

**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**

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**PROCEDURAL ORDER NO. 9**

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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. Marisa Planells-Valero

**27 August 2018**

## I. Procedural history

1. On 16 August 2018, Respondent requested a 3-week extension (until 18 September 2018) for the filing of its Rejoinder based, *inter alia*, on the following grounds: (i) changes in the Mexican government, with the inauguration of the new government taking place on 1 December 2018; (ii) the move of the Secretaría de Economía to its new offices, scheduled to take place between 20-30 August 2018; (iii) the closing of the IFT from 14-29 July 2018, a period during which the Secretaría de Economía was unable to work with the IFT in the preparation of the Rejoinder; (iv) the unexpected resumption of the NAFTA renegotiations, which increased the workload of the Dirección General de Consultoría Jurídica de Comercio Internacional and; (v) the fact that Claimants have yet to produce the documents corresponding to Respondent's Request No. 9 regarding the CDRs, in accordance with Procedural Order No. 8.
2. On 22 August 2018, Claimants objected to Respondent's extension request alleging, *inter alia*, that: (i) during the negotiation of the applicable procedural schedule Respondent should have foreseen that the period of time to prepare its Rejoinder would fall during the transition term after Federal Elections; (ii) Respondent did not provide details as to why the moving process would disrupt its ability to file the Rejoinder; the moving date was likely scheduled well in advance of the move and complications should have been anticipated; (iii) the two-week term during which the IFT was closed was established since December 2017 and, in any case, the IFT could have made its personnel available; (iv) Respondent did not provide details as to how the NAFTA renegotiation affected the preparation of the Rejoinder and workloads for this matter could have and should have been foreseen; and, (v) finally, with respect to the CDRs, Claimants explained that the Parties have not reached an agreement regarding their production and indicated 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 thought an amendment of the Rejoinder.
3. Regarding the CDRs, the Tribunal notes that since 9 August 2018, through Procedural Order No. 8, the Tribunal ordered their production and invited the Parties to agree on procedures to ensure confidentiality of the documentation and inform the Tribunal of any agreement by no later than 20 August 2018.
4. On 21 August 2018, Claimants informed the Tribunal of the proposal sent the day before 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

understands that the Parties are still working to reach an agreement and do not need yet the Tribunal's intervention to set a proceeding on their behalf.

## **II. Tribunal's analysis**

5. The Tribunal has carefully reviewed the Parties' submissions and agrees with Claimants in that the first four reasons invoked by Respondent to request an extension — summarized in points (i) to (iv) of paragraph 1 above — are not sufficiently explained and justified, and therefore are not acceptable.
6. However, the fact that Claimants have yet to produce the CDRs is a valid ground to grant an extension because these documents may be relevant and necessary to prepare Respondent's defense.
7. The Tribunal considered Claimants' proposal that Respondent file its Rejoinder on 28 August 2108 and then amend the Rejoinder after receiving the CDRs. However, the Tribunal considers that such proposal would not add to the efficiency of the proceedings, but rather may result in unnecessary debates as to the scope of the amendment of the Rejoinder.

## **III. The Tribunal's decision**

8. Based on the foregoing reasons, the Tribunal:
  - a. Suspends the deadline for filing the Rejoinder until further notice of the Tribunal.
  - b. Invites the Parties to reach an agreement on the applicable procedure to produce the CDRs by no later than 31 August 2018 and inform the Tribunal accordingly.
9. If the Parties do not reach an agreement by 1 September 2018, the Tribunal will take the corresponding decisions regarding the production of the CDRs and set the new date to file the Rejoinder.

On behalf of the Tribunal,

[ Signed ]

Dr. Eduardo Zuleta

Presiding Arbitrator

Date: 27 August 2018