

**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. 3

Tribunal

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

Secretary of the Tribunal

Ms. Sara Marzal Yetano

28 September 2017

I. INTRODUCTION

1. In accordance with the Document Production Schedule contained in Procedural Order No. 1 as amended by the Parties and approved by the Tribunal, on 15 August 2017 Claimants submitted to Respondent their document production request.
2. On 5 September 2017 Respondent submitted its objections to Claimants' document production requests.
3. On 12 September 2017 Claimants submitted their replies to Respondent's objections and presented to the Tribunal for decision a Redfern Schedule listing the requests where the Parties have not agreed.
4. The Tribunal has reviewed Claimants' requests for document production, Respondent's objections to Claimants' Requests and Claimants' replies to said objections, all of which appear in the Redfern Schedule attached to this Procedural Order.
5. Pursuant to Section 18.5 of Procedural Order No. 1, each document request shall comply with the requisites established in Article 3(3) of the 2010 IBA Rules on the Taking of Evidence in International Arbitration ("IBA Rules"). Section 18.9 of said order further adds that the objections to the production of a document or category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules.
6. The Tribunal notes that Claimants are satisfied with the public documents identified by Respondent in response to Claimants' requests No. 13, 14 and 15 and Claimants reserved their right to request additional information in the corresponding areas in future document production rounds. Accordingly, the Tribunal understands that it is not required to issue a decision on the aforementioned requests.
7. In consideration of the foregoing, the Tribunal will: (i) address the basic general premises that serve as the basis for and which motivate its decisions regarding the Parties' pending document production disputes; and (ii) decide on Claimants' document requests No. 1, 2, 3, 4, 5, 6, 7, 7 Bis, 8, 9, 10, 11, 12, 16, 17, 18 and 19.

II. GENERAL CONSIDERATIONS OF THE TRIBUNAL FOR DOCUMENT PRODUCTION IN THIS ARBITRATION

8. Pursuant to Article 3.7 of the IBA Rules, the Tribunal may order the production of documents if it determines, inter alia, that:
 - (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Article 9.2 [of the IBA Rules] applies; and (iii) the requirements of Article 3.3 [of the IBA Rules] have been satisfied.¹

¹ 2010 IBA Rules on the Taking of Evidence in International Arbitration, Article 3.7 ("IBA Rules").

9. Below, the Tribunal will make some considerations with respect to these three requirements, which are central to the Tribunal's decision.

A. First requirement: the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome

10. According to Article 3.7 of the IBA Rules, the issues that the requesting Party wishes to prove must be relevant to the case and material to its outcome. Correlatively, Article 9.2(a) of the IBA Rules provides that the Tribunal shall exclude from production any document for lack of sufficient relevance to the case or materiality to its outcome.

11. The inquiry into the relevance and materiality of the documents requested must be performed on a case by case basis, considering the information available at this early stage which basically consists of Claimants' claims in the Notice of Arbitration as amended. After carefully conducting such an analysis, the Tribunal is not persuaded that Claimants' document requests No. 2, 4 and 19 are sufficiently relevant and material to the present case.

B. Second requirement: none of the reasons for objection set forth in Article 9.2 of the IBA Rules applies

12. Pursuant to the Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration ("Commentary on the IBA Rules"), Article 9.2 of the IBA Rules "provides the limitations on admissible evidence [which] preserve the lines of distinction between the rights of the parties and the authority of the arbitral tribunal."²

13. Respondent has objected to produce some of Claimants' requests on grounds (a)³, (b)⁴ and (e)⁵ of Article 9.2.

14. As stated above, Article 9.2(a) provides that the Tribunal shall exclude from production any document for lack of sufficient relevance to the case or materiality to its outcome.

15. Article 9.2(b) provides that the Tribunal shall exclude from production any document on which a legal impediment or privilege rests under the applicable legal or ethical

² Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration, § *Article 9 —Admissibility and Assessment of the Evidence*, p. 25 [available at https://www.google.com.co/search?q=commentary+to+the+iba+rules&rlz=1C5CHFA_enCO755CO755&oq=Commentary+to+the+IBA+Rules&aqs=chrome.0.0j69i57.7759j0j7&sourceid=chrome&ie=UTF-8] ("*Commentary on the IBA Rules*").

³ Ground (a) of Article 9.2 of the IBA Rules is "lack of sufficient relevance to the case or materiality to its outcome."

⁴ Ground (b) of Article 9.2 of the IBA Rules is "legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable."

⁵ Ground (e) of Article 9.2 of the IBA Rules is "grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling."

rules. The Party objecting to a document production request on the basis of legal impediment or privilege must identify with certainty and precision whether said document contains confidential information or is subject to privilege. In this case, Respondent failed to do so when objecting Claimants' document requests No. 12, 16 and 17. In these cases, the Tribunal is not persuaded that Respondent has identified with certainty and precision whether there is a legal impediment to share with Claimants the documents requested nor that the documents requested by Claimants are subject to privilege.

16. Lastly, Article 9.2(e) provides that the Tribunal shall exclude from production any document on grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be *compelling*.⁶ The Tribunal considers that Claimants' document requests No. 12, 16 and 17, as presented, may lead to the disclosure of data from third parties (particularly operators) that may be commercially confidential.

C. Third requirement: the requirements of Article 3.3 of the IBA Rules have been satisfied

17. According to Article 3.3 of the IBA Rules, a request to produce documents shall contain:
 - (a) (i) a description of each requested Document sufficient to identify it, or (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
 - (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
 - (c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and (ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.⁷
18. Respondent objected Claimants' document requests No. 2 to 19 on the grounds that they do not provide a description in sufficient detail of a narrow and specific category of documents, as required by Article 3.3(a) of the IBA Rules. Pursuant to the Commentary on the IBA Rules, this provision is designed to prevent "a broad 'fishing expedition,'"⁸ and, at the same time, enables the Parties to request documents identifiable with a reasonable specificity.

⁶ Commentary on the IBA Rules, § *Article 9—Admissibility and Assessment of the Evidence*, p. 26 (emphasis added).

⁷ IBA Rules, Article 3.3.

⁸ Commentary on the IBA Rules, § *Procedures*, p. 8.

19. Therefore, in applying Article 3.3(a), the Tribunal has verified that Claimants provided the necessary information to identify the documents or the specific categories of documents. This means, in the Tribunal's view, that a general description of the category of documents does not suffice; rather, it must be in sufficient detail, *i.e.*, reasonably limited regarding its subject matter, content and time of making, taking into consideration the current phase of the proceedings, and the nature of the claims.
20. In this case, after carefully conducting such an analysis, the Tribunal has concluded that, except for Claimants' request No. 18, the documents requested by Claimants are described in sufficient detail.

III. THE TRIBUNAL'S DECISION

21. In light of the above, after having reviewed carefully the observations submitted by the Parties and having considered each Claimant's request in light of the legitimate interest of Respondent and the reasonableness of the burden placed on the latter, taking into account all the relevant circumstances, including the fundamental principle of the integrity of the arbitral process, the Tribunal unanimously decides to:
22. Accept, in accordance with the foregoing reasons and pursuant to the terms of this Procedural Order, Claimants' requests No. 1, 3, 5, 6, 7, 7 Bis, 8, 9, 10, 11, 12 and 17, subject to the scope set out by the Tribunal in the Redfern Schedule attached to this Procedural Order.
23. Pursuant to the procedural calendar already established, Respondent shall have until 25 October 2017 to produce these documents to Claimants.
24. Reject Claimants' requests No. 2, 4, 16, 18 and 19 in accordance with the foregoing considerations, the terms of this Procedural Order and the Redfern Schedule attached.
25. The procedural calendar for the phase following this document production shall be that established in the Procedural Time Table and Document Production Schedule in Annexes 1 and 2 of Procedural Order No. 1.

[*Signed*]

Mr. Eduardo Zuleta Jaramillo
(President)
On behalf of the Tribunal

Introduction to Claimants' Reply to Respondent's Objections To Claimants' First Document Production Request (9/12/2017)

In response to Respondent's "Preface" to its objections to Claimants' requests for document production, Claimants hereby provide their preliminary comments regarding Respondent's unsubstantiated objections:

Scope of Claimants' Requests

Contrary to Respondent's assertions, Claimants' requests are appropriately fashioned in light of Respondent's own usage and terminology and the broad definition of the word "document" in the IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules). In particular, Claimants' use of the word "information" in places in their requests is appropriate for the following reasons:

First, Respondent itself refers to the types of materials that may be produced in the document production process as "information." Namely, the text proposed by Respondent for the Tribunal's Confidentiality Order provides:

This Order is entirely without prejudice to the disputing parties' right to object to the production of documents on grounds of confidentiality, and in particular the right and legal obligation of the Respondent to protect *confidential business information that has been provided to it by telecom operators* that it regulates and other third parties possessing *such information* that has been obtained under an expectation of confidentiality. (Emphasis added.)

Respondent similarly uses the term "information" throughout its objections to Claimants' document production requests.

Second, in any event, the definition of "document" in the IBA Rules is very broad and largely synonymous with the term "information." The definitions section of the IBA Rules states:

'Document' means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means;

For purposes of a document production request, where any disclosed material by necessity must be tangible (as opposed to an intangible idea), any variation in the meaning of the words "document" and "information" is a distinction without a difference.

The formulation of Claimants' requests is therefore perfectly acceptable, particularly in light of Respondent's similar use of the term "information." Respondent should be required to include all relevant "documents" in any request that seeks "information."

Relationship Between Document Production Requests and Mexico's Transparency Process

Mexico impermissibly seeks to avoid disclosure of requested documents by hiding behind its domestic transparency process. It does so in two respects:

First, Respondent indicates that Claimants' requests must adhere to the parameters of Mexico's transparency laws, including that Claimants must exhaust all remedies under Mexican law before requesting the same documents in the current arbitral proceedings. This is obviously incorrect. Notably, in the context of preparing Procedural Order No. 1, the Tribunal rejected Respondent's proposal to confine the scope of the current process to that of the transparency process under Mexican law. Rather, whether a requested document must be disclosed is determined on the basis of the principles set forth in the IBA Rules. Mexico therefore may not withhold documents in the context of these proceedings simply because it has withheld the same documents in the context of the domestic transparency process or because Claimants have not appealed any rejection of a prior transparency request in Mexican courts.

Mexico's own conduct proves Claimants' point. While maintaining that the audio recordings of the March 5, 2016 meeting are barred from disclosure under Mexican law, Respondent nonetheless has conceded that it must disclose them in these proceedings.

Second, Respondent wrongly argues that the scope of the Mexican transparency process is broader than the scope of the document production process in the arbitral proceedings and, therefore, Claimant's requests—which seek “information” in addition to specific types of documents and communications—are overly broad. Again, Mexico cannot have it both ways. It cannot reject Claimants' transparency requests in principal part, at the local level, and then argue that the document production process in this arbitral proceeding is confined to an even more limited set of documents. As explained, the broad definition of “documents” in the IBA Rules largely parallels the concept of “information” under Mexico's transparency laws.

Specificity of Claimants' Requests

Claimants' requests are as specific as possible in light of Respondent's improper withholding of information under its domestic transparency laws. Two examples are noteworthy. First, Respondent has refused for several months to release the audio recording of a key meeting of the IFT Plenary occurring on March 5, 2015 at which Tele Facil was present and which was required by law to be made publicly available upon Tele Facil's request. Second, based on highly credible evidence, Claimants know that top officials at the IFT met sometime on or about mid-January 2015 to address how to accommodate Telmex's demand that the IFT reverse a key decision in Tele Facil's failure, Resolution 381. However, despite Claimants' numerous information requests, Respondent has failed to disclose any information to Claimants about this meeting or Telmex's related contacts with the IFT.

In light of Respondent's recalcitrance, Claimants have formulated their document production requests as specifically as possible. In each case, they have identified and

requested the types of documents typically generated in the course of governmental activity, *e.g.*, emails, meeting notes, memoranda, etc., that would very likely have been created at key points in the case timeline (often citing specific dates or date ranges). Far from a “fishing expedition,” as Respondent maintains, Claimants’ requests have been as targeted as possible while being kept in the dark by Respondent.

Business Confidentiality

Respondent claims that it cannot disclose certain information requested by Claimants because it owes a duty of confidentiality to third-party telecom providers. Respondent’s own actions belie its argument, however. For example, in an unsuccessful effort to bolster its objection to Claimants’ request for documents relating to Respondent’s attempt to sanction Tele Facil in October 2016, Respondent readily discloses the name of a third-party provider, Cablevision, and the fact that it was allegedly involved in another enforcement action around the same time—clearly sensitive information. Respondent should not be allowed to choose which sensitive business information it wishes to disclose to or withhold from Claimants based on how such a choice best serves Respondent’s immediate litigation strategy. Furthermore, with respect to certain market data requested by Claimants, such data—to the extent they are sensitive and need to be protected—can easily be anonymized, with the assistance of the Tribunal, before transmission to Claimants.

Preface to the Respondent’s objections to the Claimant’s First Request for Production of Documents (RFD)

This submission is made pursuant to paragraphs 18.7 to 18.9 of Procedural Order No. 1 (PO1).

Paragraph 18.5 of PO1 provides that each request shall comply with the requisites established in Article 3(3) of the IBA Rules on the Taking of Evidence in International Arbitration dated 29 May 2010 (IBA Rules). In addition, when the request involves a category of documents it shall include a date or range of dates insofar as possible.

The relevant part of Article 3(3) of the IBA Rules provides as follows:

Article 3 Documents

[...]

3. A Request to Produce shall contain:

- (a) (i) a description of each requested Document sufficient to identify it, or
- (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the

Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;

- (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
- (c)
 - (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
 - (ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.

Pursuant to Article 18.9 of PO1, objections to the production of a document or category of documents shall be justified on one or more of the grounds identified in Article 9(2) of the IBA Rules. Said provision identifies the following grounds for objection:

- (a) lack of sufficient relevance to the case or materiality to its outcome;
- (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;
- (c) unreasonable burden to produce the requested evidence;
- (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
- (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
- (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
- (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.

In view of the foregoing and in accordance with Article 3(5) of the IBA Rules, the Respondent's objections are based on one or more of the grounds identified in Article 9.2 of the IBA Rules and/or on the Claimant's failure to satisfy the requirements of a request for documents under Article 3.3 of the IBA Rules.

The following grounds of objection are raised in the Redfern Schedule. Rather than repeating these objections verbatim in each instance, the references to the following grounds of objection in the Redfern Schedule should be read together with the applicable narrative that follows each title below.

Requests lacking specificity

The Claimants have made repeated references to their efforts to obtain “information” under Mexico’s transparency law and have complained that the documents produced by IFT’s did not adequately respond to their requests and/or was unjustifiably denied. Requests 1 to 11 (inclusive) are seemingly aimed at obtaining documents that the Claimants believe should have been produced under their transparency law requests. Indeed, it seems that the Claimants have simply reiterated their transparency law requests in the Redfern Schedule for “*any information* in IFT’s possession ...”.

This is inappropriate for two reasons:

- There is a prescribed procedure for challenging transparency law decisions before the National Institute of Transparency, Access to Information and Protection of Personal Data (INAI) or the Transparency Unit (“Unidad de Transparencia”) that tended to the request⁹. The RFD in this arbitration is not the correct forum or a suitable process for doing so; and
- It is evident that the transparency law – which applies to “information” – may apply to a broader range of documents than can properly be requested in a RFD that is governed by the IBA Rules, as will be demonstrated below.

With the exception of Request No. 1, the Claimants have failed to provide a description in sufficient detail ... of a *narrow and specific* requested category of Documents as required by Article 3(3)(a).

- Requests 2 and 5 seek “[*a*]ny information in the IFT’s possession, including the IFT’s visitor security log information, meeting sign-in sheets, internal communications, emails, recordings and transcripts of meetings and any other information indicating the occurrence of meetings ...”
- Requests 3, 4, 6, 10, 11 seek “any information in the IFT’s possession, including memoranda, internal communications, notes, emails, recordings and transcripts of meetings, and any other information, indicating the IFT’s views ...”
- Requests 9 and 10 seek “[*a*]ny information in the IFT’s possession, including memoranda, letters, communications, emails, and any other information, exchanged between ...”

⁹ The person submitting a request under the Transparency Law may challenge the decision through a “*recurso de revision*” pursuant to Article 147 and 148 of the Federal Law on Transparency and Access to Public Information (LFTAIP), DOF May 9, 2016.

- Requests 7, 8, 12, 13, 14, 15, 16, 17, and 18 seek *any information* in the IFT's possession, *including* memoranda, internal communications, emails, notes, recordings and transcripts of meetings, and *any other information*, regarding ...”
- Request 19 seeks “[a]ny information in the IFT's possession, *including* studies, reports, memoranda, internal communications, emails, notes, and *any other information*, that was used or relied on ...” to support the determination of America Movil as the preponderant economic agent in telecommunications.

Apart from the fact that the Claimants are conflating requests for information with requests for documents, the flaws in these requests are obvious and fatal – the descriptions are so broad as to include virtually all documents and records of any kind relating to a particular subject. These are the antithesis of a “narrow and specific requested category of documents”. They are equivalent to the practice of demanding ‘discovery’ of documents under common law civil litigation procedures, contrary to both the intent and language of the IBA Rules which reflect the practice of seeking production of specific documents in international arbitration.

As noted in the Commentary to the 2010 IBA Rules:

The Working Party was able to reach agreement on certain principles governing document production because practices in international arbitration can be, and have been, harmonised to a large extent. The Working Party was guided by several principles:

1. Expansive American- or English-style discovery is generally inappropriate in international arbitration. Rather, requests for documents to be produced should be carefully tailored to issues that are relevant and material to the determination of the case.

[...]

Article 3.3 provides certain requirements regarding the content of a request to produce, which are generally designed to have the request specifically describe the documents being sought. Article 3.3 is designed to prevent a broad "fishing expedition", while at the same time permitting parties to request documents that can be identified with reasonable specificity and which can be shown to be relevant to the case and material to its outcome. This specificity of the information required by Article 3.3 is also designed to help the receiving party decide whether it wants to comply with the request voluntarily (as provided in Article 3.4), or if it wants to raise objections (Article 3.5). The specificity of the request is also designed to make it possible for the arbitral tribunal to decide, if there is an objection to the request to produce, whether or not to grant the request pursuant to the standards set forth in Article 3.7.

Although requests 2 to 19 (inclusive) could be denied by the Tribunal in their entirety, the Respondent (through the Federal Telecommunications Institute) has engaged in a good faith effort to locate responsive documents and has indicated where such documents have been identified in the Redfern Schedule. However, the Respondent does not represent or

undertake that such documents represent all documents potentially falling within the requests for “any information” in requests 2 to 19. The Respondent otherwise objects to requests 2 to 19 (inclusive) for their failure to sufficiently describe narrow and specific categories of documents.

Requests lacking sufficient relevance or materiality

Requests 2, 4 and 19 are lacking in relevance and materiality for the reasons given in the Redfern Schedule.

Requests for confidential business information protected by law

Requests 12, 16, 17, 19 would require the production of confidential information provided by third parties pursuant to an expectation of confidentiality that exists under the law. When telecom operators provide confidential business information and data to IFT they do so pursuant to IFT’s express undertaking to keep their information confidential. Moreover, both Article 82 of the Law on Industrial Property and Articles 113 and 117 of the Transparency Law prohibits disclosure of confidential information to the public without express consent of the proprietaries of such information. Accordingly, it would be illegal for IFT to produce documents containing the information the Claimants are seeking in these requests.

The Respondent accordingly objects to these request on the grounds of both “legal impediment or privilege...” under Article 9(2)(b) and “commercial or technical confidentiality...” under Article 9(2)(e).

Requests for Documents that are publicly available

Requests 13, 14, 15, 19 can be answered with publicly available documents that are posted on IFT’s website under the links that have been provided.

Request that are overly burdensome

Request 15 would require IFT to prepare statistics for 2017 year-to-date that do not yet exist and would not ordinarily be published until 2018. This request is (i) inappropriate as it is not a request for documents that exist but a request to create documents and is (ii) overly burdensome.

Request 19 would require production of a massive volume of information that is of little (if any) relevance to defining the market for Tele FÁCIL’s potential services and is already included in Resolution P/IFT/EXT/060314/76.

Redfern Schedule

I. Information Relating to Meetings and Communications between Tele Fácil and the IFT

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| Request No. | 1 |
| Document / Category of Documents: | The recording of the meeting between Tele Fácil México, S.A. de C.V. (Tele Fácil) and the Commissioners of the Federal Institute of Telecommunications (IFT) on March 5, 2015 at the IFT (recorded as Plenary interview No. 2015-03-05-1239-SP-18). |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. In this meeting, where representatives of Tele Fácil met with the IFT Plenary to request enforcement of Resolution P/IFT/261114/381 (“Resolution 381”), various IFT Commissioners expressed their views on the enforceability of Resolution 381 in Tele Fácil’s favor.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants’ request for access to the recording under Mexico’s transparency law was unjustifiably denied on July 5, 2017 through transparency request No. 0912100050617. The IFT took the position that the recording is reserved information under Article 30 of the Federal Telecommunications and Broadcasting Law. However, as the IFT itself recognized, that same article provides that the recording must be disclosed when requested by “the counterparty of a litigation-form procedure.” Even after Tele Fácil identified itself in its request as a “counterparty” in the context of the NAFTA arbitration, the IFT still failed to disclose the information.</p> <p>Under Mexican transparency law, “all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person,” unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. According to Article 30 of the Federal Telecommunications and Broadcasting Law, the IFT is required to make an audio and video recording of all IFT Plenary meetings with a telecommunications provider.</p> |

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| <p>Objections:</p> | <p>The Respondent observes that the recording is considered reserved information under Article 30 of the Federal Telecommunications Law (<i>Ley Federal de Telecomunicaciones y Radiodifusión</i>¹⁰) and thus, cannot be disclosed. The disclosure of the recording to third parties may lead to sanctions to government officials in terms of Articles 206 (IV) of the LGTAIP¹¹, 186 (IV) of the LFTAIP and Articles 8 (V) and 12 of the LFRASP.¹²</p> <p>However, since Tele Fácil’s representatives were present at that meeting, the Respondent is prepared to provide the requested recording, in the understanding that it will not be used or disclosed to third parties for purposes other than these proceedings.</p> |
| <p>Reply:</p> | <p>Claimants agree with Mexico’s decision to disclose, but not its analysis of Article 30 of the Federal Telecommunications Law. Claimants’ request falls squarely within an exception to the non-disclosure rule, as Claimants are “the counterparty of a litigation-form procedure.”</p> |
| <p>Tribunal’s decision:</p> | <p>Granted.</p> <p>Claimants may only use or disclose the recording to third parties within this arbitration proceeding.</p> |

¹⁰ Federal Telecommunications and Broadcasting Law., Artículo 30. [...]

[...Las entrevistas serán grabadas y almacenadas en medios electrónicos, ópticos o de cualquier otra tecnología, manteniéndose como información reservada, salvo para las otras partes en los procedimientos seguidos en forma de juicio, los demás comisionados, el titular del Órgano Interno de Control y el Senado de la República en caso de que esté sustanciando un procedimiento de remoción de un comisionado. La grabación de cada entrevista deberá estar a disposición de los demás comisionados. Las entrevistas deberán realizarse en las instalaciones del Instituto].

¹¹ Ley General de Transparencia y Acceso a la Información Pública.

¹² Ley Federal de Responsabilidades Administrativas de los Servidores Públicos.

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| Request No. | 2 |
| Document / Category of Documents: | Any information in the IFT's possession, including the IFT's visitor security log information, meeting sign-in sheets, internal communications, emails, recordings and transcripts of meetings and any other information, <i>indicating the occurrence of meetings and participants in meetings between Tele Fácil and the IFT's Compliance Unit</i> on January 12, 2015 and February 5, 2015, in which Tele Fácil requested enforcement of Resolution 381. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information will corroborate Tele Fácil's significant efforts to have Resolution 381 enforced and the IFT's unjustified refusal to do so in violation of Chapter Eleven of the NAFTA.</p> <p>Under Mexican transparency law, "all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person," unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent. The IFT is required by law to maintain sign-in sheets for every meeting held with a concessionaire. (Article 97 of IFT's Organic Statute.)</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent also objects on the grounds that the requested documents – apparently sought as “corroboration” that its representatives attended two meetings at IFT to discuss Resolution 381 – is not material to the outcome of the case. Surely, the Claimants can adduce their own evidence as to who attended the referenced meetings on Tele Fácil’s behalf.</p> <p>Notwithstanding the above, the Respondent has identified and does not object to the production of the following responsive document: “Visitor security log (“registro de acceso”) of 5 february 2015”, subject to redaction of names and details of all other visitors not associated with Tele Fácil.</p> <p>The Respondent has no documentary records of a meeting held on 12 January 2015 between Tele Fácil and IFT’s Compliance Unit.</p> <p>IFT has not identified any other documents that would be responsive to this request.</p> |
| <p>Reply:</p> | <p>Respondent fails to address the core of Claimants’ request which is to obtain documents evidencing the participation of officials from the IFT Compliance Unit (not Tele Facil representatives) in meetings occurring on specified dates. Claimants obviously can account for the whereabouts and schedules of its own representatives. Disclosure of the visitor security log for a meeting held on February 5, 2015, only identifies that Tele Facil representatives were at the IFT to visit “Mr. Canchola” from the Compliance Unit, but does not identify who in the IFT Compliance Unit was actually present at the meeting with Tele Facil.</p> <p>Further, with respect to Claimants’ request for information regarding the January 12, 2015 meeting—which occurred between multiple representatives of Tele Facil and representatives of the IFT’s Compliance Unit—Respondent’s response can only be interpreted as denying the existence of such meeting.</p> <p>For the above reasons, Respondent’s objections should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| <p>Tribunal’s decision:</p> | <p>Denied.</p> <p>The Tribunal is not convinced that the documents requested are sufficiently relevant to the case and material to its outcome (IBA Rules, Art. 9.2(a)).</p> |

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| Request No. | 3 |
| Document / Category of Documents: | Any information in the IFT's possession, including memoranda, internal communications, notes, emails, recordings and transcripts of meetings, and any other information, <i>indicating the IFT's views on the substance of the meetings between Tele Fácil and the IFT's Compliance Unit</i> on January 12, 2015 and February 5, 2015, in which Tele Fácil requested enforcement of Resolution 381. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants' local counsel, the requested information will indicate that the IFT's Compliance Unit agreed with Tele Fácil representatives that Resolution 381 was binding on the parties and fully enforceable, but that it ultimately was not enforced in violation of Chapter Eleven of the NAFTA.</p> <p>Under Mexican transparency law, "all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person," unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent. In the course of addressing enforcement issues, the Compliance Unit produces analysis and correspondence in connection with its enforcement duties.</p> |
| Objections: | The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i> , failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents. In any case, IFT has not identified any documents that would be responsive to this request. |
| Reply: | Claimants' request is highly specific. It identifies the dates of meetings that took place between Tele Fácil and the IFT's Compliance Unit, the purpose of those meetings (to request enforcement of Resolution 381), and the types of documents typically generated in the course of governmental activity that likely exist in connection with these meetings, e.g., meeting notes, emails, memoranda, etc. As explained, Respondent cannot avoid its disclosure obligations by hiding behind its prior decisions to reject Claimants' transparency requests under local |

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| | law. Accordingly, Respondent's objections should be dismissed and Respondent should be ordered to produce all relevant documents. |
| Tribunal's decision: | Granted. The Tribunal notes Respondent's comment that the IFT has not identified any documents that would be responsive to this request and requests Respondent to confirm that it has undertaken and will undertake a good faith effort to search for the documents that are responsive to this request and inform Claimants and the Tribunal accordingly. |

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| Request No. | 4 |
| Document / Category of Documents: | Any information in the IFT's possession, including memoranda, internal communications, notes, emails, recordings and transcripts of meetings, and any other information, <i>regarding the document labeled "UC/DG-SUV/5267/2016" and dated October 11, 2016</i> , a reference to which was included in the IFT's correspondence to Tele Fácil dated October 11, 2016 as part of an apparent effort to sanction Tele Fácil that was never pursued. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants' local counsel, the requested information will indicate the IFT's unjustified, arbitrary and discriminatory plans to sanction Tele Fácil in violation of Chapter Eleven of the NAFTA.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants' request for this information under Mexico's transparency law was unjustifiably denied on November 14, 2016 through transparency request No. 0912100084716. According to the IFT, the requested document was not related to Tele Fácil, but rather referred to an on-going verification process against another concessionaire. However, pursuant to the IFT's own citation sent to Tele Fácil, the company was the intended recipient of the notification.</p> <p>Under Mexican transparency law, "all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person," unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. The IFT's own citation makes a clear reference to document UC/DG-SUV/5267/2016.</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent has identified the following potential responsive document:</p> <ul style="list-style-type: none"> • Oficio IFT/225/UC/DG-SUV/5267/2016 to Cablevisión, S.A. de C.V., dated 11 October 2016 <p>The Respondent, however, objects to the production of this document on the grounds of lack of relevance and materiality and “legal impediment or privilege...” under Article 9(2)(b).</p> <p>The requested documents lack relevance and materiality because <i>Oficio</i> IFT/225/UC/DG-SUV/5267/2016 pertains to an administrative proceeding that does not involve Tele Fácil in any way. The <i>Oficio</i> was referenced in correspondence sent to Tele Fácil <u>in error</u>. The outcome of this arbitration cannot be affected by an administrative proceeding that could lead to sanctions to a third party unrelated to Tele Fácil.</p> <p>The Respondent further objects on the grounds of legal impediment to provide the document. The oficio at issue is part of file 2S.2S.21.1-41.0007.14, that was open due to a complaint filed by Cablevisión, S.A. de C.V., on 24 May 2014 and is ongoing. The file is considered reserved information under Article 110 subsection VI, of the Transparency Law (LFTAIP), because it contains information that may obstruct the verification, inspection and audit activities related to the enforcement of laws if disclosed to third parties.</p> |
| <p>Reply:</p> | <p>Respondent’s objection is entirely unsatisfactory. As explained, on October 11, 2016, Tele Facil received a formal notice from the IFT’s Compliance Unit that it was imposing some form of sanctions on Tele Facil. A physical copy of this notice was left by an IFT official at Tele Facil’s premises because a Tele Facil representative was not present to receive it in person at the time of delivery. Had Tele Facil’s representative been present, the IFT official would have handed him the document that Claimants now request: Document UC/DG-SUV/5267/2016. Respondent unpersuasively claims that such document was referenced and would have been produced in error as it related to an entirely separate company. In any event, Document UC/DG-SUV/5267/2016 exists and would have been delivered to Tele Fácil. Accordingly, Respondent should be ordered to disclose a copy of the original version of the document as prepared for and brought for delivery to Tele Facil’s premises on October 11, 2016.</p> |

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| Tribunal's decision: | Denied. The Tribunal is not persuaded that the documents requested are relevant to the case and material to its outcome (IBA Rules, Art. 9.2(a)). |
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II. Information Relating to Meetings and Communications between Telmex and the IFT

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| Request No. | 5 |
| Document / Category of Documents: | Any information in the IFT's possession, including the IFT's visitor security log information, meeting sign-in sheets, notes, emails, recordings and transcripts of meetings, and any other information, <i>indicating the occurrence of meetings (and participants in meetings) or communications between employees and/or representatives of Teléfonos de Mexico, S.A.B. de C.V. and Teléfonos del Noroeste (jointly "Telmex") and the IFT</i> , including with any Commissioners and/or their staff, or officials in the Regulatory Policy Unit, the Legal Unit, or the Compliance Unit, relating to the topics of interconnection with Tele Fácil, Resolution 381 or any other related matter. This request includes known meetings that occurred between Telmex and the IFT on February 6 and 23, 2015, as well as any other meetings or communications occurring between November 26, 2014 and October 7, 2015, the date of Resolution 127. |

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| <p>Justification:</p> | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants’ local counsel, the requested information will indicate that the IFT granted Telmex improper access and influence in connection with its efforts to reverse Resolution 381 in violation of Chapter Eleven of the NAFTA.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants’ request for this information under Mexico’s transparency law was insufficiently answered on July 4, 2017 through transparency request Nos. 0912100048017 and 0912100048117. The IFT claimed that the two known meetings involved the unrelated matter of Telmex’s request for confirmation of criteria regarding the use of electronic phonebooks, and yet there is no corresponding decree on record with the IFT Plenary resolving that alleged request for confirmation of criteria.</p> <p>Under Mexican transparency law, “all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person,” unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. Based on information already provided by the IFT, Telmex representatives met with IFT officials on February 6 and February 23, 2015, and it is highly likely that they met or otherwise communicated with the IFT on other occasions. The IFT is required to maintain sign-in sheets for every meeting held with a concessionaire and, under Mexican law, these documents are public information.</p> |
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| <p>Objections:</p> | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>In response to transparency requests No. 0912100048017 and 0912100048117, IFT identified the following documents that would fall within this request:</p> <ul style="list-style-type: none"> • Communication dated 16 January 2015 from Teléfonos de México, S.A.B. de C.V. y Teléfonos del Noroeste, S.A. de C.V. (en lo sucesivo, “TELMEX”) requesting confirmation of criteria; • Note (“nota informativa”) on personal data contained in Telephone directories published and distributed by Telmex. • Oficio SPJ/DGJC/0131/2015 dated 12 February 2015 from the General Directorate of Legal Affairs (Directora General Jurídica Consultiva). • Oficio IFT/227/UAJ/DG-CJ/0020/2015 dated 6 March 2015 issued by the General Director of Legal Consultancy (Directora General de Consulta Jurídica). • Attendance List , dated February 23, 2015. <p>The Respondent does not object to the production of public versions of the foregoing documents, but it does object to production of unredacted versions of said documents, as they contain confidential information (personal data under Articles 2(V), 6, 8, 16, 17 and 31 of the LGPDPPSO, Article 113(I) of the LFTAIP¹³ and Article 116 (I) LGTAIP.</p> <p>In addition to these documents the Respondent has located and will produce the following documents:</p> <ul style="list-style-type: none"> • Attendance list for the 6 February 2015 meeting. <p>The Respondent has been unable to identify any records pertaining to meetings held from 26 November 2014 to 7 October 2015 relating to the topics of interconnection.</p> |
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| <p>Reply:</p> | <p>Respondent’s response is entirely unsatisfactory. Based on information from highly credible witnesses, Claimants know that a meeting among senior IFT officials took place after Resolution 381 was rendered (likely around mid-January 2015) to address demands by Telmex to reverse that resolution. Additionally, Telmex filed a request for confirmation of criteria with the IFT on February 18, 2015, with the express aim of reversing the scope of Resolution 381. As is typically the case, such a request is not filed before a carrier discusses the matter with IFT officials and receives feedback regarding whether a proposed legal interpretation is likely to be approved by the IFT Plenary. It therefore defies belief that there is no record of any meetings between Telmex (through its corporate representatives or through its many “advisers”) and the IFT to discuss a matter that Telmex proclaimed was so important as to require the repudiation of an IFT decision. Accordingly, Respondent’s objection should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| <p>Tribunal’s decision:</p> | <p>Granted.</p> <p>Documents containing personal data related to third parties shall be redacted only not to disclose such data.</p> |

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| Request No. | 6 |
| Document / Category of Documents: | <p>Any information in the IFT's possession, including memoranda, internal communications, emails, notes, recordings and transcripts of meetings, and any other information, <i>indicating the IFT's views on the substance of any meetings or communications between employees and/or representatives of Teléfonos de Mexico, S.A.B. de C.V. and Teléfonos del Noroeste (jointly "Telmex") and the IFT</i>, including with any Commissioners and their staff or officials in the Regulatory Policy Unit, the Legal Unit, or the Compliance Unit, relating to the topic of interconnection with Tele Fácil, Resolution 381 or any other related issue. This request includes known meetings between Telmex and the IFT on February 6 and 23, 2015, along with any other meetings or communications occurring between November 26, 2014 and October 7, 2015, the date of Resolution 127.</p> |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants' local counsel, the requested information will indicate the extent of the IFT's improper contact with Telmex and consideration of its views in connection with the company's attempts to reverse Resolution 381 in violation of Chapter Eleven of the NAFTA.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants' request for this information under Mexico's transparency law was insufficiently answered on June 21, 2017 through transparency request No. 091210005217, and on July 4, 2017 through transparency request No. 0912100048517. The IFT claimed that the two known meetings involved the unrelated matter of Telmex's request for confirmation of criteria regarding the use of electronic phonebooks, and yet there is no corresponding decree on record with the IFT Plenary resolving that alleged request for confirmation of criteria.</p> <p>Under Mexican transparency law, "all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person," unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. In the course of meeting with and otherwise communicating with Telmex representatives, it is highly likely that the IFT documented its views regarding the substance of such meetings and communications.</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent has already provided the Claimants with the following documents pursuant to transparency request No. 0912100048517:</p> <ul style="list-style-type: none"> • Resolution P/IFT/261114/381 (“Resolution 381”). <p>The Respondent has been unable to identify any additional documents that would be responsive to this request.</p> |
| <p>Reply:</p> | <p>Please see Claimants’ reply to Respondent’s objection to Request No. 5. A significant meeting took place among senior IFT officials (likely in or about mid-January 2015) to address Telmex’s serious concerns about Resolution 381. There is a high probability that memoranda, internal communications, emails, notes, recordings or transcripts of meetings exist that record the IFT’s views regarding Telmex’s concerns. Accordingly, Respondent’s objection should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| <p>Tribunal’s decision:</p> | <p>Granted.</p> <p>The Tribunal notes Respondent’s comment that the IFT has not identified any additional documents that would be responsive to this request and requests Respondent to confirm that it has undertaken and will undertake a good faith effort to search for the documents that are responsive to this request and inform Claimants and the Tribunal accordingly.</p> |

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| Request No. | 7 |
| Document / Category of Documents: | Any information in the IFT's possession, including memoranda, internal communications, emails, notes, recordings and transcripts of meetings, and any other information, <i>indicating the IFT's views on the substance of Telmex's request for confirmation of criteria</i> filed on February 18, 2015, with the IFT's Legal Unit. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants' local counsel, the requested information will demonstrate the IFT's improper use of Telmex's request for confirmation of criteria to repudiate Resolution 381 in violation of Chapter Eleven of the NAFTA.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants' request for this information under Mexico's transparency law was insufficiently answered on July 3, 106 through transparency request No. 0912100048917, and on July 4, 2017 through transparency request No. 0912100048617. The IFT ignored the bulk of Claimants' request and only produced official documentation issued and notified to third parties and between IFT Units.</p> <p>Under Mexican transparency law, "all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person," unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. In the course of addressing Telmex's request for confirmation of criteria of the scope of Resolution 381 it is highly likely that the IFT undertook written analysis of the issues raised by Telmex.</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>Notwithstanding the above objection, the Respondent has provided the following documents to the Claimants pursuant to their transparency request No. SAI 0912100048617:</p> <ul style="list-style-type: none"> • Management control record (<i>Volante de Control de Gestión</i>) No. 0284/2015 of 19 February 2015; • Communication dated 18 February 2015 from Telmex and Telnor; • Communication dated 7 April 2015 from the Legal Affairs Unit; • Draft Resolution. <p>The Respondent has also provided the following documents to the Claimants pursuant to their transparency request No. 0912100048917:</p> <ul style="list-style-type: none"> • Oficio IFT/225/UC2008/2015; • Letter of 2 October 2015 from Teléfonos de México responding to oficio IFT/225/UC/2008/2015; • <i>Acta</i> IFT/DF/DGV/561/2015; • <i>Acta</i> IFT/DF/DGV/989/2015. <p>The Respondent observes that the documents that were provided to the Claimant were public versions of the documents, as they contain confidential information (personal data under Articles 2(V), 6, 8, 16, 17 and 31 of the LGPDPPSO¹⁴, Article 113(I) of the LFTAIP¹⁵ and Article 116 (I) LGTAIP. The Respondent objects to the production of unredacted versions of said documents on those grounds.</p> <p>IFT has not identified any other documents that would be responsive to this request</p> |
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| <p>Reply:</p> | <p>None of the documents disclosed previously through the IFT's domestic transparency process constitute memoranda, emails, notes, recordings and transcripts of meetings indicating the IFT's views on the substance of Telmex's request for confirmation of criteria filed on February 18, 2015. The type of government decision-making involved in interpreting and deciding to repeal (for the first time ever) a previously established interconnection agreement would very likely have given rise to some memorialization of views before presentation of a draft decree to the IFT Plenary. Accordingly, Respondent's objections should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| <p>Tribunal's decision:</p> | <p>Granted.</p> <p>Documents containing personal data related to third parties shall be redacted only not to disclose such data.</p> <p>The Tribunal notes Respondent's comment that the IFT has not identified any additional documents that would be responsive to this request and requests Respondent to confirm that it has undertaken and will undertake a good faith effort to search for the documents that are responsive to this request and inform Claimants and the Tribunal accordingly.</p> |

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| Request No. | 7 Bis |
| Document / Category of Documents: | Any information in the IFT's possession, including memoranda, internal communications, emails, notes, recordings and transcripts of meetings, and any other information, <i>regarding the request for guidance by the IFT's Compliance Unit regarding the enforceability of Resolution 381</i> submitted on February 10, 2015 to the IFT's Legal Unit through document IFT/225/UC/DG-SUV/706/2015. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants' local counsel, the requested information will demonstrate the IFT's unjustifiable, arbitrary and discriminatory conduct when the Compliance Unit refused to enforce Resolution 381, contrary to law and practice, and instead sought legal guidance which unduly delayed the execution of the IFT's duties in violation of Chapter Eleven of the NAFTA.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants' request for this information under Mexico's transparency law was insufficiently answered on July 4, 2017 through transparency request No. 0912100048517. The IFT ignored the bulk of Claimants' request and only produced official documentation issued and notified to third parties and between IFT Units.</p> <p>Under Mexican transparency law, "all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person," unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. In the course of considering and formulating its request to the Legal Unit, the Compliance Unit very likely undertook written analysis of the issues raised.</p> |
| Objections: | <p>The Respondent objects to the request on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>Notwithstanding the above, the Respondent has identified, and does not object to the production of the following responsive document:</p> <ul style="list-style-type: none"> • Oficio IFT/225/UC/DG-SUV/706/2015, dated February 10, 2015. |

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| | <ul style="list-style-type: none"> • Draft Resolution 381. <p>The Respondent has provided the Resolution P/IFT/261114/381, dated 26 November 2014 to the Claimants pursuant to their transparency request No. 0912100048517.</p> <p>IFT has not identified any other documents that would be responsive to this request</p> |
| Reply: | <p>The Compliance Unit’s request for guidance from the Legal Unit was highly unusual as a matter of IFT practice. It sought clarification on whether all aspects of Resolution 381 must be enforced, despite the fact that Resolution 381 contained standard orders to the disputing parties to execute the interconnection agreement, as determined by the IFT, and physically interconnect their networks. Prior resolutions with identical language had been enforced by the Compliance Unit without pause. It is therefore difficult to believe that not a single communication to or from the Compliance Unit (via email or otherwise) regarding the Compliance Unit’s highly unusual request was ever generated. Accordingly, Respondent’s objection should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| Tribunal’s decision: | <p>Granted.</p> <p>The Tribunal notes Respondent’s comment that the IFT has not identified any additional documents that would be responsive to this identified any other documents that would be responsive to this request and requests Respondent to confirm that it has undertaken and will undertake a good faith effort to search for the documents that are responsive to this request and inform Claimants and the Tribunal accordingly.</p> |

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| Request No. | 8 |
| Document / Category of Documents: | Any information in the IFT's possession, including memoranda, letters, communications, emails, and any other information, <i>exchanged between representatives and/or employees of Telmex and the IFT regarding Resolution 381</i> following the rendering of that resolution on November 26, 2014. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants' local counsel, it is reasonably believed that Telmex was in regular contact with the IFT, including a possible high-level meeting with the IFT Plenary, after the issuance of Resolution 381. The requested information will demonstrate the IFT's unjustifiable, arbitrary and discriminatory conduct, in violation of Chapter Eleven, in considering Telmex's <i>ex parte</i> views regarding its requested reversal of Resolution 381.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants' request for this information under Mexico's transparency law was insufficiently answered on July 4, 2017 through transparency document No. 0912100048817. The IFT ignored the bulk of Claimants' request and only produced official documentation issued and notified to third parties and between IFT Units.</p> <p>Under Mexican transparency law, "all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person," unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. In the course of considering Telmex's <i>ex parte</i> complaints following Resolution 381, the IFT very likely memorialized its interactions.</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the request on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>In response to transparency request No. 0912100048817, IFT identified the following documents:</p> <ol style="list-style-type: none"> 1. Notification to Tele Fácil México, S.A de C.V, dated December 3, 2014. 2. Citation for Teléfonos de México and Telnor, dated December 3, 2014. 3. Notification instruction to Telmex and Telnor, dated December 4, 2014. 4. <i>Acta</i> IFT/DF/DGV/561/2015 to Teléfonos de México, S.A.B. de C.V. 5. <i>Acta</i> IFT/DF/DGV/989/2015, to Telmex. 6. Oficio IFT/225/UC/2008/2015 to Teléfonos de México, S.A.B. de C.V. 7. Letter of 2 October 2015 from Teléfonos de México responding to oficio IFT/225/UC/2008/2015. <p>The Respondent has provided documents 4 to 7 to the Claimants pursuant to their transparency request No. 0912100048917.</p> <p>The Respondent observes that the documents listed above contain confidential information (personal data under Articles 2(V), 6, 8, 16, and 31 of the LGPDPPSO¹⁶, Article 113(I) of the LFTAIP¹⁷ and Article 116 (I) LGTAIP). For this reason, the Claimant was provided with public versions of the documents. The Respondent maintains its confidentiality objection to the extent that the Claimant requests unredacted versions of said documents. The Respondent does not object to the production of the following responsive documents:</p> <ul style="list-style-type: none"> • Notice to Telmex regarding Resolution P/IFT/261114/381 • Notification to Tele Fácil México, S.A de C.V, dated December 3, 2014. • Citation for Teléfonos de México and Telnor, dated December 3, 2014. • Notification instruction to Telmex and Telnor, dated December 4, 2014. |
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| Reply: | The type of government decision-making involved in resolving an interconnection dispute between two telecom carriers would very likely give rise to some memorialization of the IFT's internal work. Accordingly, Respondent's objections should be dismissed and Respondent should be ordered to produce all relevant documents. |
| Tribunal's decision: | Granted. Documents containing personal data related to third parties shall be redacted only not to disclose such data. |

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| Request No. | 9 |
| Document / Category of Documents: | Any information in the IFT’s possession, including memoranda, letters, communications, emails, and any other information, <i>exchanged between representatives and/or employees of Telmex and the IFT regarding Decree P/IFT/EXT/080415/77</i> (“Decree 77”) before and after that decree was issued on April 8, 2015. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants’ local counsel, it is reasonably believed that Telmex was in regular contact with the IFT, including a possible high-level meeting with the IFT Plenary, before and after the issuance of Decree 77. The requested information will demonstrate the IFT’s unjustifiable, arbitrary and discriminatory conduct in repudiating Resolution 381, in violation of Chapter Eleven.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants’ request for this information under Mexico’s transparency law was insufficiently answered on July 3, 2017 through transparency request No. 0912100048917. The IFT ignored the bulk of Claimants’ request and only produced official documentation issued and notified to third parties and between IFT Units.</p> <p>Under Mexican transparency law, “all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person,” unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. In the course of considering Telmex’s <i>ex parte</i> communications regarding its request for confirmation of criteria that resulted in Decree 77, the IFT very likely memorialized its interactions.</p> |
| Objections: | <p>The Respondent objects to the request on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>Notwithstanding the above, the Respondent has identified a few responsive documents which are included in its response to requests 7 and 11.</p> <p>IFT has not identified any other documents that would be responsive to this request.</p> |

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| Reply: | The type of government decision-making involved in interpreting and deciding to repeal (for the first time ever) a previously established interconnection agreement would very likely give rise to some memorialization of the IFT's internal work. Accordingly, Respondent's objections should be dismissed and Respondent should be ordered to produce all relevant documents. |
| Tribunal's decision: | Granted. The Tribunal notes Respondent's comment that the IFT has not identified any additional documents that would be responsive to this request and requests Respondent to confirm that it has undertaken and will undertake a good faith effort to search for the documents that are responsive to this request and inform Claimants and the Tribunal accordingly. |

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| Request No. | 10 |
| Document / Category of Documents: | Any information in the IFT’s possession, including memoranda, internal communications, emails, notes, recordings and transcripts of meetings, and any other information, <i>exchanged between representatives and/or employees of Telmex and the IFT regarding Resolution P/IFT/EXT/071015/127</i> (“Resolution 127”) before and after it was rendered on October 7, 2015. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants’ local counsel, it is reasonably believed that Telmex was in regular contact with the IFT before and after the issuance of Resolution 127. The requested information will demonstrate the IFT’s unjustifiable, arbitrary and discriminatory conduct, in violation of Chapter Eleven, in considering Telmex’s <i>ex parte</i> views regarding the initiation of a new disagreement with Tele Fácil over 2015 interconnection rates contrary to the IFT’s rulings in Resolution 381.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants’ request for this information under Mexico’s transparency law was insufficiently answered on July 31, 2017 through transparency request No. 0912100049017. The IFT ignored the bulk of Claimants’ request and only produced official documentation issued and notified to third parties and between IFT Units.</p> <p>Under Mexican transparency law, “all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person,” unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. In the course of considering Telmex’s <i>ex parte</i> communications regarding the dispute it manufactured over 2015 interconnection rates that led to Resolution 127, the IFT very likely memorialized its interactions.</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the request on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>Notwithstanding the above, Respondent has identified, and does not object to the production of the following responsive documents:</p> <ul style="list-style-type: none"> • Notice to Telmex re: P/IFT/EXT/071015/127. • IFT’s File on Resolution 127 (various documents pertaining to this file have been provided to the Claimant pursuant to its transparency request No. 0912100049017) <p>The Respondent observes that the documents that are being produced contain confidential information (personal data under Articles 2(V), 6, 8, 16, 17 and 31 of the LGPDPPSO¹⁸ and Article 113(I) of the LFTAIP¹⁹ and Article 116 (I) of the LGTAIP and thus, cannot be used or disclosed for purposes other than these proceedings.</p> <p>IFT has not identified any other documents that would be responsive to this request.</p> |
| <p>Reply:</p> | <p>The type of government decision-making involved in the unprecedented decision to allow an interconnection agreement that was previously established by the IFT Plenary to be reopened and re-litigated by Telmex would very likely give rise to some memorialization of the IFT’s internal work. Accordingly, Respondent’s objections should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| <p>Tribunal’s decision:</p> | <p>Granted.</p> <p>Documents containing personal data related to third parties shall be redacted only not to disclose such data.</p> <p>The Tribunal notes Respondent’s comment that the IFT has not identified any additional documents that would be responsive to this request and requests Respondent to confirm that it has undertaken and will undertake a good faith effort to search for the documents that are responsive to this request and inform Claimants and the Tribunal accordingly.</p> |

¹⁸ Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados.

¹⁹ Ley Federal de Transparencia y Acceso a la Información Pública.

III. Internal Communications and Documentation of the IFT

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| Request No. | 11 |
| Document / Category of Documents: | Any information in the IFT's possession, including memoranda, internal communications, emails, notes, recordings and transcripts of meetings, and any other information, <i>indicating the IFT's views with respect to</i> Resolution 381 issued on November 26, 2014, Decree 77 issued on April 8, 2015, and Resolution 127 issued on October 7, 2015. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. Based on information provided by Claimants' local counsel, it is reasonably believed that the requested information will indicate the IFT's improper use of Telmex's request for confirmation of criteria to repudiate Resolution 381 in violation of Chapter Eleven of the NAFTA.</p> <p>The requested information is not in the possession, custody or control of the Claimants. Claimants' request for this information under Mexico's transparency law was insufficiently answered on July 4, 2016 through transparency request Nos. 0912100048517, 0912100048617 and 0912100048717. The IFT ignored the bulk of Claimants' request and only produced official documentation issued and notified to third parties and between IFT Units.</p> <p>Under Mexican transparency law, "all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person," unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>The requested information is in the possession, custody and control of the Respondent. In the course of addressing Telmex's request for confirmation of criteria of the scope of Resolution 381, it is highly likely that the IFT undertook written analysis of the issues involving interconnection between Telmex and Tele Fácil.</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the request on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent observes that the Claimant has sought and obtained the following documents falling within this request in response to transparency requests No. 0912100048517, 0912100048617 y 0912100048717:</p> <ul style="list-style-type: none"> • Oficio IFT/225/UC/2008/2015 (public version) • Letter dated 2 October 2015 submitted by Telmex in response to oficio IFT/225/UC/2008/2015 • Oficio IFT/225/UC/DG-SUV/5441/2016 • Oficio IFT/225/UC/DG-SUV/04660/2016 <p>Notwithstanding the above, the Respondent has identified, and does not object to the production of the following responsive documents:</p> <ul style="list-style-type: none"> • Oficio IFT/225/UC/089/2016 • Oficio IFT/225/UC/DG-VER/231/2016 • Oficio IFT/225/UC/DG-SUV/3517/2016 • Oficio IFT/225/UC/DG- SAN/0334/2016 • Oficio IFT/225/UC/DG-SUV/3986/2016 • Oficio IFT/225/UC/DG-SUV/706/2015 • Drafts, Executive Notes and Responses regarding Resolutions P/IFT/261114/381 and P/IFT/EXT/071015/127 <p>IFT has not identified any other documents that would be responsive to this request.</p> |
| <p>Reply:</p> | <p>As explained, it is impossible to believe that there is no memorialization of the IFT’s work or record of the views of IFT officials in relation to the issue of Tele Facil’s interconnection. In particular, based on highly credible witnesses, Claimants know that a significant meeting among senior IFT officials, convened to address Telmex’s stated concerns about Resolution 381, took place in our about mid-January 2015. Accordingly, Respondent’s objections should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| <p>Tribunal’s decision:</p> | <p>Granted.</p> <p>The Tribunal notes Respondent’s comment that the IFT has not identified any additional documents that would be responsive to this request and requests Respondent to confirm that it has undertaken and will undertake a good faith effort to search for the documents that are responsive to this request and inform Claimants and the Tribunal accordingly.</p> |

IV. Information on Mexican Telecommunications Market

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| Request No. | 12 |
| Document / Category of Documents: | Any information in the IFT's possession, including memoranda, internal communications, emails, notes, recordings and transcripts of meetings, and any other information, <i>regarding the volume of monthly traffic in minutes (beginning in December 2014) that is initiated in Telmex's network and delivered via interconnection to other carriers</i> , specifically broken down according to how much of that monthly traffic is delivered to each carrier. |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information is required to accurately identify the market in which Tele Fácil would have operated and competed but for the IFT's destruction of Claimants' investment.</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent. Telmex is required by law to report the requested information to the IFT. Although the IFT publishes information regarding the total volume of traffic that Telmex delivers to other carriers, that information does not distinguish between which specific carriers such traffic is delivered.</p> |
| Objections: | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent further objects to this request on the grounds of "legal impediment or privilege..." under Article 9(2)(b) and "commercial or technical confidentiality..." under Article 9(2)(e). Traffic data provided to IFT by telecom operators constitutes third party confidential business information as it pertains to the operation of their business. Furthermore, Article 82 of the Law on Industrial Property prohibits disclosure of said information to the public or third parties by IFT officials and is protected in terms of Articles 113 (II) of the LFTAIP.</p> <p>Notwithstanding the above, Respondent has identified a document containing aggregated traffic data (<i>i.e.</i>, not broken down by operator) which is public and does not object to the production of aggregated data for October, November and December, 2015, and the first semester of 2016. IFT has no record of data for other years.</p> <p>IFT has not identified any other documents that would be responsive to this request.</p> |

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| <p>Reply:</p> | <p>Article 82 of the Law of Industrial Property does not protect all “information as it pertains to the operation of their business,” as Respondent asserts. Rather, under that article, information is protected as an industrial secret only if it “necessarily refer[s] to the nature, characteristics or purposes of the products; production methods or processes; or distribution or marketing forms of products or services” that allow a company “to obtain or maintain a competitive or economic advantage.”</p> <p>The IFT collects the traffic data of all telecom operators, which by law must be made publicly available. The IFT has failed to justify why such data becomes an “industrial secret” simply because it is broken down by operator. The information requested by Claimants does not implicate the “nature, characteristics or purposes of the products; production methods or processes; or distribution or marketing forms of products or services” of such operators. Nor could such information reasonably grant any competitive or economic advantage to Tele Facil, which has been forced out of the Mexican market.</p> <p>Regarding the limited information offered by Respondent, Claimants note that more data is available. Respondent ignores the fact that pursuant to the Federal Telecommunications and Broadcasting Law, the 42nd Rule of the 1997 Rules of Local Service, and the specific information obligations in each carriers’ concessions, it has collected the requested information dating back even before December 2014, the starting point of Claimants’ request.</p> <p>Furthermore, with respect to the requested market data, such data—to the extent they are sensitive and need to be protected—could easily be anonymized, with the assistance of the Tribunal, before transmission to Claimants.</p> <p>For all these reasons, Respondent’s objection should be dismissed and Respondent should be ordered to produce all relevant data.</p> |
| <p>Tribunal’s decision:</p> | <p>Denied as regards traffic data broken down by carrier. The Tribunal agrees that traffic data provided by carrier constitutes third party confidential business information.</p> <p>The request is granted as regards aggregate traffic data.</p> |

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| Document / Category of Documents: | Any information in the IFT's possession, including reports, memoranda, internal communications, emails, notes, and any other information, <i>regarding penetration rates in the Mexican telecommunications market from 2013 to present (except 2015) for (i) fixed residential telephone, (ii) fixed non-residential telephone, and (iii) mobile telephone services.</i> |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information is required to accurately identify the market in which Tele Fácil would have operated and competed but for the IFT's destruction of Claimants' investment.</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent. The IFT has this information publicly available but only for the year 2015, as contained in its Statistical Yearbook 2015 (<i>Anuario Estadístico 2015</i>).</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>Notwithstanding the above, the Respondent observes that the following information is publicly available from IFT's data bank:</p> <ul style="list-style-type: none"> • Fixed residential telephone lines (penetration) available at: https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FPenetraci%C3%B3n%20Hist%C3%B3rica%20de%20Telefon%C3%ADa%20Fija%28VisualExploration%29 • Non-residential fixed telephone lines (penetration) available at: https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FPenetraci%C3%B3n%20Hist%C3%B3rica%20de%20Telefon%C3%ADa%20Fija%28VisualExploration%29 • Mobile services (density) https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs_request_path_url=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FTeledensidad%20de%20Banda%20Ancha%20M%C3%B3vil%28VisualExploration%29 https://bit.ift.org.mx/SASVisualAnalyticsViewer/VisualAnalyticsViewer_guest.jsp?appSwitcherDisabled=false&reportName=%C3%8Dndice+Descarga+de+Datos&reportPath=/Shared+Data/SAS+Visual+Analytics/Tablas+de+consulta/&appSwitcherDisabled=true <p>IFT has not identified any other documents that would be responsive to this request</p> |
| <p>Reply:</p> | <p>Claimants maintain that its request is specific and relevant and material to the case. While Claimants provide no reply at this time, they reserve their right to request additional information in this area in future document production rounds.</p> |
| <p>Tribunal's decision:</p> | <p>Considering Claimants' Reply, no decision from the Tribunal is required.</p> |

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| Request No. | 14 |
| Document / Category of Documents: | Any information in the IFT's possession, including reports, memoranda, internal communications, emails, notes, and any other information, <i>regarding end-user subscriptions from 2013 to present (except 2015) for (i) residential fixed line households, (ii) wireless subscriptions, and (iii) fixed line economic units (businesses).</i> |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information is required to accurately identify the market in which Tele Fácil would have operated and competed but for the IFT's destruction of Claimants' investment.</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent. The IFT has this information publicly available but only for the year 2015, as contained in its Statistical Yearbook 2015 (<i>Anuario Estadístico 2015</i>).</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>Notwithstanding the above, the Respondent observes that the following information is publicly available from IFT’s website:</p> <ul style="list-style-type: none"> • Residential fixed lines (number of lines) https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FL%C3%ADneas%20de%20Telefon%C3%ADa%20Fija%28VisualExploration%29 • Mobile subscriptions (number of lines) https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs_request_path_url=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FL%C3%ADneas%20de%20Telefon%C3%ADa%20M%C3%B3vil%28VisualExploration%29 • Non-residential fixed lines (number of lines) https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FL%C3%ADneas%20de%20Telefon%C3%ADa%20Fija%28VisualExploration%29 <p>The Respondent additionally objects that it would be grossly over burdensome to require IFT to prepare year-to-date statistics for the Claimants use in this proceeding. The request is preposterous on that ground alone.</p> <p>IFT has not identified any other documents that would be responsive to this request.</p> |
| <p>Reply:</p> | <p>Claimants maintain that its request is specific and relevant and material to the case. While Claimants provide no reply at this time, they reserve their right to request additional information in this area in future document production rounds.</p> |
| <p>Tribunal’s decision:</p> | <p>Considering Claimants’ Reply, no decision from the Tribunal is required.</p> |

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| Request No. | 15 |
| Document / Category of Documents: | Any information in the IFT's possession, including reports, memoranda, internal communications, emails, notes, and any other information, <i>regarding the monthly and/or quarterly shares by carrier of the Mexican telecommunications market from January 2017 to present, broken down for the following markets: (i) Number of fixed lines; (ii) fixed-line traffic share; (iii) fixed-line traffic share (local and national long distance); (iv) fixed-line traffic share (international); (v) fixed-line broadband subscriptions share; and (vi) mobile subscriptions share.</i> |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information is required to accurately identify the market in which Tele Fácil would have operated and competed but for the IFT's destruction of Claimants' investment.</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent. The IFT has this information publicly available up to the last quarter of 2016, but not for year 2017.</p> |

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| <p>Objections:</p> | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>Notwithstanding the above, the Respondent observes that the following information is publicly available from IFT's data bank:</p> <ul style="list-style-type: none"> • Total fixed lines (number of lines) <p>https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FL%C3%ADneas%20de%20Telefon%C3%ADa%20Fija%28VisualExploration%29</p> • Traffic over fixed lines (minutes) <p>https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FTr%C3%A1fico%20de%20Telefon%C3%ADa%20Fija%28VisualExploration%29</p> • International long distance traffic over fixed lines (minutes) <p>https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FTr%C3%A1fico%20de%20Telefon%C3%ADa%20Fija%28VisualExploration%29</p> • Broad band subscriptions on fixed lines <p>https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FAccesos%20de%20Banda%20Ancha%20Fija%28VisualExploration%29</p> • Mobile subscriptions (number of lines) <p>https://bit.ift.org.mx/SASVisualAnalyticsExplorer/VisualAnalyticsExplorer/VisualAnalyticsExplorerApp.jsp?sasdfs%5Frequest%5Fpath%5Furl=SBIP%3A%2F%2FMETASERVER%2FShared%20Data%2FSAS%20Visual%20Analytics%2FTablas%20de%20consulta%2FL%C3%ADneas%20de%20Telefon%C3%ADa%20M%C3%B3vil%28VisualExploration%29</p> <p>IFT has not identified any other documents that would be responsive to this request</p> |
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| Reply: | Claimants maintain that its request is specific and relevant and material to the case. While Claimants provide no reply at this time, they reserve their right to request additional information in this area in future document production rounds. |
| Tribunal's decision: | Considering Claimants' Reply, no decision from the Tribunal is required. |

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| Request No. | 16 |
| Document / Category of Documents: | Any information in the IFT's possession, including reports, memoranda, internal communications, emails, notes, and any other information, <i>regarding the list of all Mexican telecommunications concessionaires receiving international traffic from the United States, by year from 2014 to 2017.</i> |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information is required to accurately identify the market in which Tele Fácil would have operated and competed but for the IFT's destruction of Claimants' investment.</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent. Every Mexican carrier that routes incoming international traffic must be authorized by and report its statistical information to the IFT pursuant to Rule 23 of the International Telecommunications Rules.</p> |
| Objections: | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent further objects to this request on the grounds of "legal impediment or privilege..." under Article 9(2)(b) and "commercial or technical confidentiality..." under Article 9(2)(e).</p> <p>The request contains confidential business information provided by third parties related to their assets, financial situation, economic/accounting data and technical/financial data which, if granted, could put the concessionaire at a disadvantage <i>vis-à-vis</i> its competitors, and is protected in terms of Articles 113 (III) of the LFTAIP and 116 last paragraph of the LGTAIP.</p> |

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| <p>Reply:</p> | <p>Claimants' request is specific as it only pertains to the limited list of entities in the market that are authorized to receive international traffic. Respondent possesses and is easily capable of producing a list of entities that have been granted a license and/or authorization by the Mexican Government to receive international traffic.</p> <p>The requested information is not protected. Tele Facil's knowledge that a particular company provides international termination services cannot cause any business harm, particularly since Tele Facil has been forced out of the Mexican market. By law, the IFT is required to authorize any company providing international termination services in Mexico, and such authorization should be made publicly available. In particular, the requested information does not refer to the "nature, characteristics or purposes of the products; production methods or processes; or distribution or marketing forms of products or services" of an affected entity. Nor could such information reasonably grant any competitive or economic advantage to a competitor.</p> <p>Accordingly, Respondent's objection should be dismissed and Respondent should be ordered to produce all relevant data.</p> |
| <p>Tribunal's decision:</p> | <p>Denied.</p> <p>The Tribunal considers that this request may lead to the disclosure of data from third parties (particularly operators) that may be commercially confidential (IBA Rules, Art. 9.2(e)).</p> |

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| Request No. | 17 |
| Document / Category of Documents: | Any information in the IFT's possession, including reports, memoranda, internal communications, emails, notes, and any other information, <i>regarding the monthly incoming US international traffic minutes received by each Mexican carrier, separated for fixed lines and wireless users, for 2014 to 2017.</i> |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information is required to accurately identify the market in which Tele Fácil would have operated and competed but for the IFT's destruction of Claimants' investment.</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent. Every carrier authorized to route incoming or outgoing international traffic in Mexico must report this information to the IFT pursuant to Rule 23 of the International Telecommunications Rules.</p> |
| Objections: | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent further objects to this request on the grounds of "legal impediment or privilege..." under Article 9(2)(b) and "commercial or technical confidentiality..." under Article 9(2)(e).</p> <p>The request contains confidential business information provided by third parties related to their assets, financial situation, economic/accounting data and technical/financial data which, if granted, could put the concessionaire at a disadvantage <i>vis-à-vis</i> its competitors, and is protected in terms of Articles 113 (III) of the LFTAIP and 116 last paragraph of the LGTAIP.</p> |

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| Reply: | <p>Claimants' request is specific and the data is clearly in Respondent's possession, as Respondent is required by law to collect such data under Rule 23 of the International Telecommunications Rules.</p> <p>Additionally, the requested information does not refer to the "nature, characteristics or purposes of the products; production methods or processes; or distribution or marketing forms of products or services" of any provider. Nor could such information reasonably grant any competitive or economic advantage to another provider, particularly Tele Facil which has been forced out of the Mexican market. Claimant is not requesting any revenue or rate information that could be considered as "related to their assets, financial situations, economic/accounting data and technical/financial data" as Respondent asserts. Thus, Claimants' request would not put any company at a disadvantage.</p> <p>Furthermore, with respect to certain market data requested by Claimants, such data—to the extent they are sensitive and need to be protected—can easily be anonymized, with the assistance of the Tribunal, before transmission to Claimants.</p> <p>Accordingly, Respondent's objection should be dismissed and Respondent should be ordered to produce all relevant data.</p> |
| Tribunal's decision: | <p>Denied as regards traffic data broken down by carrier. The Tribunal agrees that traffic data provided by carriers constitutes third party confidential business information.</p> <p>The request is granted as regards aggregate traffic data.</p> |

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| Request No. | 18 |
| Document / Category of Documents: | Any information in the IFT's possession, including reports, memoranda, internal communications, emails, notes, and any other information, <i>regarding audio conferencing (including chat lines, radio streaming, and other similar) services in Mexico, from 2013 to present.</i> |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information is required to accurately identify the market in which Tele Fácil would have operated and competed but for the IFT's destruction of Claimants' investment.</p> <p>The requested information is not in the possession, custody or control of the Claimants. If existent, the requested information is in the possession, custody and control of the Respondent.</p> |
| Objections: | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent has not identified any documents that would be responsive to this request.</p> |
| Reply: | <p>The request is specific as it pertains to information very likely in the IFT's possession regarding a specific type of telecommunications services. It is difficult to believe that not a single communication, report, memoranda, study, or analysis has been performed by the government agency with expertise in telecommunications services, including with respect to audio conferencing services.</p> <p>Accordingly, Respondent's objection should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| Tribunal's decision: | <p>Denied.</p> <p>Claimants have failed to identify a narrow and specific category of documents (IBA Rules, Art. 3.3(a)).</p> |

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| Request No. | 19 |
| Document / Category of Documents: | Any information in the IFT's possession, including studies, reports, memoranda, internal communications, emails, notes, and any other information, <i>that was used or relied on to support the determination of the economic interest group of America Movil, S.A.B. de C.V. as the preponderant economic agent in telecommunications, as determined by the IFT in Resolution P/IFT/EXT/060314/76 dated March 6, 2014.</i> |
| Justification: | <p>The requested information is relevant to the case and material to its outcome. The requested information is required to accurately identify the market in which Tele Fácil would have operated and competed but for the IFT's destruction of Claimants' investment.</p> <p>The requested information is not in the possession, custody or control of the Claimants. The requested information is in the possession, custody and control of the Respondent.</p> |
| Objections: | <p>The Respondent objects to the requests on the grounds of lack of specificity (<i>i.e.</i>, failure to comply with Article 3(3)(a)), as explained in the general objection to this Request for Documents.</p> <p>The Respondent further objects on the grounds of "lack of sufficient relevance to the case or materiality to its outcome" under Article 9(2)(a). The Claimant does not explain how IFT's ruling re America Movil's economic preponderance is necessary to identify the market in which Tele Fácil would have operated. The Respondent notes that said ruling does not involve Tele Fácil in any way and it was issued after Tele Fácil made its decision to pursue its business venture in Mexico and after it requested interconnection with Telmex (which belongs to America Movil's group of companies).</p> <p>The Respondent also objects to the requests on the grounds of "legal impediment or privilege..." under Article 9(2)(b) and "commercial or technical confidentiality..." under Article 9(2)(e). The requests contain confidential business information provided by third parties related to their assets, financial situation, economic/accounting data and technical/financial data which, if granted, could put the concessionaire at a disadvantage <i>vis-à-vis</i> its competitors.</p> <p>Notwithstanding the foregoing, the Respondent notes that the Resolution itself contains the information used and relied on to support the determination. A public version of the resolution is available at:</p> <p>http://www.ift.org.mx/sites/default/files/conocenos/pleno/sesiones/acuerdologia/pifttext06031476versionpublicahoja.pdf</p> |

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| <p>Reply:</p> | <p>The information requested by Claimant is specific and is relevant to the case and material to its outcome, since América Móvil is the preponderant economic agent in the industry in which Tele Fácil would have operated, and was the entity that ultimately prevented its entrance into the market.</p> <p>Respondent admits that the resolution in which it determined that America Móvil was the preponderant economic agent is public. Claimant is merely requesting the underlying information that was used in the decision-making process to support such a resolution, which should now be available to the public as that the decision is final. Pursuant to Mexican transparency law, “all information created, obtained, acquired, transformed or in possession of the obligated parties (meaning any government agency or government entity, either from the Executive, Judicial or Legislative branch, or independent agencies) is public and can be accessed by any person,” unless it falls within one of the exceptions for reserved and confidential information. No exceptions apply as the government measures at issue are now final, even if at some point the requested information contained opinions, recommendations or points of view by the IFT that relate to governmental decision-making processes. (Article 110 Section VIII of the Federal Law of Transparency and Access to Public Information.)</p> <p>Furthermore, with respect to certain market data requested by Claimants, such data—to the extent they are sensitive and need to be protected—can easily be anonymized, with the assistance of the Tribunal, before transmission to Claimants.</p> <p>Accordingly, Respondent’s objection should be dismissed and Respondent should be ordered to produce all relevant documents.</p> |
| <p>Tribunal’s decision:</p> | <p>Denied.</p> <p>The Tribunal is not persuaded that the documents requested are sufficiently relevant to the case and material to its outcome (IBA Rules, Art. 9.2(a)).</p> |