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

VERIZON COMMUNICATIONS, INC. & AFFILIATES, foreign corporations,

Plaintiff, **Case No:**

vs.

FLORIDA DEPARTMENT OF REVENUE, an agency of the State of Florida,

Defendant.
_____/

COMPLAINT

Plaintiff, Verizon Communications, Inc. & Affiliates ("Verizon" or "Plaintiff"), by and through its undersigned counsel, sues the State of Florida, Department of Revenue ("Department" or "Defendant") to contest the Notice of Proposed Refund Denial, dated November 22, 2024 (the "NOPRD"). A true and correct copy of the NOPRD is attached hereto as **Exhibit A**. Through the NOPRD, the Department denied Plaintiff's claim for a corporate income tax refund for the 2022 tax year (the "Period").

THE PARTIES

1. Plaintiff, Verizon, is a Delaware corporation authorized to do business in Florida.

2. The Defendant Department of Revenue, is an agency of the State of Florida.

JURISDICTION AND VENUE

3. This is an action to contest the Department's denial of Verizon's refund claim for corporate income taxes paid for the Period.

4. This Court has jurisdiction over this matter pursuant to section 72.011, Florida Statutes.

5. There is no uncontested tax or interest that requires Verizon's payment to the state to be in compliance with section 72.011(3)(a), Florida Statutes.

6. This Complaint is timely-filed and any and all jurisdictional requirements have been met. All conditions precedent to this action have been performed or waived.

STATEMENT OF THE CASE

7. This action contests the denial of Verizon's refund claim filed by Verizon for the Period for corporate income taxes pursuant to Chapter 220, Florida Statutes (the "Refund Claim").

8. During the Period, Plaintiff provided various services to Florida residents that included data/internet and voice services (the "Services").

9. Plaintiff timely-filed a consolidated Florida corporate income tax return on Form F-1120 for the Period.

10. On its originally-filed F-1120 for the Period, Plaintiff's tax return reflected the following items:[1]

[1] The list of items reflects only those items specific to the calculation of the tax refund reported in the Refund Claim and which has been denied in the NOPRD.

a. It excluded certain intercompany sales from its sales factor numerator and denominator.

b. It generally sourced the sales of the Services to Florida based on the customer's NPA-NXX number and the FCC license area to which the number is assigned. As a result, certain receipts from the sales of the Services were included in Plaintiff's sales factor numerator for apportionment purposes.

c. It utilized a three-factor apportionment formula comprised of property, payroll and double weighted sales, as provided in section 220.15, Florida Statutes, to apportion its income to Florida.

11. In accordance with section 220.153, Florida Statutes, the Florida Department of Economic Opportunity properly approved Verizon's application to apportion its adjusted federal income under section 220.153. The approval affords Verizon an annual election to either apportion its Florida income using either a single sales factor or the three-factor apportionment formula provided in section 220.15, Florida Statutes.

12. Pursuant to section 213.345, Florida Statutes, the time to file a claim for refund expires November 1, 2026. On or about July 27, 2024, Plaintiff timely filed an amended Florida corporate income tax return on Form F-1120X seeking a refund of overpaid tax for the Period - the Refund Claim - in the amount of $24,719,438.00.

13. The basis for the Refund Claim is as follows:

a. Verizon should include certain intercompany sales in its sales factor numerator and denominator. The portion of the refund associated with this position is $3,702,736.00.

b. The receipts from the sales of Services to Florida residents should not have been included in Plaintiff's sales factor numerator for apportionment purposes. In support, Plaintiff relied on Rule 12C-1.0155(2)(l), F.A.C. (the "COP Rule"). The portion of the refund associated with this position is $11,517,914.00.

c. To the extent that Plaintiff's sales of Services are excluded from the sales factor numerator, Plaintiff wishes to apportion its income to Florida using a single sales factor as provided in section 220.153, Florida Statutes, in lieu of the three-factor apportionment formula provided in section 220.15, Florida Statutes. The portion of the refund associated with the change to single sales factor is $9,498,788.00.

14. On November 22, 2024, the Department issued the NOPRD denying the Refund Claim.[2] The Plaintiff did not file an informal protest to the NOPRD and as such, in accordance with Rule 12-6.932(1), F.A.C., the NOPRD became final on January 21, 2025.

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[2] Please note that the amount of tax at issue does not tie to the Refund Claim to which the NOPRD relates. The Refund Claim is for $24,719,438.59. The Department's NOPRD lists the amount of the Refund Claim as $21,749,409.49.

15. Section 72.011(2)(a), Florida Statutes, requires a taxpayer to contest a denial of a refund of any tax, interest or penalty paid under chapter 220 within 60 days after the date the denial becomes final (in this case, March 22, 2025). By this action, Plaintiff timely challenges the Department's denial of the Refund Claim.

STATEMENT OF MATERIAL FACTS

16. Plaintiff, through its affiliates, is one of the world's leading providers of communications, technology, information, and entertainment products and services to consumers, businesses, and government entities.

17. The Refund Claim relates to the inclusion of Plaintiff's intercompany sales that qualified as "sales" for purposes of the sales factor pursuant to Fla. Admin. Code r. 12C-1.0155(1)(j) and the ruling in *Dept. of Revenue v. Anheuser-Busch,* 527 So. 2d 877 (Fla. Dist. Ct. App. 1988).

18. The Refund Claim also relates to the provision of the Services by numerous entities included in the Plaintiff's Florida consolidated tax return, including but not limited to, Cellco Partnership, Alltel Corporation, and Airtouch Cellular, Inc. (the "Subsidiaries"), and certain disregarded entities owned by the Subsidiaries (collectively, the "Service Providers").

a. During the Period, approximately ninety percent of Plaintiff's receipts from the sale of Services were from the provision of internet access services. The remaining ten percent of Plaintiff's Services receipts were from voice services.

b. The majority of the costs incurred by the Service Providers during the Period to provide the Services to Florida residents were incurred outside Florida.

c. During the Period, the Service Providers provided the Services to Florida residents from locations outside the state.

d. Relying on the COP Rule, the Refund Claim sourced the receipts from the sale of Services based on the location of where the Service Providers incurred the costs to perform the Services.

19. In accordance with section 220.153, Florida Statutes, on November 10, 2014, the Florida Department of Economic Opportunity approved in writing Verizon's application to qualify as a taxpayer who is eligible to apportion its adjusted federal income under Section 220.153.

APPLICABLE LAW

Apportionment– Inclusion of Intercompany Sales in Sales Factor

20. When, as in this case, a taxpayer's consolidated group engages in intercompany sales, those intercompany sales must be included in the taxpayer's Florida sales factor.

21. The Department of Revenue codified the holding in *Dept. of Revenue v. Anheuser-Busch,* 527 So. 2d 877 (Fla. Dist. Ct. App. 1988), by promulgating Fla. Admin. Code r. 12C-1.0155(1)(j), which states: "Intercompany sales. When a consolidated return is filed, intercompany sales may be included in the sales

factor. Indications that the amounts may be included as sales include the following factors:

1. Amounts called sales on the books;
2. Amounts invoiced as sold to related party;
3. Actual payment from related party; or
4. Amounts included in consolidated federal income tax return as "gross receipts or sales."

22. The intercompany receipts at issue herein meet the requirements outlined in Fla. Admin. Code r. 12C-1.0155(1)(j), and as such, Plaintiff was required to include these receipts in the numerator and denominator of its sales factor.

Apportionment – Sourcing of Services for Sales Factor

23. When, as in this case, there are sales of services, the composition of the sales factor is determined by the COP Rule. Under the COP Rule, sales are attributed to Florida if the "income producing activity" responsible for generating the sales revenue is performed by the taxpayer in this state. If the income producing activity is performed within and outside Florida, the COP Rule states that the sales will be attributed to this state only if the greater proportion of the income producing activity is performed in Florida. For purposes of the COP Rule, the "income producing activity" is defined by reference to the "costs of performance."

24. Plaintiff was required to apportion its federal adjusted gross income to Florida under either section 220.15 or 220.153, Florida Statutes, because it was doing business both within and outside Florida.

25. Plaintiff was required to apportion its federal adjusted gross income to Florida in accordance with the sales factor referenced in section 220.15(1), Florida Statutes.

26. The Service Providers were required to follow the COP Rule during the Period for purposes of sourcing the receipts derived from providing the Services to Florida residents.

27. The Service Providers' reliance on the COP Rule to source receipts from the Services to Florida residents during the Period is supported further by two recent decisions of the Circuit Court – *Target Enterprises, Inc. v. Department,* 2021-CA-002158 (Nov. 28, 2022) and *Billmatrix Corporation v. Department,* 2020-CA-000435 (Mar. 1, 2023).

Apportionment – Use of Single Sales Factor

28. Section 220.15, Florida Statutes, provides that corporations that are doing business both within and outside Florida are required to apportion their federal adjusted gross income to the state.

29. Corporations are generally required to apportion their federal adjusted gross income to Florida in accordance with the three-factor apportionment formula outlined in section 220.15, Florida Statutes. The apportionment formula

provided by section 220.15(1), Florida Statutes, is comprised of a double-weighted sales factor, a property factor, and a payroll factor.

30. A taxpayer who applies and demonstrates to the Department of Commerce that, within a 2-year period beginning on or after July 1, 2011, it has made qualified capital expenditures equal to or exceeding $250 million may apportion its adjusted federal income solely by the sales factor set forth in s. 220.15(5).

COUNT ONE

THE REFUND CLAIM PROPERLY INCLUDES CERTAIN INTERCOMPANY SALES IN ITS FLORIDA SALES FACTOR

31. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 30 as if fully set forth herein.

32. Certain members of Plaintiff's affiliated group sell goods and/or services to other members of the affiliated group, creating intercompany receipts.

33. Some of these intercompany receipts are (i) amounts called sales on the Plaintiffs books; (ii) amounts invoiced as sold to related party; (iii) incorporate actual payment from related party; and/or are (iv) amounts included in consolidated federal income tax return as "gross receipts or sales.

34. As such, these intercompany receipts possess the indicia of "sales."

35. Therefore, these intercompany receipts meet the requirements outlined in Fla. Admin. Code r. 12C-1.0155(1)(j) and *Dept. of Revenue v. Anheuser-Busch,* 527 So. 2d 877 (Fla. Dist. Ct. App. 1988).[3]

36. Because Plaintiff correctly included these receipts in the numerator and denominator of its sales factor pursuant to applicable Florida law, the Department acted improperly by denying this portion of the Refund Claim.

COUNT TWO

FLORIDA LAW REQUIRES PLAINTIFF USE THE COP RULE TO APPORTION THE SERVICE RECEIPTS

37. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 36 as if fully set forth herein.

38. Rule 12C-1.0155(2), F.A.C., defines the term "Florida sale" for purposes of the sales factor numerator of the apportionment formula provided by section 220.15(1), Florida Statutes.

39. Rule 12C-1.0155(2)(a) – (k), F.A.C., outlines eleven specific categories of income and explains what it means to have a "Florida sale" with respect to each such category of income.

40. The COP Rule is a catch-all category for "other sales" falling outside the income categories of Rule 12C-1.0155(2)(a) – (k), F.A.C.

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[3] As noted in the audited workpapers for Plaintiff's 2018-2020 tax years (Audit number 200301261), the Florida auditors agreed that these same intercompany receipts at issue herein should be treated as sales, includible in the Plaintiff's sales factor.

41. The receipts earned by the Service Providers from performing the Services for its customers during the Period are not described by the categories of income defined in Rule 12C-1.0155(2)(a) – (k), F.A.C.

42. Because the receipts earned by the Service Providers from performing the Services for its customers during the Period are not described by the categories of income defined in Rule 12C-1.0155(2)(a) – (k), F.A.C., the COP Rule contains the correct sourcing rule.

43. The Refund Claim correctly relied on the COP Rule to source the Service Providers' Services receipts during the Period.

44. Because the Service Providers correctly used the COP Rule to source the receipts from performing the Services during the Period, the Department acted improperly by denying this portion of the Refund Claim.

COUNT THREE

FLORIDA'S RULE ADDRESSING THE SOURCING OF "TELECOMMUNICATIONS SERVICES" DOES NOT APPLY TO THE RECEIPTS EARNED BY THE SERVICE PROVIDERS FROM PROVIDING INTERNET ACCESS SERVICES TO FLORIDA CUSTOMERS

45. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 44 as if fully set forth herein.

46. Rule 12C-1.0155(2)(g), F.A.C., (the "Telecom Rule") provides that "gross receipts from telecommunications services include those earned by the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

47. Certain Service Providers within the Verizon affiliated group do not offer services to the public and as such, the Telecom Rule cannot apply to their receipts.

48. With respect to the remaining Service Providers within the Verizon affiliated group, the Telecom Rule does not apply to their receipts.

49. For purposes of the Telecom Rule, the term "telecommunications services" was historically defined by reference to section 203.012(5)(b), Florida Statutes.

50. Section 203.012(5)(b), Florida Statutes, defined "telecommunications services" by specifically excluding, *inter alia*, internet access services.

51. Following the repeal of section 203.012, Florida Statutes, the Telecom Rule no longer contains a definition of "telecommunications services."

52. Section 203.012, Florida Statutes, was replaced with section 202.11, Florida Statutes, which similarly defines "communication services" to exclude internet access services.

53. The definition of "telecommunications services" in the Telecom Rule retains the same meaning following the repeal of section 203.012, Florida Statutes, and as such, "internet access services" are not telecommunications services.

54. Section 202.11, Florida Statutes, provides that "Internet access service" has the same meaning as ascribed to the term "Internet access" by s. 1105(5) of the Internet Tax Freedom Act, 47 U.S.C. s. 151.

55. 47 U.S.C. § 151, s. 1105(5) defines the term "Internet access" as follows:

> (A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;
> (B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—
> (i) to provide such service; or
> (ii) to otherwise enable users to access content, information or other services offered over the Internet;
> (C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;
> (D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and
> (E) includes a homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

56. The data/internet services provided by the Service Providers are properly considered "internet access services" excluded from the definition of "telecommunications services" as defined by section 203.012(5)(b), Florida Statutes, prior to its repeal.

57. Because the data/internet services provided by the Service Providers are excluded from the definition of "telecommunications services" outlined in the

Telecom Rule, the Telecom Rule does not apply to the receipts earned from the Service Providers for providing data/internet services to Florida customers.

COUNT FOUR

EVEN IF THE TAXPAYER PROVIDED TELECOM SERVICES, THE TELECOM RULE DOES NOT APPLY TO THE RECEIPTS EARNED FROM PROVIDING SERVICES BECAUSE IT IS UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION

58. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 57 as if fully set forth herein.

59. The Telecom Rule provides that "gross receipts from telecommunications services include those earned by the offering of telecommunications for a fee directly to the public..."

60. The Telecom Rule makes clear that sales of telecommunication services to "the public" are treated as a "Florida sales" for apportionment purposes, but "non-public" sales of voice services are not.

61. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides: "[N]or shall any State ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

62. A state tax will be invalidated under the Equal Protection Clause where the tax classification is arbitrary, there being no rational basis for the distinction between classes. *Armour v. City of Indianapolis*, 566 U.S. 673 (2012).

63. The Telecom Rule distinguishes between telecommunications services provided to the public (treated as a Florida sale for apportionment purposes) and telecommunications services provided to non-public customers.

64. The Telecom Rule is unconstitutional on its face and as-applied to Plaintiff under the Equal Protection Clause because there is no rational basis for classifying and taxing public sales of telecommunications services differently than non-public sales of telecommunications services.

65. Because the Telecom Rule is unconstitutional on its face and as-applied to Plaintiff under the Equal Protection Clause, Plaintiff's sales of services cannot be sourced to Florida for apportionment purposes based on the Telecom Rule.

COUNT FIVE

EVEN IF THE TAXPAYER PROVIDED TELECOM SERVICES, THE TELECOM RULE DOES NOT APPLY TO THE RECEIPTS EARNED FROM PROVIDING SERVICES BECAUSE IT IS UNCONSTITUTIONAL UNDER THE INTERNAL CONSISTENCY TEST OF THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

66. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 65 as if fully set forth herein.

67. In order for a tax to be fairly apportioned for purposes of satisfying Commerce Clause scrutiny, it must be internally and externally consistent. *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 169 (1983).

68. Internal consistency requires that, for a tax to be fairly apportioned, "the imposition of a tax identical to the one in question by every other State would add no burden to interstate commerce that intrastate commerce would not also bear. This test asks nothing about the degree of economic reality reflected by the tax,

but simply looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce interstate. A failure of interstate commerce shows as a matter of law that a State is attempting to take more than its fair share of taxes from the interstate transaction, since allowing such a tax in one State would place interstate commerce at the mercy of those remaining State that might impose an identical tax." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 185(1995); *See also Comptroller of Md. v. Wynne*, 575 U.S. 542 (2015).

69. The Telecom Rule states that "Telecommunications charges are Florida sales if the communication originates or terminates in Florida and the bill is charged to a Florida telecommunications number or device, Florida telephone number or telephone, or Florida customer."

70. Accordingly, the Telecom Rule defines a Florida sale to include receipts that are assigned to a Florida phone number as well as receipts assigned to a Florida resident. The receipts assigned to a Florida telecommunications number or device, a Florida telephone number or telephone, and/ or a Florida customer could at the same time also be assigned to a different state.[4]

71. If every other state imposed the same sourcing methodology, then there is a substantial risk of multiple taxation and interstate commerce (*i.e.*, receipts

[4] As an example, a cell phone may have a (305) Florida area code phone number but the cell phone account owner may be a resident of Georgia.

associated with a number that could be assigned to multiple states) would be taxed at a higher burden than intrastate commerce (*i.e.*, receipts that could only be associated with one state).[5]

72. As such, the Telecom Rule is unconstitutional on its face because it violates the Commerce Clause requirement for internal consistency. Therefore, the Telecom Rule cannot be used to source Plaintiff's sales of services to Florida.

COUNT SIX

EVEN IF THE TAXPAYER PROVIDED TELECOM SERVICES, THE TELECOM RULE DOES NOT APPLY TO THE RECEIPTS EARNED FROM PROVIDING SERVICES BECAUSE IT IS UNCONSTITUTIONAL UNDER THE EXTERNAL CONSISTENCY TEST OF THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

73. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 72 as if fully set forth herein.

74. External consistency looks to the economic justification for the state's claim upon the value taxed, to discover whether a state's tax reaches beyond that portion of value that is fairly attributable to economic activity within the taxing state. External consistency similarly requires that a taxing statute not be arbitrary or capricious.

75. Because (1) the Telecom Rule defines a Florida sale to include receipts that are assigned to a Florida phone number as well as receipts assigned to a

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[5] As an example, receipts from a call that originated in Florida from a (305) Florida area code phone number and terminated in Georgia, where the cell phone account owner was a resident of Georgia, would be assigned to both Florida and Georgia; these receipts would be sourced to both Florida and Georgia. Receipts from a call that originated in Florida from a (305) Florida area code and terminated in Florida would be assigned to Florida; these receipts would only be assigned to Florida.

Florida resident and (2) a Florida telecommunications number or device, a Florida telephone number or telephone, and/ or a Florida customer could all be assigned to different states, the resulting tax applied to Plaintiff's sales results in Florida reaching beyond the portion of value that it fairly attributable to Verizon's economic activity within Florida. As such, the Telecom Rule is unconstitutional as applied to Plaintiff because it violates the Commerce Clause requirement of external consistency.

76. The Telecom Rule is also arbitrary and capricious because it is not supported by necessary facts and it is irrational as applied to current industry standards.

77. The Telecom Rule sources telecommunications sales to Florida if a call is intrastate or if the call originates or terminates in Florida. Thus, the Telecom Rule requires a telecommunications service provider to source its sales based on individual calls made by the taxpayer's customer.

78. Verizon does not generally charge its customers on a per-call basis and instead, it charges a set monthly service fee (which is a standard industry practice). In any given month, a customer will most likely make intrastate calls, calls from Florida to another state, and – if the owner of the phone travels - even calls that both originate and terminate outside Florida.

79. The Telecom Rule provides no basis for attributing a monthly service fee to Florida and as such, it is impossible for today's telecommunication industry to apply the Telecom Rule. Therefore, the rule is not supported by necessary facts

and it is irrational, and thereby provides arbitrary and capricious results, thereby violating the Commerce Clause requirement of external consistency.

80. Because the Telecom Rule is unconstitutional as-applied to Plaintiff under the Commerce Clause, the Telecom Rule cannot be used to source Plaintiff's sales of services to Florida.

COUNT SEVEN

EVEN IF THE TAXPAYER PROVIDED TELECOM SERVICES, THE TELECOM RULE DOES NOT APPLY TO THE RECEIPTS EARNED FROM PROVIDING SERVICES BECAUSE IT IS UNCONSTITUTIONAL UNDER THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

81. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 80 as if fully set forth herein.

82. The Commerce Clause of the United States Constitution provides: "[T]he Congress shall have Power...[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3.

83. A determination that a state tax violates the Commerce Clause may be made on the basis of either discriminatory purpose or discriminatory effect. *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270 (1984).

84. The provision of telecommunications services involves interstate commerce.

85. The Telecom Rule defines gross receipts from telecommunication services to include only "those earned by the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available

directly to the public, regardless of the facilities used." Rule 12C-1.0155(2)(g), F.A.C.

86. As such, the Telecom Rule applies a unique taxing scheme to telecommunication services provided to the public, while applying a different taxing scheme to telecommunication services provided to non-public customers.

87. There is no legitimate state interest in promoting telecommunication services provided to non-public customers versus promoting telecommunication services provided to the public.

88. The Telecom Rule also places an undue burden on interstate commerce because it imposes market sourcing basis for apportioning telecommunication services sales to Florida while most other sales are sourced based on the location of income producing activity (based on costs of performance).

89. There is no legitimate state interest in using a different sourcing methodology for telecommunications services sales than for other sales.

90. Because the Telecom Rule has a discriminatory effect on interstate commerce with no legitimate state interest for that discriminatory effect, it is unconstitutional under the Commerce Clause.

COUNT EIGHT

EVEN IF THE TAXPAYER PROVIDED TELECOM SERVICES, THE TELECOM RULE DOES NOT APPLY TO THE RECEIPTS EARNED FROM PROVIDING THE SERVICES BECAUSE IT IS UNCONSTITUTIONAL UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION

91. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 90 as if fully set forth herein.

92. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that "nor shall any State deprive any person of ... property, without due process of law."

93. The Due Process Clause prevents a state from imposing an income-based tax on "value earned outside its borders." *ASARCO Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 315 (1982).

94. Because (1) the Telecom Rule defines a Florida sale to include receipts that are assigned to a Florida phone number as well as receipts assigned to a Florida resident and (2) a Florida telecommunications number or device, a Florida telephone number or telephone, and/ or a Florida customer could at the same time also be assigned to a different state, the resulting apportionment calculation applied to Plaintiff's sales could include a call occurring entirely outside of Florida. For example, if a Georgia resident with a Florida number called another Georgia resident with a Florida number, the Telecom Rule would treat receipts associated with that call as Florida receipts which necessarily results in Florida taxing "value earned outside its borders." For these reasons, the Telecom Rule is unconstitutional as applied to Plaintiff because it violates the Due Process Clause.

COUNT NINE

EVEN IF THE TAXPAYER PROVIDED TELECOM SERVICES, THE TELECOM RULE DOES NOT APPLY TO THE RECEIPTS EARNED FROM PROVIDING SERVICES BECAUSE IT IS AN INVALID EXERCISE OF DELEGATED LEGISLATIVE AUTHORITY

95. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 94 as if fully set forth herein.

96. Section 120.52(8), Florida Statutes, prohibits rules that are deemed to be an invalid exercise of delegated legislative authority. *Golden West Financial Corporation v. Florida Dept. of Revenue,* 975 So. 2d 567 (Fla. 1st DCA 2008).

97. Section 120.52(8)(e), Florida Statutes, defines a rule as being an invalid exercise of delegated legislative authority if "[t]he rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational."

98. The Telecom Rule is arbitrary and capricious because it is not supported by necessary facts and it is irrational.

99. The Telecom Rule sources telecommunications sales to Florida if a call is intrastate or if the call originates or terminates in Florida. Thus, the Telecom Rule requires a telecommunications service provider to source its sales based on individual calls made by the taxpayer's customer.

100. Verizon does not generally charge its customers on a per-call basis and instead, it charges a set monthly service fee (which is a standard industry practice). In any given month, a customer will most likely make intrastate calls, calls from Florida to another state, and – if the owner of the phone travels - even calls that both originate and terminate outside Florida.

101. The Telecom Rule provides no basis for attributing a monthly service fee to Florida and as such, it is impossible for today's telecommunication industry to apply the Telecom Rule. Therefore, the rule is not supported by necessary facts and it is irrational, and it is arbitrary and capricious.

102. Because the Telecom Rule is an invalid exercise of delegated legislative authority as defined by section 120.52(8), Florida Statutes, the Telecom Rule cannot be used to source Plaintiff's sales of services to Florida.

COUNT TEN

THE REFUND CLAIM PROPERLY UTILIZES A SINGLE SALES FACTOR IN LIEU OF THE STANDARD THREE-FACTOR APPORTIONMENT FORMULA TO APPORTION PLAINTIFF'S INCOME TO FLORIDA

103. Plaintiff realleges and reincorporates the allegations of paragraphs 1 through 102 as if fully set forth herein.

104. To the extent this court agrees that Verizon's sales factor should not include sales of Services in the numerator, Verizon elects to apportion its adjusted federal income for the 2022 taxable year using the single sales apportionment factor method as provided under section 220.153, Florida Statutes.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against the Department and in favor of the Plaintiff:

(1) approving the portion of the Refund Claim relating to the inclusion of intercompany sales in the numerator and denominator of Plaintiff's sales factor for apportionment purposes;

(2) approving the portion of the Refund Claim relating to the tax treatment of Plaintiff's receipts from providing the Services because Plaintiff properly used the COP Rule to source such receipts;

(3) confirming that the Telecom Rule does not apply to Plaintiff's receipts from providing the Services to Florida customers;

(4) confirming the Telecom Rule is unconstitutional under the Equal Protection Clause of the United States Constitution both facially and as-applied to Plaintiff;

(5) confirming the Telecom Rule is facially unconstitutional under the Commerce Clause of the United States Constitution because it fails the test of internal consistency;

(6) confirming the Telecom Rule is unconstitutional under the Commerce Clause of the United States Constitution as-applied to Plaintiff because it fails the test of external consistency;

(7) confirming the Telecom Rule is facially unconstitutional under the Commerce Clause of the United States Constitution because it places an undue burden on interstate commerce;

(8) confirming the Telecom Rule is unconstitutional under the Due Process Clause of the United States Constitution as-applied to Plaintiff;

(9) invalidating the Telecom Rule because it is an invalid exercise of delegated legislative authority;

(10) confirming that Plaintiff properly used single sales factor apportionment in lieu of the standard three-factor apportionment formula; and

(11) such other relief as is just and equitable.

DATED: March 17, 2025.

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