i) a joint proposal advising the Tribunal of any agreements reached on the rules and procedures to be included in the Confidentiality Order, and (ii) their respective positions in those issues where they have been unable to reach an agreement.

On 30 August 2017, the parties submitted a joint proposal of the Confidentiality Order in accordance with the Tribunal's request. Based on this joint proposal, the Tribunal herein issues the Confidentiality Order, resolving those issues in which there was disagreement between the disputing parties.

Order

The Tribunal issues the following Confidentiality Order:

1. For the purposes of this Order, as per Procedural Order No. 1, Section 26.2, this confidentiality order shall apply to the following documents that the ICSID Secretariat will publish on the Centre's website. These include:
 - a) Any orders, decisions, interim or partial awards, as well as the final award, issued by the Tribunal;
 - b) The following memorials (but not the supporting witness statements, expert reports, exhibits, or legal authorities): (i) Claimants' notice of arbitration and its amendment; (ii) Claimants' statement of claim; (iii) Respondent's statement of defence; (iv) Claimants' reply; Respondent's rejoinder (collectively "pleadings"); and
 - c) Any written submissions by other NAFTA Parties and any written submissions by third persons (*amicus curiae*) that have been admitted by the Tribunal.
2. If a disputing party wishes to declare certain information contained in a pleading to be confidential, it shall notify the other disputing party within 7 days of the filing such pleading that it contains confidential information and shall provide its proposed redactions to the opposing party within 15 days thereafter. The ICSID Secretariat shall not publish any pleading on its website until the initial 7-day period has expired and no declaration of confidentiality has been made by either disputing party, or the proposed redactions have been agreed or resolved in the manner provided below.

3. The disputing party seeking redactions shall clearly identify the document containing such information with the notation “Confidential” or “Contains Confidential Information”, and shall take equivalent measures with respect to information contained in other material produced in electronic and similar media.
4. Confidential information shall not be disclosed to the public except in accordance with the terms of this Order or with the prior written consent of the disputing party that claimed confidentiality with respect to the information.
5. Neither the disputing parties nor the Tribunal may make publicly available information that either disputing party has properly designated as confidential, subject to the dispute resolution procedure established in paragraph 6 of this Order.
6. Disputes related to a disputing party’s designation of confidential information may be submitted to the Tribunal for determination, pursuant to the following procedure:
 - a) If a disputing party opposes any redactions that the other disputing party proposes, it shall so notify the other proposing party within 7 days of receiving the redacted pleading in question, providing its reasons for objecting.
 - b) If the disputing parties cannot agree on the resolution of any dispute within 10 days, either party may submit the matter to the tribunal for a decision which it shall attempt to render within 10 days.
 - c) If the Tribunal determines that the information was not properly designated, the proposing party that has submitted the document shall prepare a new public version in which the improperly designated information is either included or deleted, as the case may be, in accordance with the Tribunal’s instructions. Only the approved revised redacted version shall be published.
7. If the Tribunal issues an order, decision or award containing information that either disputing party considers to be confidential, then the proposing party shall inform the other disputing party that it wishes to redact certain confidential information from the order, decision or award and the procedure for redacting confidential information in pleadings and resolving related disputes shall apply.
8. Definitions in the context of this Order:
 - a) “disputing party” means, in the case of the Claimants, Joshua Dean Nelson, in his own right and on behalf of Tele Fácil México, S.A. de C.V., and Jorge Luis Blanco (“Tele Fácil”), and in the case of the Respondent, the Government of the United Mexican States and the Federal Institute of Telecommunications (IFT) collectively the “disputing parties”;

- b) “confidential information” means any information designated by a disputing party as confidential. A disputing party may designate as confidential, and, subject to the terms and procedures of this Order, protect from disclosure to the public any information that may otherwise be released under the terms of this Order on any of the following grounds:
- i. business confidentiality;
 - ii. business confidentiality relating to a third party;
 - iii. information that is privileged or otherwise protected from disclosure, including information properly and consistently classified by the government as determined by the Tribunal;
 - iv. confidential information that is deemed to be financial, commercial, scientific or technical information supplied by third parties that has been treated as confidential information by those third parties or the recipient.
 - v. information the disclosure of which prevents law enforcement.
- c) “business confidentiality” includes:
- i. commercial business secrets,
 - ii. financial, commercial, scientific or technical confidential information from the enterprise that has been consistently treated as confidential information by the party to whom is related, and includes information on prices, costs, strategic and marketing plans, market share data, accounting or financial records that have not been disclosed to the public;
 - iii. information the disclosure of which could result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, the disputing party to which it relates, and
 - iv. information the disclosure of which could interfere with contractual or other negotiations of the disputing party to which it relates.
9. This Order only governs issues relating to the disclosure of information to the public. Therefore, it preserves the disputing parties’ right to object the production of documents on grounds of confidentiality.

On behalf of the Tribunal

[*Signed*]

Dr. Eduardo Zuleta
Presiding Arbitrator
Date: 7 September 2017