

# A TEMPESTUOUS TRADE TIFF

A DEAL BETWEEN LATIN AMERICA TELECOM AND PACIFICTEL GOES SOUR.

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Miami attorney Leoncio de la Peña anticipated a few legal fireworks in a \$14 million trade dispute between his South Florida telecommunications client and an Ecuadorean telephone company.

But he hardly expected a warning from the U.S. Embassy to scrap a planned trip to Quito.

"The embassy said that I should absolutely not travel to Ecuador," said de la Peña. The problem, the embassy told de la Peña, was that a criminal complaint by his client's Ecuadorean adversary could result in a request for his arrest in the South American country.

Now de la Peña is discovering, as others have before him, that navigating a trade dispute in Ecuador can be a very precarious voyage.

The Miami attorney represents Latin America Telecom, a Miami telecommunications carrier that handles long-distance phone calls between residents in the United States and countries in South America. In October 2000, Latin America Telecom — whose founder is transplanted Chilean Jorge Welch — signed a contract to carry calls to and from Ecuador with the Guayaquil telephone company, Pacifictel.

But the deal soured within two years. Latin America Telecom charged it was paying too much to Pacifictel and that at one point telephone calls were not being completed.

Commercial relations worsened to the point that both sides agreed to arbitration. The Arbitration Tribunal in Guayaquil hired Cotecna, the Ecuadorean subsidiary of a Swiss firm, and it concluded that Latin America Telecom should recover \$10 million from Pacifictel.

But in July, the Arbitration Tribunal ruled in favor of Pacifictel and ordered the Miami company to pay \$14 million to Pacifictel. The final decision said that Latin America Telecom had failed to pay Pacifictel for the minutes of phone calls carried by the local phone company.

## LAWSUIT IN MIAMI

Disagreeing with the arbitration process, Latin America Telecom filed suit in federal court in Miami, charging that

Pacifictel conspired to drive it out of business by giving better rates to a group of competitors and by failing to deliver the number of minutes of telephone calls from Ecuador to the United States that it promised. The suit also alleges that company executives subjected the arbitration panel to "improper public intimidation, including vicious public attacks."

Pacifictel, which is owned by an Ecuadorean government trust, has stuck by its position.

Besides demanding that Latin America Telecom abide by the decision of arbitrators, the company recently filed a criminal complaint against Latin America Telecom, which led to arrest warrants being issued for Joffrey Coelho — the company's lawyer in Guayaquil, Welch and others. The warrant was quashed by a local judge, but not before Coelho fled Ecuador. Afterwards, Pacifictel filed a complaint against the judge.

Besides turning to the U.S. Embassy, de la Peña also tried to enlist U.S. Trade Representative Robert B. Zoellick, whose agency recently commenced negotiations for a free trade agreement with Ecuador.

A U.S. Embassy spokesman in Quito, Glenn Warren, said that the embassy does not comment on ongoing legal disputes.

Warren said, however, that before disputes reach the litigation or arbitration phase, the embassy's commercial section tries to help both sides reach an "amicable" resolution.

If a decision goes in favor of a U.S. company the "embassy assists to get the judicial deci-



DAVID M. BARREDA/HERALD STAFF

**PRECARIOUS ASSIGNMENT:** Miami attorney Leoncio de la Peña, outside of his Brickell Key Drive office, is representing Latin America Telecom, a Miami firm that is waging a business battle against Pacifictel from Ecuador.

sion implemented," Warren said in a telephone interview.

There is a precedent for private firms to piggyback onto trade deals. In 2002, several American companies, as well as several foreign firms, tried to get provisions put into an expanded Andean trade pact that conditioned Peru and Ecuador's inclusion on settling trade disputes involving the companies. The issue wasn't included in the final version of the agreement, but it signaled to regional governments that the companies were serious about it.

## GOVERNMENT'S HELP

"The only way you are going to solve this problem is with the help of the U.S. government," de la Peña said. "It is unacceptable for an American lawyer trying to work something out to not be able to go to a foreign country to meet with the embassy."

Pacifictel has been involved in a tempest of its own. On July 9, the former executive director, Capt. Mauricio Galindo Rojas, was removed by Ecuadorean President Lucio Gutiérrez as questions arose about the company's performance. Galindo is believed to no longer be in Ecuador, according to press reports, and could not be reached by

telephone to comment on the trade dispute.

Another official, Fernando Larrea Martínez, the president's representative to the phone company, resigned recently.

After de la Peña wrote to Larrea asking for a resolution to the dispute, the Ecuadorean lawyer sent him a note, describing his letter as a "monstrosity," his behavior as "delinquent" and vowing that the Miami lawyer would feel the weight of the law for his "treachery."

Larrea did not return a message left on his telephone.

But Calixto Vallejo, the attorney for Pacifictel in Guayaquil, said the company intended to fight the complaints and that he visited Miami in late July to look for a local attorney.

Vallejo said that since the two companies had agreed to submit any problems to arbitration, it was wrong for Latin America Telecom to file a lawsuit in another location.

"If a company agrees to a price, it should comply with the price it agreed on," Vallejo

said. "And if they submit themselves to a tribunal in Ecuador and when the decision doesn't favor them, they ignore it and start new actions in the United States — that doesn't strike me as serious."

Such trade disputes can drag on for years.

## OTHER TRADE DISPUTES

Former Florida Secretary of Commerce Charles Dusseau was on the board of Telinfor, which was involved in a similar trade dispute with the Peruvian phone company, Telefónica de Peru.

The heavy lobbying to write conditions into the 2002 Andean Trade Preference Act put Ecuador and Peru on notice, Dusseau said. But it did not change the situation overnight.

"We got a pittance of what we thought they owed us," Dusseau said.

Hearing that another Miami company and the Ecuadorean phone giant were locked in a dispute, Dusseau had some advice: "Our dispute went on for five years. Tell them to pack a lunch."

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