

**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.**

**(the “Claimants”)**

**and**

**THE UNITED MEXICAN STATES**

**(the “Respondent”)**

**ICSID Case No. UNCT/17/1**

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**PROCEDURAL ORDER NO. 14**

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*Tribunal*

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

*Secretary of the Tribunal*

Ms. Sara Marzal Yetano

**17 May 2019**

## **I. Procedural history**

1. The hearing in the present arbitration took place from 22 April 2019 to 26 April 2019 (the “April Hearing”).
2. On 26 April 2019, the last day of the April Hearing, the Parties were invited by the Tribunal to discuss and seek an agreement on (a) the sequence and timing of the Post-Hearing Briefs; and (b) whether additional submissions on the consequences of the withdrawal of Mr. Jorge Luis Blanco from this arbitration (the “Blanco Withdrawal”) were required and, if so, the sequence and timing thereof.
3. The Parties agreed to one round of Post-Hearing Briefs and one round of submissions regarding the Blanco Withdrawal as follows:

<b>Submission</b>	<b>Party</b>	<b>Due Date</b>
Submission on the Blanco Withdrawal	Respondent	13 June 2019
Post-Hearing Briefs	Claimant and Respondent	15 August 2019
Reply to the Submission on the Blanco Withdrawal	Claimant	15 August 2019

4. The Parties, however, did not agree on the scope of the submission regarding the Blanco Withdrawal. Respondent intends to address: (a) whether the transfer of the shares to Mr. Joshua Dean Nelson dated 29 March 2016 is valid in light of the circumstances that resulted in the Blanco Withdrawal and the implications of the foregoing for this arbitration; and (2) whether *de facto* control suffices as a matter of law for purposes of NAFTA Article 1117 and whether Mr. Joshua Dean Nelson has *de facto* control of Tele Fácil México, S.A. de C.V. Claimant in turn considers that Respondent only needs to address the first issue because the second one has already been thoroughly briefed in this process.

## **II. The Tribunal’s decision**

5. The Tribunal has carefully reviewed the Parties’ submissions and considers that the issue on *de facto* control was addressed before the Blanco Withdrawal, under the assumption that Mr. Jorge Luis Blanco remained a claimant in this arbitration. The withdrawal of Mr. Jorge Luis Blanco was only reported by Claimant after Respondent’s Rejoinder had been filed and shortly before the April Hearing. Therefore, the Tribunal will allow Respondent to address the two issues stated above.
6. Consequently, the Tribunal decides:
  - a. To approve the agreement of the Parties on Post-Hearing Briefs and submissions on the Blanco Withdrawal as reflected in paragraph 3 above.
  - b. The submissions on the Blanco Withdrawal shall refer to: (1) whether the transfer of shares of Tele Fácil México, S.A. de C.V. to Mr. Joshua Dean Nelson Nelson on 29 March 2016 is valid in light of the circumstances that resulted in the Blanco Withdrawal; and (2)

whether *de facto* control suffices as a matter of law and whether Mr. Joshua Nelson has *de facto* control of Tele Fácil México, S.A. de C.V. Any evidence on these issues may only be submitted by Respondent on 13 June 2019 and by Claimant on 15 August 2019.

- c. Should the Tribunal deem it necessary or convenient, it may request additional submissions or evidence from the Parties on the Blanco Withdrawal after 15 August 2019.

On behalf of the Tribunal,

[ *Signed* ]

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Dr. Eduardo Zuleta  
Presiding Arbitrator  
Date: 17 May 2019