

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

T-MOBILE SOUTH LLC,

Plaintiff,

Case No. 2024 CA 002137

vs.

STATE OF FLORIDA, DEPARTMENT OF  
REVENUE,

Defendant.

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, T-Mobile South LLC (“TMS” or “Plaintiff”), by and through its undersigned counsel and pursuant to chapters 72, 202, 203, and 213, Florida Statutes, sues Defendant, State of Florida, Department of Revenue (the “Department” or “Defendant”), and alleges as follows:

**THE PARTIES**

1. Plaintiff is a limited liability company organized and existing under the laws of the State of Delaware. Plaintiff is registered to transact business in the state of Florida.
2. At all times relevant, TMS’s principal place of business is located at 12920 SE 38<sup>th</sup> Street Bellevue, Washington 98006.
3. The Department is an agency of the State of Florida. By law, the Department is vested with the responsibility of regulating, controlling, and administering the imposition and collection of the communication services tax imposed under chapter 202, Florida Statutes (“Communications Services Tax”). *See Fla. Stat. § 202.26.*

## JURISDICTION AND VENUE

1. This is an action contesting the legality of an assessment (the “Assessment”) issued by the Department against the Plaintiff for Communications Services Tax and interest pursuant to chapter 202, Florida Statutes.

2. The Assessment became “final” for purposes of section 72.011(1), Florida Statutes, when the Department issued the Notice of Reconsideration on October 22, 2024 (the “Notice”). A true and correct copy of the Notice is attached to this Complaint as **Exhibit A** and is incorporated herein by reference.

3. Pursuant to section 72.011(3)(a), Florida Statutes, by check dated April 26, 2022 TMS made payment of the tax and interest assessed by the Department in the amount of \$1,447,772.77, which is not contested by TMS.

4. With respect to jurisdictional security requirement in section 72.011(3)(b), Florida Statutes, TMS requested that the Department waive the security requirement. Upon review of TMS’s request, the Department waived the jurisdictional security requirement in section 72.011(3)(b), Florida Statutes, by letter dated December 19, 2024. A copy of the Department’s letter to TMS waiving the security requirement is attached hereto as **Exhibit B**.

5. Plaintiff contests the Notice in its entirety.

6. This action is authorized by section 72.011, Florida Statutes.

7. This action is timely filed in accordance with section 72.011(2), Florida Statutes.

8. Pursuant to section 284.30, Florida Statutes, a copy of this Complaint, which requests attorney fees, is being simultaneously served on the Department of Financial Services.

9. Venue is proper in this Court pursuant to section 72.011(4)(a), Florida Statutes.

10. Plaintiff has exhausted all legally necessary administrative remedies and has otherwise satisfied all other conditions precedent to the filing of this action.

### **FACTUAL BACKGROUND**

11. Pursuant to chapter 72, Florida Statutes, Plaintiff brings this action to invalidate and set aside a disputed Communications Services Tax assessment issued by the Department for the tax periods from August 1, 2015 through July 31, 2018 (the “Tax Period”).

12. T-Mobile USA, Inc. (“T-Mobile”) provides wireless communications services through subsidiary operating companies, including TMS, to customers in the State of Florida.

13. Netflix Inc. provides video steaming services (“Netflix services”) to customers in the State of Florida.

14. During the Tax Period, T-Mobile sold wireless communications services plans that included a service called “Netflix ON US,” whereby customers received basic Netflix services with the plan.

15. As part of their receipt of these services, T-Mobile’s customers who sign up for “Netflix ON US” receive Netflix services subject to the Netflix terms of use.

16. To take advantage of “Netflix ON US,” customers need to link an active Netflix account to the customer’s T-Mobile account and TMS pays Netflix on behalf of its customers.

17. If the customer links an existing Netflix account to the “Netflix ON US” offer and then terminates its T-Mobile wireless communications services plans, such termination does not cancel the customer’s Netflix membership, and Netflix automatically resumes charging the customer’s prior method of payment.

18. The Department initiated a routine tax audit of TMS for the Tax Period. At the conclusion of the audit, the Department adjusted TMS’s Communications Services Tax liability.

19. In particular, the Department made adjustments and imposed CST on subscription video on demand services provided by TMS to Florida customers.

20. On May 31, 2022, the Department issued a Notice of Proposed Assessment (“NOPA”). A copy of the NOPA is attached hereto as **Exhibit C**. The NOPA assessed TMS Communications Services Tax and interest for the Tax Periods through May 31, 2022 in the following amounts:

<b>Tax</b>	<b>Interest</b>	<b>Penalties</b>	<b>Total</b>
\$1,975,612.86	\$736,890.96	\$16,703.71	\$2,729,207.53

21. By check dated April 26, 2022,<sup>1</sup> TMS made payment in the amount of \$1,447,772.77 covering \$1,010,614.95 in tax; \$420,454.11 in interest, and \$16,703.71 in penalties. A copy of the check is attached as **Exhibit D**.

22. In a letter dated July 26, 2022, TMS protested the NOPA. Specifically, TMS protested Exhibit A04 – Untaxed S.V.O.D Comm. Services provided to Florida Customers, which includes \$964,997.91 in CST plus associated interest.

23. The Department issued the Notice of Decision, dated March 16, 2023, denying TMS’s protest and sustaining the audit assessment and the NOPA. A copy of the Notice of Decision is attached hereto as **Exhibit E**.

24. TMS filed a timely petition for reconsideration dated April 13, 2023.

25. On October 22, 2024, the Department issued the Notice denying TMS’s protest and upholding the Department’s audit adjustments and the NOPA in full.

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<sup>1</sup> The check was processed by the Department on May 4, 2022.

26. Pursuant to section 72.011(2), Florida Statutes, and chapter 12-6, Florida Administrative Code, the Department's assessment is final as of the date of the Notice, i.e., October 22, 2024.

27. In accordance with the procedure set forth in section 72.011, Florida Statutes, TMS has timely filed this action pursuant to section 72.011 within sixty (60) days from the date that the proposed assessment became a final assessment. *See* § 72.011(2), Fla. Stat.; Fla. Admin. Code Ann. ch. 12-6.

### **FLORIDA LAW AND SALES TAX**

28. Article VII, section 1, Florida Constitution, states that “[n]o tax shall be levied except in pursuance of law.”

29. In Florida, tax laws are construed strongly in favor of the taxpayer and against the government. *See New Sea Escape Cruises v. Dep't of Revenue*, 823 So. 2d 161, 163 (Fla. 4th DCA 2002); *Dep't of Bus. & Pro. Regul. v. WJA Realty P'ship*, 679 So. 2d 302, 306 (Fla. 3d DCA 1996).

30. Florida imposes Communications Services Tax on “every person who engages in the business of selling communications services at retail in [Florida]. . . [f]or the exercise of such privilege.” § 202.12(1)(a), Fla. Stat.

31. Communications Services Tax is also imposed on purchasers who purchase communications services from a seller in another state or jurisdiction and such services are otherwise taxable under the Communications Services Tax; provided, however, that Communications Services Tax is not imposed on the purchaser of such services “if the out-of-state seller registers as a dealer in this state and collects from the purchaser the” Communications Services Tax.

32. The tax base of the Communications Services Tax is “the sales price of the communications service that: 1. Originates and terminates in [Florida], or 2. Originates or terminates in [Florida] and is charged to a service address in [Florida]” when sold at retail. Fla. Stat. § 202.12(1)(a).

33. “Communications services” is defined as “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.” § 202.11(1), Fla. Stat.

34. The tax is only imposed on retail sales of communications services, meaning it is not imposed on “the sale of communications services for . . . resale or for use as a component part of or for integration into communications services to be resold in the ordinary course of business.” § 202.11(11), Fla. Stat.

35. An example of a sale that is not a “retail sale” includes “charges paid by a video service provider for the purchase of video programming or the transmission of video or other programming by another dealer of communications services.” § 202.16(2)(a), Fla. Stat.

36. A seller of communications services who makes a sale for resale which is not in compliance with the Department’s procedures is liable for any tax, penalty, and interest due for failing to comply. *Id.*

37. “Sales price” is defined as “the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service . . . , which is part of the sale and for which the charge is not separately itemized on a customer's bill or separately allocated . . . . The sales price

of communications services may not be reduced by any separately identified components of the charge which constitute expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.” § 202.11(13), Fla. Stat.

38. Further, the “sales price” of communication services does not include charges for “[a] dealer’s internal use of communications services in connection with its business of providing communications services.” § 202.11(3)(b)6, Fla. Stat.

39. The Department has interpreted this definition of “sales price” to exempt sales of communications services between two dealers of communications services, where the purchasing dealer uses the communications services in connection with its business of providing communications services. *See* Fla. Dep’t of Revenue TAA 23A19-001 (Mar. 7, 2023), <https://qas.floridarevenue.com/TaxLaw/Documents/23A19-001.pdf>.

40. Florida “can only levy its tax against the amount actually charged and collected from the subscriber . . . . A tax based on a charge greater than the subscriber is actually required to pay is simply illegal . . . . If for any given month the customer is permitted to purchase the service for less, for any reason, it is only that purchase price which is subject to the tax.” *See Orange Cnty. v. Bellsouth Telecomms., Inc.* 812 So.2d 475, 478 (Fla. 2002).

### **COUNT ONE**

#### **THE DEPARTMENT ILLEGALLY ASSESSED COMMUNICATIONS SERVICES TAX ON A TAX BASE IN EXCESS OF THE SALES PRICE**

41. TMS incorporates by reference paragraphs 1 through 40 of the preceding allegations, as if set forth fully in this Count.

42. The Communications Services Tax is imposed on the seller of communications services based on the sales price of communications services sold at retail; thus, the tax base for the Communications Services Tax is limited to the amount actually charged for such services.

43. Similar to Florida sales tax, Communications Services Tax is due on the net amount paid at the time of sale and discounts that are taken at the time of sale are not included in the selling price.

44. TMS sold wireless communications services plans that included Netflix services for no additional charge to its customer.

45. The Department's illegally assessed TMS based on an amount that is greater than the tax base for the Communications Services Tax, *i.e.*, the amount that TMS charged customers for the wireless communications services plans and Netflix services.

46. As a result, the NOPA and Notice are incorrect, improper and contrary to Florida law, and must be abated.

47. Based on the foregoing, the Assessment is unlawful and the liability asserted therein is invalid in its entirety.

## **COUNT TWO**

### **THE DEPARTMENT ILLEGALLY ASSESSED COMMUNICATIONS SERVICES TAX ON COMMUNICATIONS SERVICES USED INTERNALLY BY TMS**

48. TMS incorporates by reference paragraphs 1 through 47 of the preceding allegations, as if set forth fully in this Count.

49. TMS offers the free basic Netflix subscription as an inducement to sell customers certain cellular communications service plans.

50. Since TMS is a dealer of communications services and is using the communications services purchased from Netflix in connection with its business of providing communications



services, the Netflix subscriptions should be excluded from the sales price and not subject to the Communications Services Tax.

51. As a result, the NOPA and Notice are incorrect, improper and contrary to Florida law, and must be abated. Based on the foregoing, the Assessment is unlawful and the liability asserted therein is invalid in its entirety.

**COUNT THREE**

**THE DEPARTMENT ILLEGALLY ASSESSED COMMUNICATIONS SERVICES TAX ON NETFLIX SERVICES WHICH ARE NOT COMMUNICATIONS SERVICES**

52. TMS incorporates by reference paragraphs 1 through 51 of the preceding allegations, as if set forth fully in this Count

53. Netflix services are not “communications services” and thus, not subject to the CST.

54. The charges for Netflix services on T-Mobile’s invoices are not charges for communications services.

55. Any charges for communications services that are transmitted, conveyed, or routed are provided by TMS and TMS has collected and remitted CST on such charges.

56. As a result, the NOPA and Notice are incorrect, improper and contrary to Florida law, and must be abated.

57. TMS is entitled to a refund of all amounts paid for Communications Services Tax for sales of Netflix services during the Tax Period.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff, T-Mobile South LLC, respectfully requests that judgment be entered against the Defendant and in favor of Plaintiff, and that this Court issue an Order:

a) Invalidating the NOPA and Notice or in the alternative, enter an order invalidating the portion of the NOPA and Notice determined to be erroneous, unjust, unlawful and contrary to the laws of the State of Florida;

b) Awarding Plaintiff and ordering judgment against Defendant for attorneys fees and expenses of litigation to which Plaintiff may be entitled under the laws of the State of Florida pursuant to sections 213.015 and 57.105, Florida Statutes; and

c) Awarding such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted this 19th day of December, 2024.

EVERSHEDS SUTHERLAND (US) LLP

By: 

Jonathan A. Feldman

Fla. Bar No. 0176397

Eric S. Tresh (*pro hac vice* forthcoming)

Elizabeth S. Cha (*pro hac vice* forthcoming)

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Attorneys for Plaintiff,

T-MOBILE SOUTH LLC

# **EXHIBIT A**



**Florida Department of Revenue**  
*Technical Assistance and Dispute Resolution*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

October 22, 2024

MR. ANTHONY M. WHELAN, TAX DIRECTOR  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

**Re: Notice of Reconsideration**  
T MOBILE SOUTH LLC ("Taxpayer")  
BPN: 2235334  
Audit #: 200249849  
Communications Services Tax  
Period: 08/01/2015 - 07/31/2018

Proposed Assessment Amount:	\$	2,729,207.53
Sustained Amount:	\$	2,729,207.53
Balance Due:	*	\$ 1,406,978.69

\* Includes payments and updated interest through October 21, 2024. Interest continues to accrue at \$173.06 per day until the postmark date of payment. Daily interest is subject to change every January 1 and July 1.

Dear Mr. Whelan:

This is the Department's response to the petition for reconsideration postmarked April 13, 2023, filed against the referenced assessment. The petition for reconsideration, the case file, and other available information have been carefully reviewed. This reply constitutes the issuance of our Notice of Reconsideration, pursuant to the provisions of Rule 12-6.003, Florida Administrative Code ("F.A.C."). It represents our position based on applicable law to the issues under protest.

**ISSUE**

Whether untaxed subscription video on demand communication services purchased by Taxpayer is subject to communications services tax ("CST")?

### FACTS

The Department of Revenue conducted a communications services audit of Taxpayer's books and records for the audit period referenced above. Taxpayer is registered as a dealer of communications services.

Taxpayer is in the business of providing mobile telecommunications and related equipment in Florida. Taxpayer is a limited liability company, and its parent company is T-Mobile USA Inc. They are headquartered in Bellevue, WA.

The Department included the following audit adjustments in the Notice of Proposed Assessment (NOPA) dated May 31, 2022.

- Exhibit A01: Disallowed Exempt Communications Services Sales Made to Fla. Customers
- Exhibit A02: Untaxed Detailed Billing Charges – Florida Customers
- Exhibit A03: Untaxed "UnRadio" Communications Services Provided to Florida Customers
- Exhibit A04: Untaxed S.V.O.D. (Subscription Video on Demand) Communications Services Provided to Florida Customers.

In a letter dated July 26, 2022, Taxpayer protested exhibit A04 – Untaxed S.V.O.D. Communications Services Provided to Florida Customers. The Department issued the Notice of Decision ("NOD") dated March 16, 2023, sustaining the audit assessment.

Taxpayer filed a timely petition for reconsideration dated April 13, 2023.

### TAXPAYER ARGUMENT

In its protest letter dated April 13, 2023, Taxpayer asserted:

- The sales price definition states that "[t]he sales price of communications service does not include charges for...[a] dealer's internal use of communications services in connection with its business of providing communications services."
- There is a Florida Technical Assistance Advisement ("TAA") that addressed communications services purchased by taxpayer providing retail cellular communications services. In the advisement, Florida's Tax Law Specialist determined that "in connection with" is not defined by the statutes and "a definitional statute that sets forth a statement of what is and is not included in the taxable "sales price" ... must be construed against the state and in favor of the taxpayer." Considering "connection" under its ordinary meaning of "association, relationship," the Tax Law Specialist determined that the communications services purchased for a variety of functions, including sales, by the taxpayer providing cellular communications services were all in

some way connected to its business of providing communications services and thus excluded from the sales price.

Taxpayer offers a free basic Netflix subscription as an inducement to sell customers certain cellular communications service plans, specifically the T-Mobile ONE and Magenta plans during the audit period. Since Taxpayer is a dealer of communications services and is using the communications services purchased from Netflix in connection with its business of providing communications services, the Netflix subscriptions should be excluded from the sales price and not subject to CST.

#### LAW

Section 202.11(13), Florida Statutes ("F.S."), provides that "Sales price" and means in part:

... the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service, not described in paragraph (a), which is part of the sale and for which the charge is not separately itemized on a customer's bill or separately allocated under subparagraph (b)8. The sales price of communications services may not be reduced by any separately identified components of the charge which constitute expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.

(a) The sales price of communications services includes, whether or not separately stated, charges for any of the following:

1. The connection, movement, change, or termination of communications services.
2. The detailed billing of communications services.
3. The sale of directory listings in connection with a communications service.
4. Central office and custom calling features.
5. Voice mail and other messaging service.
6. Directory assistance.
7. The service of sending or receiving a document commonly referred to as a facsimile or "fax," except when performed during the course of providing professional or advertising services.

(b) The sales price of communications services does not include charges for any of the following:

\*\*\*\*\*

6. A dealer's internal use of communications services in connection with its business of providing communications services. (Emphasis Added.)

### DISCUSSION

#### *Subscription Video on Demand*

Chapter 202, F.S., imposes Communications Services Tax on the retail sale of communications services. Communications services tax is comprised of Florida communications services tax and the local communications services tax imposed by Chapter 203, F.S.

The term "communications services" is defined broadly and means, in pertinent part, "...the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance..." (See Section 202.11(1), F.S.) The SVOD services are classified as video services. The term "video services" means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services." (Emphasis added) (See Section 202.11(24), F.S.)

Communications services tax is computed on the sales price of the communication services. By definition, the sales price includes items such as detailed billing, voicemail, directory assistance, etc., whether or not separately stated. A sale of communications services occurs when communications services are provided for a consideration. Communications services tax applies, generally, to the retail sales price of communications services that (1) originate and terminate in Florida, or (2) originate or terminate in Florida and are charged to a Florida service address (See Section 202.12(1), F.S.) Service address generally means the location of the equipment from which communications services originate or are received by the customer. For video services, the service address is the location where the customer receives the services in Florida (See Section 202.11(14), F.S.)

During the review of taxable Florida communications services relevant to the July 2018 reporting period the auditor identified that T Mobile was providing Subscription Video on Demand ("S.V.O.D.") services to Florida customers as part of certain cellular service plans (referred to internally as "Netflix on Us"). Based on the service (credit) amounts identified in Taxpayer's books and records, these services were scheduled for additional tax due for the periods of 09/2017 through 07/2018. These services were determined to be subject to Florida CST under the provisions of Chapter 202, Section 202.11(1), F.S. The exhibits were later revised to adjust the scheduled taxable amounts of the "Netflix on Us" services to reflect the true cost element of the services to T Mobile (which amounted to 85% of the value of the service (credit) amounts allotted to each applicable Florida customer relative to the Netflix services received in

records provided and reviewed). Also, the transactions relating to S.V.O.D. services resold to Florida customers that included a billing amount of greater than \$0.00 and which included a charge for Florida CST, were deleted from the exhibit.

The SVOD services do not meet the definition of "internal use" as provided in Section 202.11(14)(b), F.S. as the services are used by the end user (Florida customers). The services are purchases for resale or integration into the communications services Taxpayer sells to their customers.

Under Florida law, a sale of a communications service for the purpose of reselling that service is so it may be excluded from communications services tax. A "sale for the purpose of resale" is defined in Rule 12A-19.060(3), F.A.C., as follows:

A "sale for the purpose of resale" occurs when a person purchases communications services from a dealer and then resells the communications services, uses the communications services as a component part of communications services that are offered for retail sale, or integrates the purchased communications services into communications services offered for retail sale.

Section 202.16(2), F.S., states in pertinent part:

... Any person who makes a sale for resale which is not in compliance with these rules is liable for any tax, penalty, and interest due for failing to comply, to be calculated pursuant to s. 202.28(2)(a).

In order to comply with the rules, the party making the sale of communications services for the purpose of resale must receive a copy of the purchaser's Communications Services Tax Annual Resale Certificate. Rule 12A-19.060(6)(a), F.A.C., provides:

A selling dealer who makes a sale for the purpose of resale and receives a copy of a valid Communications Services Tax Annual Resale Certificate in lieu of tax will be in compliance with the requirements of this rule and is relieved from any liability for any tax due on that sale.

#### *Reliance on Technical Assistance Advisements*

Taxpayer cites a TAA issued by the Department in support of its assertion. Taxpayer states the TAA determined that communications services purchased for a variety of functions, including sales, by a taxpayer providing cellular communications services are connected to its business of providing communications services and thus should be excluded from the sales price.

TAA's are binding on the Department only under the facts and circumstances described in the request for a specific taxpayer. Section 213.22(1), F.S., states, "Technical assistance advisements shall have no precedential value except to the taxpayer who requests the



advisement...." Therefore, the TAA has not been taken into consideration when reviewing Taxpayer's protest.

### **CONCLUSION**

Based on the discussion above, Taxpayer has not provided sufficient information regarding resale certificates and therefore, the assessment is sustained.

Enclosed for your convenience is an audit remittance coupon. Payment, including interest to the postmark date of payment, should be returned in the enclosed envelope, along with the audit remittance coupon. The check should reflect the audit number.

### **TAXPAYER APPEAL RIGHTS**

You are notified that this Notice of Reconsideration constitutes the final position of this Department, prior to court action or administrative proceeding, regarding the assessment you have protested. Pursuant to Sections 72.011(2) and 120.80(14), F.S., and Rule Chapter 12-6, F.A.C., as of the date of this Notice of Reconsideration the assessment is final for purposes of court action or administrative proceeding. Pursuant to Sections 72.011(2) and 120.80(14), F.S., and Rule Chapter 12-6, F.A.C., no court action or administrative proceeding may be brought to contest the assessment after sixty (60) days from the date of this Notice of Reconsideration.

The assessment reflected in the Notice of Reconsideration is final, and you have three alternatives for further review:

1) Pursuant to Section 72.011, F.S., and Rule Chapter 12-6, F.A.C., you may contest the assessment in circuit court by filing a complaint with the clerk of the court. THE COMPLAINT MUST BE RECEIVED BY THE CLERK OF THE CIRCUIT COURT WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF RECONSIDERATION. Section 72.011(3), F.S., provides that no circuit court action may be brought unless you pay to the Department the amount of taxes, penalties, and accrued interest assessed by the Department that are uncontested and tender or post a bond for the remaining disputed amounts unless a waiver is granted, as provided in that section. Failure to pay the uncontested amounts will result in the dismissal of the action and imposition of an additional penalty in the amount of twenty-five percent (25%) of the tax assessed. The requirements of Chapter 72, F.S., are jurisdictional;

2) Pursuant to Sections 72.011, 120.569, 120.57, and 120.80(14), F.S., and Rule Chapter 12-6, F.A.C., you may contest the assessment in an administrative forum by filing a petition for a Chapter 120 administrative hearing with the Department of Revenue, Office of General Counsel, Post Office Box 6668, Tallahassee, FL 32314-6668. THE PETITION MUST BE RECEIVED BY THE DEPARTMENT WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF RECONSIDERATION. The petition should conform to the requirements of the Uniform Rules promulgated pursuant to Section 120.54(5), F.S. Section 120.80(14), F.S., provides that before you file a petition under Chapter 120, F.S., you must pay to the Department the amount of

taxes, penalties, and accrued interest that are not being contested. Failure to pay those amounts will result in the dismissal of the petition and imposition of an additional penalty in the amount of twenty-five percent (25%) of the tax assessed. Mediation pursuant to Section 120.573, F.S., is not available. The requirements of Section 72.011(2) and (3)(a), F.S., are jurisdictional for any action contesting an assessment or refund denial under Chapter 120, F.S.;  
OR

3) Pursuant to Section 120.68, F.S., you may contest the assessment in the appropriate district court of appeal by filing a Notice of Appeal meeting the requirements of Rule 9.110, Florida Rules of Appellate Procedure, with i) the Clerk of the Department of Revenue, Office of General Counsel, Post Office Box 6668, Tallahassee, FL 32314-6668 and ii) with the clerk of the appropriate district court of appeal, accompanied by the applicable filing fee. THE NOTICE OF APPEAL MUST BE FILED WITH BOTH THE DISTRICT COURT OF APPEAL AND THE DEPARTMENT OF REVENUE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS NOTICE OF RECONSIDERATION.

Should you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

*William Roberts*

William Roberts  
Tax Conferee  
Technical Assistance & Dispute Resolution  
(850)717-7658

Enclosure: Audit Remittance Coupon

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT**

Persons needing an accommodation to participate in any proceeding before the Technical Assistance and Dispute Resolution Office should contact that office at 850-617-8346, or you may also call via the Florida Relay System at 800-955-8770, at least five working days before such proceeding.



**Florida Department of Revenue**  
*Technical Assistance and Dispute Resolution*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

[floridarevenue.com](http://floridarevenue.com)

### **TADR Satisfaction Survey**

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 200249849

Respondent code: 44

Tax type: Communications Services Tax

Correspondence type: Informal Protest

If you need technical assistance accessing the survey, please email Douglas Charity at [douglas.charity@floridarevenue.com](mailto:douglas.charity@floridarevenue.com).

Thank you.



**FLORIDA**  
Executive Director  
Jim Zingale

DR-839  
N. 05/04

### Audit Remittance Coupon

October 21, 2024

C/O TAX DEPARTMENT  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

Business Partner: 2235334  
Audit Number : 200249849  
Audit Period : 08/01/2015 - 07/31/2018  
Tax Type : Communications Services Tax

To ensure proper credit, please detach and include the preprinted remittance coupon below when submitting payments.

If additional interest is applicable, please refer to the additional interest instructions on the enclosed correspondence.

You can pay bills online for many taxes using your credit card or the ACH-Debit method at [www.myflorida.com/dor](http://www.myflorida.com/dor).

DR-839  
N. 05/04

Detach For Processing

### Audit Remittance Coupon

Service Center Pittsburgh Service Center
Business Partner 2235334
Audit Number 200249849

Make check or money order payable to:  
Florida Department of Revenue  
5050 West Tennessee Street  
Tallahassee, Florida 32399-0100

Check Number
Tax Type Communications Services Tax
Remittance Total

C/O TAX DEPARTMENT  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

0600 0 20180731 0063004059 7 6200249849 0000 6

# **EXHIBIT B**



**Florida Department of Revenue**  
*Office of General Counsel*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

December 19, 2024

Mr. Jonathan A. Feldman, Esq.  
Eversheds Sutherland (US) LLP  
999 Peachtree Street, NE, Suite 2300  
Atlanta, GA 30309-3996

Re: T-Mobile South, LLC  
FEI#: 20-3945483  
Bond Waiver Request  
Audit# 200249849  
Period: 8/1/15 – 7/31/18  
Tax Type: Communications Services Tax

Dear Mr. Feldman:

I am in receipt of your letter requesting a waiver of the provisions of s. 72.011(3)(b), F.S., on behalf of T-Mobile South, LLC. Ms. Isabel Nogues, an Assistant General Counsel with the Department, has reviewed the publicly available financial information and the executed guaranty of T-Mobile US, Inc. Based on that review and Isabel's recommendation, the Department is willing to waive the requirements of s. 72.011(3)(b), F.S., with respect to an action by T-Mobile South, LLC.

A copy of this letter should attached to your complaint that is filed with the circuit court.

Should you have any questions, please give Isabel or me a call.

Sincerely,

Mark S. Hamilton  
General Counsel

# **EXHIBIT C**



NOTICE OF PROPOSED ASSESSMENT

05/31/2022

C/O TAX DEPARTMENT
T MOBILE SOUTH LLC
12920 SE 38TH ST
BELLEVUE WA 98006-1350

Audit Number : 200249849
Business Partner : 2235334
Tax : Communications Services Tax
ID Number : 20-3945483
Audit Period : 08/01/2015 - 07/31/2018

The Notice of Proposed Assessment ("Notice") identifies the deficiency resulting from an audit of your books and records for the audit period indicated. The Department has previously provided you with schedules of the various transactions supporting the basis for the proposed assessment.

Assessment Authority: Chapter 202, F.S.

Table with 2 columns: Description and Amount. Rows include Tax (\$1,975,612.86), Penalty (\$16,703.71), Penalty - Fraud (.00), Penalty - Other (.00), Interest Through 05/31/2022 (\$736,890.96), Total Deficiency (\$2,729,207.53), Less: Payment(s) (\$1,447,772.77), Less: Offset(s) (.00), and Balance Due (\$1,281,434.76).

Plus additional daily interest at \$101.23 per day from 06/01/2022, through the payment date. See Page 2, "Addendum to Notice of Proposed Assessment" for explanation of interest rates (if applicable).

If you do not agree with the proposed assessment, you may request a review through one of the following:

- informal protest
administrative hearing
judicial proceeding

The enclosed brochure provides you with the procedures for requesting a review.

If you file an informal written protest, you must file it with the Department no later than 08/01/2022, unless you request and receive an extension prior to this date. If you fail to file an informal written protest, the proposed assessment will become a FINAL ASSESSMENT on 08/01/2022.

If you request an administrative hearing or judicial proceeding, you must file your request no later than 09/28/2022 or 60 days from the date the assessment becomes a Final Assessment. Florida Statutes mandate this time limit and the Department cannot extend it. You must file the petition for an administrative hearing with the Department of Revenue. For judicial proceedings, you must file a complaint with the appropriate Clerk of the Court.

If a balance is due and you agree with the proposed assessment, please pay the balance due within 60 days from the notice date. Please return your payment in the enclosed envelope and include the NOPA remittance coupon.

The amount shown on this notice may not include: credits, payments, notices of tax action, delinquency notices or other billings previously issued by the Department.

NOTE: If you are protected by Federal Bankruptcy Law, you are not required to pay except as provided by Title 11 United States Code (U.S. Bankruptcy Code).

Refer questions and correspondence to:

Compliance Standards Process
P.O. BOX 5139
Tallahassee, FL 32314-5139
Phone: (850) 617-8565 Fax: (850) 245-5981





**Addendum to Notice of Proposed Assessment  
Schedule of Tax, Penalty and/or interest**

C/O TAX DEPARTMENT  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

Audit Number : 200249849  
Business Partner : 2235334  
Tax : Communications Services Tax  
ID Number : 20-3945483  
Audit Period : 08/01/2015 - 07/31/2018

I. 12% Interest Rate		II. Market Interest		III. Combined Liability			
Applied Period		Applied Period		Combined Applied Period			
Tax	Interest Through 05/31/2022	Tax	Interest Through 05/31/2022	Tax	Penalties	Interest Through 05/31/2022	Total
\$	\$	\$	\$	\$	\$	\$	\$
0.00	0.00	1,975,612.86	736,890.96	1,975,612.86	16,703.71	736,890.96	2,729,207.53
Less Payments							( 1,447,772.77 )
Offsets							0.00
Balance Due							1,281,434.76

- I. Twelve (12) Percent Interest Rate: For taxes due on or before December 31, 1999, an interest rate of 12% per annum applies, except for Corporate Income and Emergency Excise Taxes. The additional daily interest amount for this portion of the liability is \$0.00
- II. Market Interest Rate: For taxes due on or after January 1, 2000, a floating interest rate applies. This rate will be updated January 1 and July 1 of each year. The additional daily interest amount for this portion of the liability is \$101.23. Current and prior interest rates are posted on our Internet site at: [www.floridarevenue.com](http://www.floridarevenue.com) or you can contact Taxpayer Services at 850-488-6800 and select Information on Taxes from the option menu.
- III. Combined Liability: This column combines columns I and II and represents the total tax, penalties and interest assessed. The combined daily interest amount is \$101.23. Please include additional interest accrued from 06/01/2022 through the date your payment is postmarked.

Refer questions and correspondence to:

Compliance Standards Process  
Florida Department of Revenue  
P.O. BOX 5139  
Tallahassee, FL 32314-5139  
Phone: (850) 617-8565 Fax: (850) 245-5981



Enforcement Remittance Coupon  
NOPA Remittance Coupon

C/O TAX DEPARTMENT  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

Business Partner : 2235334  
Service Notification : 200249849  
Period : 08/01/2015 - 07/31/2018  
Tax Type : Communications Services Tax

To ensure proper credit, please detach and include the preprinted remittance coupon below when submitting payments.

The amount of interest owed has been calculated through the Interest Through date shown on the NOPA. When submitting your payment, please remember to include the additional interest amount accrued since that date.

To calculate the additional interest amount, multiply the number of days since the Interest through date times the daily interest amount. The daily interest amount is also shown on the NOPA.

You can pay bills online for many taxes using your credit card or the ACH-Debit method at [www.floridarevenue.com](http://www.floridarevenue.com).

DR-839  
N.10/03

Detach For processing  
**NOPA Remittance Coupon**

Make check or money order payable to:  
Florida Department of Revenue  
5050 West Tennessee Street  
Tallahassee, Florida 32399-0100

Service Center: Pittsburgh
Business Partner: 2235334
Audit Number 200249849

Check Number:
Tax Type: Communications Services Tax
Remittance Total:

C/O TAX DEPARTMENT  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

# **EXHIBIT D**



**T-MOBILE USA, INC.**  
 12920 SE 38TH STREET  
 BELLEVUE, WA 98006  
 (425) 378-4000

3748463  
 04/26/2022  
 2000009468

Invoice Number	Inv. Date	Description	Deductions	Voucher	Amount Paid
TXOP FL AUDIT	04/26/2022	FL 937- CST- S P 0718 X	\$0.00	1100778022	\$1,447,772.77

Page 1 of 1

DO NOT ACCEPT THIS CHECK UNLESS THE FACE FADES FROM BLACK TO RED WITH LOGO IN BACKGROUND THE BACK OF THIS DOCUMENT HAS HEAT-SENSITIVE INK THAT CHANGES FROM ORANGE TO YELLOW.



**T-MOBILE USA, INC.**  
 12920 SE 38th Street  
 Bellevue, WA 98006  
 (425) 378-4000

JPMorgan Chase Bank, N.A.  
 Syracuse, NY  
 50-937/213

3748463  
 04/26/2022  
 VID 2000009468

**\$\*1,447,772.77**

\*\*\*One Million Four Hundred Forty-Seven Thousand Seven Hundred Seventy-Two Dollars And 77 Cents

Pay To The Order Of  
**FLORIDA DEPARTMENT OF REVENUE**  
 5050 W TENNESSEE ST  
 TALLAHASSEE, FL 32399-0128

VOID AFTER 180 DAYS  
 THIS CHECK CLEARS THROUGH POSITIVE PAY

*David [Signature]*

# **EXHIBIT E**



March 16, 2023

MR. JACE CEVALIER – SENIOR TAX MANAGER  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

Re: Notice of Decision  
T MOBILE SOUTH LLC  
BPN: 2235334  
Audit #: 200249849  
Communications Services Tax  
Period: 08/01/2015 - 07/31/2018

Proposed Assessment Amount:	\$	2,729,207.53
Sustained Amount:	\$	2,729,207.53
Balance Due:	*	\$ 1,312,729.17

\* Includes payments and updated interest through March 15, 2023. Interest continues to accrue at \$130.15 per day until the postmark date of payment. Daily interest is subject to change every January 1 and July 1.

Dear Mr. Chevalier:

This is the Department's response to the protest letter postmarked July 26, 2022, filed against the referenced assessment. The letter of protest, the case file, and other available information have been carefully reviewed. This reply constitutes the issuance of our Notice of Decision, pursuant to the provisions of Rule 12-6.003, Florida Administrative Code (F.A.C.). It represents our position based on applicable law to the issues under protest.

**ISSUE**

Whether taxpayer purchases of subscription video on demand (SVOD) services which are provided to Florida customer should be subject to Communication Services Tax.

### FACTS

Taxpayer provides wireless telecommunications services to customers in Florida, including voice, data and text. Taxpayer is headquartered in Bellevue, WA, where all books and records are maintained. Nexus was established as the taxpayer has retail locations and employees in the state.

The Taxpayer was issued a DR-840, Notice of Intent to Audit for CST on September 13, 2018, for August 1, 2015, through July 31, 2018.

On April 13, 2022, a Notice of Intent to Make Audit Changes (DR-1215) was issued. Audit adjustments were based on Taxpayer's failure to collect and remit the applicable Florida CST due on the sale of taxable 'data' services made to Florida customers during the audit period as part of a mobile cellular telephone service plan.

Taxpayer protested the assessment. A Notice of Proposed Assessment was issued on May 31, 2022.

Taxpayer timely filed an informal protest dated July 26, 2022. A teleconference was held on August 25, 2022. Taxpayer provided a copy of the CST resale certificate from 2017, Netflix contract and three sample invoices.

### TAXPAYER ARGUMENT

Taxpayer asserts that Taxpayer does not provide data, audio or video as a service which is invoiced as "data". Taxpayer only has the capacity to resell the internet access purchased from its provider T-Mobile. The term "data" is the industry standard verbiage used to simplify the description for the benefit of the customer. The charges for "data" listed on Taxpayer invoices consist of the quantity of internet access data that is used by Taxpayers' end-users to gain access to the internet. The data usage expressed on Taxpayer's invoices are clearly related to the purchase of internet usage and therefore exempt.

### LAW & DISCUSSION

Florida law imposes state and local CST, and gross receipts tax on sales of communication services. Generally, unless an exemption or exclusion from CST applies, the sale of communications services is taxable in Florida if the communications service either originates and terminates in Florida; or, originates or terminates in Florida and is charged to a Florida service address. The service address is generally the location of the equipment from which the communications services originate or are received by the customer. (See ss. 202.11(14), 202.12, and 202.19, F.S.)

Dealers of communications services are required to secure, maintain, and keep as long as required by s. 213.35, F.S., a complete record of communications services sold at retail by the

dealer, together with invoices, records of gross receipts from such sales, and other pertinent records and papers required by the Department in order to determine the accuracy of a return which has been filed or payment. Dealers' books and records should disclose the purchases and sales of all services sold, to whom sold, and the amount sold, in the form and manner that the Department requires, so that the Department can determine the volume of services sold or purchased, and the dates and amounts of such sales and purchases. (See s. 202.34, F.S.)

If a dealer does not have adequate records of its sales of communications services, the Department may, upon the basis of a test or sampling of the dealer's available records or other information relating to the sales made by such dealer for a representative period, determine the proper basis for assessing tax. (See s. 202.34, F.S.)

Taxpayer has not provided sufficient records to support a revision to the tax assessed. Therefore, the assessment is sustained. The following suggested information if provided in a Petition for Reconsideration may be helpful in supporting the taxpayer's assertion.

- Copy of Terms and Conditions effective for each year in the audit period.
- Copy of Billing Statements during the audit period which include the data services (Clear Choice Data (T-Mobile), ½ GB Cellular Data, and My Choice Data – 256 MB).
- Copy of Service Plans effective for each year in the audit period which include the data services (Clear Choice Data (T-Mobile), ½ GB Cellular Data, and My Choice Data – 256 MB).

#### CONCLUSION

Taxpayer did not properly collect and remit CST during the audit period. Based on the information presented, the assessment is sustained.

Enclosed for your convenience is an audit remittance coupon. Payment, including interest to the postmark date of payment, should be returned in the enclosed envelope, along with the audit remittance coupon. The check should reflect the audit number.

#### TAXPAYER APPEAL RIGHTS

This Notice of Decision constitutes the final position of the Department unless a Petition for Reconsideration is filed on a timely basis, in which event the Notice of Reconsideration will be the Department's final position. The requirements for a Petition for Reconsideration are set forth below.

Pursuant to Section 72.011(2), F.S., and Rule Chapter 12-6, F.A.C., the assessment is final as of the date of this Notice of Decision unless you file a written Petition for Reconsideration postmarked within thirty (30) days of the date of this Notice of Decision and addressed to Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, FL 32314-7443.



The Petition for Reconsideration must contain new facts or arguments; otherwise, it is subject to dismissal.

Absent a timely-filed Petition for Reconsideration, the assessment reflected in the Notice of Decision is final, and you have three alternatives for further review:

- 1) Pursuant to Section 72.011, F.S., and Rule Chapter 12-6, F.A.C., you may contest the assessment in circuit court by filing a complaint with the clerk of the court. **THE COMPLAINT MUST BE RECEIVED BY THE CLERK OF THE CIRCUIT COURT WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF DECISION.** Section 72.011(3), F.S., provides that no circuit court action may be brought unless you pay to the Department the amount of taxes, penalties, and accrued interest assessed by the Department that are uncontested and tender or post a bond for the remaining disputed amounts unless a waiver is granted, as provided in that section. Failure to pay the uncontested amounts will result in the dismissal of the action and imposition of an additional penalty in the amount of twenty-five percent (25%) of the tax assessed. The requirements of Chapter 72, F.S., are jurisdictional;
- 2) Pursuant to Sections 72.011, 120.569, 120.57, and 120.80(14), F.S., and Rule Chapter 12-6, F.A.C., you may contest the assessment in an administrative forum by filing a petition for a Chapter 120 administrative hearing with the Department of Revenue, Office of General Counsel, Post Office Box 6668, Tallahassee, FL 32314-6668. **THE PETITION MUST BE RECEIVED BY THE DEPARTMENT WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF DECISION.** The petition should conform to the requirements of the Uniform Rules promulgated pursuant to Section 120.54(5), F.S. Section 120.80(14), F.S., provides that before you file a petition under Chapter 120, F.S., you must pay to the Department the amount of taxes, penalties, and accrued interest that are not being contested. Failure to pay those amounts will result in the dismissal of the petition and imposition of an additional penalty in the amount of twenty-five percent (25%) of the tax assessed. Mediation pursuant to Section 120.573, F.S., is not available. The requirements of Section 72.011(2) and (3)(a), F.S., are jurisdictional for any action contesting an assessment or refund denial under Chapter 120, F.S.; OR
- 3) Pursuant to Section 120.68, F.S., you may contest the assessment in the appropriate district court of appeal by filing a Notice of Appeal meeting the requirements of Rule 9.110, Florida Rules of Appellate Procedure, with i) the Clerk of the Department of Revenue, Office of General Counsel, Post Office Box 6668, Tallahassee, FL 32314-6668 and ii) with the clerk of the appropriate district court of appeal, accompanied by the applicable filing fee. **THE NOTICE OF APPEAL MUST BE FILED WITH BOTH THE DISTRICT COURT OF APPEAL AND THE DEPARTMENT OF REVENUE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS NOTICE OF DECISION.**

Should you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

*William Roberts*

William Roberts  
Tax Conferee  
Technical Assistance & Dispute Resolution  
(850)717-7658

Enclosure: Audit Remittance Coupon

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT**

Persons needing an accommodation to participate in any proceeding before the Technical Assistance and Dispute Resolution Office should contact that office at 850-617-8346, or you may also call via the Florida Relay System at 800-955-8770, at least five working days before such proceeding.

### TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 200249849

Respondent code: 44

Tax type: Other Taxes

Correspondence type: Informal Protest

If you need technical assistance accessing the survey, please email Douglas Charity at [douglas.charity@floridarevenue.com](mailto:douglas.charity@floridarevenue.com).

Thank you.



DR-839  
N. 05/04

### Audit Remittance Coupon

March 15, 2023

C/O TAX DEPARTMENT  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

Business Partner: 2235334  
Audit Number : 200249849  
Audit Period : 08/01/2015 - 07/31/2018  
Tax Type : Communications Services Tax

To ensure proper credit, please detach and include the preprinted remittance coupon below when submitting payments.

If additional interest is applicable, please refer to the additional interest instructions on the enclosed correspondence.

You can pay bills online for many taxes using your credit card or the ACH-Debit method at [www.myflorida.com/dor](http://www.myflorida.com/dor).

DR-839  
N. 05/04

Detach For Processing  
**Audit Remittance Coupon**

Service Center Pittsburgh Service Center
Business Partner 2235334
Audit Number 200249849

Make check or money order payable to:  
Florida Department of Revenue  
5050 West Tennessee Street  
Tallahassee, Florida 32399-0100

Check Number
Tax Type Communications Services Tax
Remittance Total

C/O TAX DEPARTMENT  
T MOBILE SOUTH LLC  
12920 SE 38TH ST  
BELLEVUE WA 98006-1350

0600 0 20180731 0063004059 7 6200249849 0000 6