

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

VODAFONE AMERICAS INC., a foreign  
corporation,  
  
Plaintiff,  
  
v.  
  
STATE OF FLORIDA, DEPARTMENT OF  
REVENUE, a state agency,  
  
Defendant.

Case No. 37 2011 CA 3496

FILED  
CIRCUIT COURT  
LEON COUNTY, FLORIDA  
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COMPLAINT

Plaintiff, Vodafone Americas Inc ("VAI"), by and through counsel sues the State of Florida Department of Revenue (hereinafter "Defendant" or "Department") and alleges as follows:

The Parties

1. VAI is a foreign corporation with its principal place of business in Denver, Colorado.
2. The Department is an agency established under the laws of the State of Florida.

Jurisdiction and Venue

3. This is an action to contest the Department's denial of VAI's refund claim for corporate income taxes.
4. Jurisdiction over this controversy is properly vested in this Court pursuant to Fla. Stat. § 72.011 and Article V, § 20(c)(3) of the Florida Constitution. VAI's Complaint is timely and any and all jurisdictional requirements under Fla. Stat. § 72.011 have been met.

5. Venue is proper in this Court pursuant to Fla. Stat. § 72.011(4).

#### Nature of the Controversy

6. This action seeks to resolve a current controversy between VAI and the Department concerning the Department's denial of certain corporate income tax refund claims filed by VAI (the "Claims").

7. The Claims related to VAI's fiscal years ending March 31, 2006 through March 31, 2009 (collectively, the "Claim Period").

8. VAI's primary argument in support of the Claims was that it lacked sufficient nexus with the State of Florida to be liable for corporate income taxes for the Claim Period.

9. In the alternative, VAI maintained, *inter alia*, that in the event that it did have sufficient nexus with the State of Florida to be liable for corporate income taxes for the Claim Period, the disputed receipts should have be characterized as nonbusiness income allocated to VAI's commercial domicile outside the State of Florida.

10. The Department denied the Claims concluding that, *inter alia*, VAI had a sufficient nexus with the State of Florida for corporate income tax purposes and that the receipts were properly characterized as business income apportioned to the State of Florida.

#### Factual and Legal Allegations

11. All factual allegations below are true and correct for all periods relevant to the Claim Period.

12. VAI is a subchapter C corporation for federal income tax reporting purposes.

13. VAI is incorporated under Delaware law and commercially domiciled in Denver, Colorado.

14. VAI owns 100% of the membership interests in JV PartnerCo LLC, a Delaware

limited liability company commercially domiciled in Denver, Colorado.

15. VAI owns 100% of the membership interests in Vodafone Holdings LLC, a Delaware limited liability company commercially domiciled in Denver, Colorado.

16. VAI directly owns 51.19% of the membership interests in PCS Nucleus LP, a Delaware limited partnership commercially domiciled in Denver, Colorado.

17. The remaining 48.21% of the membership interests of PCS Nucleus LP is owned indirectly by VAI through its ownership interest in Vodafone Holdings LLC.

18. JV PartnerCo LLC owns 38.74% of the membership interests in Celco Partnership ("Celco").

19. PCS Nucleus LP owns 6.26% of the membership interests in Celco.

20. Indirectly through JV PartnerCo LLC and PCS Nucleus LP, VAI owns a 45% interest in Celco.

21. Verizon Communications, Inc., an unrelated entity from VAI, Vodafone Holdings, LLC, JV PartnerCo LLC and PCS Nucleus LP, owns the remaining 55% of the membership interests in Celco.

22. Celco is a general partnership formed in Delaware and governed by the Delaware Revised Uniform Partnership Act, Title 6 of the Delaware Code, Section 15-101, *et seq.*

23. Celco and its subsidiaries do business under the name of "Verizon Wireless."

24. Celco is registered and qualified to do business in the State of Florida.

25. Celco was engaged in business in the State of Florida for all periods relevant to this controversy.

26. Celco's business operations are governed by the Celco Partnership Amended

and Restated Partnership Agreement between JV PartnerCo LLC, PCS Nucleus LP, and AirTouch Paging (collectively, the Vodafone partners and all of which are wholly owned subsidiaries of VAI other than AirTouch Paging which has since been dissolved) and Bell Atlantic Cellular Holdings, L.P., NYNEX PCS Inc. and PCSCO Partnership (collectively, the Verizon partners and all of which are wholly owned subsidiaries of Verizon Communications, Inc.) and, to a more limited extent, by the Alliance Agreement between Vodafone Group PLC (the indirect foreign parent of VAI) ("Vodafone") and Bell Atlantic Corporation n/k/a Verizon Communications, Inc. (the Cellco Partnership Amended and Restated Partnership Agreement and the Alliance Agreement are collectively referred to hereinafter as the "Agreement").

27. Under the Agreement, VAI, an indirect, minority owner of Cellco, was precluded from having direct or indirect responsibility for the day-to-day operations of Cellco's business.

28. VAI was not directly or indirectly involved and did not otherwise participate in any of the day-to-day operations of Cellco.

29. Under the Agreement, VAI, an indirect, minority owner of Cellco, was precluded from having any direct or indirect control over the management of Cellco.

30. VAI did not directly or indirectly exercise any control over the management of Cellco.

31. Under the Agreement, VAI, an indirect, minority owner of Cellco, was precluded from having direct or indirect control over the business conducted by Cellco.

32. VAI did not directly or indirectly exercise control over the business conducted by Cellco.

33. The Agreement contains non-compete provisions that preclude VAI from

actively participating in Celco's line of business.

34. VAI's sole business activities related to the management of its passive investment in Celco at its commercial domicile outside the State of Florida.

35. No agency or similar relationship existed between Celco and VAI, as an indirect, minority owner of Celco.

36. VAI has and had no physical presence the State of Florida.

37. VAI has and had no business activity in any state outside of the state of its commercial domicile.

38. VAI filed the Claims in December 2009 requesting refunds of corporate income taxes paid to the Department on the basis that, *inter alia*, it lacked sufficient nexus with the State of Florida to support an obligation to pay corporate income taxes.

39. By letter dated January 12, 2010, the Department denied the Claims arguing that VAI had sufficient nexus with Florida to support the obligation to pay corporate income taxes (the "Denial").

40. By letter dated March 12, 2010, VAI timely protested the Denial again asserting lack of sufficient nexus with the State of Florida and, *inter alia*, asserting that even if a sufficient nexus exists the receipts were nonbusiness income allocable to VAI's commercial domicile outside the State of Florida.

41. By letter dated October 11, 2011, the Department issued a Notice of Decision of Refund Denial (the "Notice") again asserting that VAI had sufficient nexus with the State of Florida and that the receipts were business income properly apportioned to the State of Florida. A true, complete and correct copy of the Notice is attached hereto as Exhibit A.

#### COUNT I

**THE RELATIONSHIP BETWEEN VAI AND THE STATE OF FLORIDA IS  
INSUFFICIENT TO SUPPORT AN OBLIGATION TO PAY CORPORATE INCOME  
TAXES UNDER FLA. STAT. § 220.11**

42. VAI realleges and reincorporates the allegations of paragraphs 1 through 41 as if fully set forth herein.

43. Fla. Stat. § 220.11 provides that for the "privilege of conducting business, earning or receiving income in this state, or being a resident or citizen of this state" a taxpayer is subject to the Florida corporate income tax.

44. Fla. Stat. § 220.11 requires that the *corporate taxpayer* purposefully direct its activities at the State of Florida in order to be subject to corporate income tax.

45. Cellco is a distinct legal entity separate from its partners whose existence is respected under Delaware and Florida law.

46. Cellco is engaged in the "privilege of conducting business, earning or receiving income in this state, or being a resident or citizen of this state" within the meaning of Fla. Stat. § 220.11.

47. The Department has not challenged the separate legal existence of VAI or otherwise argued that VAI's status as a subchapter C corporation should be disregarded.

48. VAI, an indirect, minority owner of and passive investor in Cellco, is *itself* not engaged in the "privilege of conducting business, earning or receiving income in this state, or being a resident or citizen of this state" as required by Fla. Stat. § 220.11.

49. Because VAI, an indirect, minority owner of and passive investor in Cellco, is *itself* not engaged in the "privilege of conducting business, earning or receiving income in this state, or being a resident or citizen of this state" as required by Fla. Stat. § 220.11, VAI lacked the sufficient relationship required under Fla. Stat. § 220.11 to pay corporate income taxes for

the Claim Period and is therefore entitled to payment of the Claims.

## COUNT II

### **12C-1.022(2)(e), F.A.C. IS AN UNCONSTITUTIONAL, INVALID EXERCISE OF DELEGATED LEGISLATIVE AUTHORITY TO THE EXTENT IT ENLARGES MODIFIES OR CONTRAVENES FLA. STAT. § 220.11**

50. VAI realleges and reincorporates the allegations of paragraphs 1 through 49 as if fully set forth herein.

51. Fla. Stat. § 120.52(8) provides that the Department is only permitted to promulgate rules that implement the specific powers and duties granted by enabling statutes.

52. Under Fla. Stat. § 120.52(8), a Department rule that enlarges, modifies or contravenes the statute it purports to implement is an unconstitutional, invalid exercise of delegated legislative authority.

53. Fla. Stat. § 220.11 requires that the *corporate taxpayer* purposefully direct its activities at the State of Florida in order to be subject to corporate income tax.

54. Rule 12C-1.022(2)(e), F.A.C., ignores and contravenes the express language of Fla. Stat. § 220.11 and modifies and enlarges that statute by providing that a foreign (out-of-state) corporate partner is responsible for payment of corporate income taxes *irrespective of the relationship between the foreign corporate partner and the in-state partnership*.

55. In addition, Rule 12C-1.022(2)(e), F.A.C., contravenes, modifies and enlarges the dictates of Fla. Stat. § 220.11 to the extent it attributes the in-state activities of a separate and distinct legal entity (i.e., the in-state partnership) to its foreign corporate partners irrespective of any consideration of the in-state activities of such foreign corporate partners.

56. Rule 12C-1.022(2)(e) is inconsistent with Fla. Stat. § 220.11 and therefore

improperly contravenes, modifies and enlarges the specific powers and duties granted by Fla. Stat. § 220.11.

57. Rule 12C-1.022(2)(e) is unconstitutional and an invalid exercise of delegated legislative authority under Fla. Stat. § 120.52(8) because it improperly contravenes, modifies and enlarges the specific powers and duties granted by Fla. Stat. § 220.11.

58. Moreover, any other rule advanced by the Department to support its position that VAI had sufficient nexus with the State of Florida in the face of Fla. Stat. § 220.11 would likewise be an unconstitutional and invalid exercise of delegated legislative authority under Fla. Stat. § 120.52(8).

59. Because Rule 12C-1.022(2)(e) and any other rule promulgated by the Department inconsistent with Fla. Stat. § 220.11 is unconstitutional and invalid under Fla. Stat. § 120.52(8), VAI is entitled to payment of the Claims with respect to the Claim Period.

### COUNT III

#### **VAI'S CONTACTS WITH THE STATE OF FLORIDA WERE INSUFFICIENT TO SATISFY THE PERSONAL JURISDICTION AND THEREFORE TAXING JURISDICTION REQUIREMENTS OF THE STATE OF FLORIDA**

60. VAI realleges and reincorporates the allegations of paragraphs 1 through 59 as if fully set forth herein.

61. Under Florida law, partners in a partnership are not engaged in business in the State of Florida for personal jurisdiction purposes solely because they possess an ownership interest in the in-state partnership.

62. VAI, owning an indirect non-controlling interest in a general partnership engaged in business in the State of Florida, was a passive owner in Cellco.

63. VAI was not engaged in business in the State of Florida for personal jurisdiction



purposes based solely on its ownership interest in Celco.

64. If VAI lacked personal jurisdiction with the State of Florida, the Department would be unable to enforce a judgment for corporate income taxes assessed against VAI.

65. If the Department would be unable to enforce a judgment for corporate income taxes assessed against VAI based on lack of personal jurisdiction, then the Department likewise lacks jurisdiction to require VAI to pay corporate income tax to the State of Florida.

66. Because VAI lacked contacts with the State of Florida sufficient to satisfy the requirements of personal jurisdiction, the contacts sufficient to support liability for corporate income taxes were also absent therefore entitling VAI to payment of the Claims with respect to the Claim Period.

#### COUNT IV

#### VAI LACKED SUFFICIENT NEXUS WITH THE STATE OF FLORIDA UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION

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

68. The Due Process Clause of the 14<sup>th</sup> Amendment of the United States Constitution (the "Due Process Clause") requires that a certain "minimal connection" must exist between the taxpayer and the taxing state before the taxing state may properly assert taxing jurisdiction over the taxpayer.

69. Celco maintained the "minimal connection" required by the Due Process Clause in order for the Department to properly assert taxing jurisdiction over Celco.

70. VAI's only connection to the State of Florida was its indirect, passive, minority ownership in a partnership that was *itself* engaged in business in the State of Florida.

71. VAI's indirect, passive ownership of a minority interest in Celco is insufficient to satisfy the "minimal connection" requirement of the Due Process Clause.

72. VAI, an indirect, minority owner of and passive investor in Celco, lacked the "minimal connection" required by the Due Process Clause to subject VAI to corporate income tax in the State of Florida.

73. Because VAI, an indirect, passive owner of and passive investor in Celco, lacked the "minimal connection" required by the Due Process Clause to subject VAI to corporate income tax in the State of Florida, VAI is entitled to payment of the Claims with respect to the Claim Period.

#### COUNT V

#### **VAI LACKED SUBSTANTIAL NEXUS WITH THE STATE OF FLORIDA UNDER THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION BECAUSE VAI DID NOT HAVE A PHYSICAL PRESENCE IN THE STATE**

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

75. The Commerce Clause of the United States Constitution (the "Commerce Clause") requires that a certain "substantial nexus" exist between the taxpayer and the taxing state before the taxing state may properly assert taxing jurisdiction over the taxpayer.

76. Before a taxpayer can be found to have the required "substantial nexus" under the Commerce Clause for purposes of the Florida corporate income tax, it must be shown that the taxpayer maintained a physical presence in the State of Florida.

77. VAI lacked any physical presence in the State of Florida.

78. Lacking the required physical presence in the State of Florida, VAI did not possess

the "substantial nexus" required by the Commerce Clause.

79. VAI's indirect, passive ownership of a minority interest in Celco is insufficient to satisfy the "substantial nexus" requirement of the Commerce Clause.

80. Because VAI did not possess "substantial nexus" with the State of Florida as required by the Commerce Clause, VAI is entitled to payment of the Claims with respect to the Claim Period.

#### COUNT VI

#### **EVEN IF PHYSICAL PRESENCE IS NOT REQUIRED FOR PURPOSES OF THE COMMERCE CLAUSE, VAI STILL LACKED "SUBSTANTIAL NEXUS" WITH THE STATE OF FLORIDA**

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

82. The Commerce Clause requires that a certain "substantial nexus" exist between the taxpayer and the taxing state before the taxing state may properly assert taxing jurisdiction over the taxpayer.

83. A taxpayer must have a continuous, meaningful and ongoing relationship with a taxing state to satisfy the "substantial nexus" requirement of the Commerce Clause.

84. A taxpayer must have a "substantial" connection with the taxing state to satisfy the "substantial nexus" requirement of the Commerce Clause.

85. VAI, an indirect, minority owner of and passive investor in Celco, lacked a continuous, meaningful and ongoing relationship with the State of Florida necessary to satisfy the "substantial nexus" requirement of the Commerce Clause.

86. VAI, an indirect, minority owner of and passive investor in Celco, lacked the "substantial" connection with the State of Florida necessary to satisfy the "substantial nexus"

requirement of the Commerce Clause.

87. VAI's indirect, passive ownership of a minority interest in Celco is insufficient to satisfy the "substantial nexus" requirement of the Commerce Clause.

88. Because VAI lacked a continuous, meaningful and ongoing relationship and a "substantial" connection with the State of Florida as required by the "substantial nexus" requirement of the Commerce Clause, VAI is entitled to payment of the Claims with respect to the Claim Period.

#### COUNT VII

**THE CORPORATE INCOME TAXES PAID BY VAI TO THE DEPARTMENT ARE NOT "FAIRLY RELATED" TO THE SERVICES PROVIDED BY THE STATE OF FLORIDA TO VAI AS REQUIRED BY THE COMMERCE CLAUSE**

89. VAI realleges and reincorporates the allegations of paragraphs 1 through 88 as if fully set forth herein.

90. The Commerce Clause requires that before a *taxpayer* can be liable for tax it must be shown that the tax imposed is "fairly related" to the services provided by the taxing state to the *taxpayer*.

91. The State of Florida provided no services to VAI sufficient to justify VAI's payment of corporate income taxes to the Department for the Claim Period.

92. VAI's only business activity related to its management of its indirect, passive investment in Celco in the state of its commercial domicile outside the State of Florida.

93. Because of its in-state activities, it was *Celco*, not VAI, that was the recipient of any services provided by the State of Florida.

94. Because the corporate income taxes paid by VAI were not "fairly related" to the services provided by the State of Florida to VAI as required by the Commerce Clause, VAI is

entitled to payment of the Claims with respect to the Claim Period.

COUNT VIII

THE INCOME SUBJECT TO CORPORATE INCOME TAX WAS NONBUSINESS  
INCOME ALLOCABLE TO VAI'S STATE OF COMMERCIAL DOMICILE

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

96. Under Fla. Stat. § 220.03(1)(r), income received by a foreign corporation not arising from "transactions and activities in the regular course of the [foreign corporation's] trade or business [carried on in the State of Florida]" is nonbusiness income allocable to the state of commercial domicile of such foreign corporation.

97. Fla. Stat. § 220.03(1)(r) further provides that the term "nonbusiness income" does not include "income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's trade or business operations [in the State of Florida][.]"

98. The legislative intent and purpose behind the clear language used in Fla. Stat. § 220.03(1)(r) is to characterize income received by a foreign corporation based solely on the "transactions," "activities" and "trade or business operations" in the State of Florida *of such foreign corporation*.

99. Any and all "transactions," "activities" and "trade or business operations" of VAI are carried on solely in its state of commercial domicile outside the State of Florida.

100. VAI does not engage in any "transactions," "activities" or "trade or business operations" in the State of Florida.

101. VAI's "acquisition, management and disposition" of its passive, indirect

ownership interest in Cellco is not an integral part of any "trade or business operation" *carried on by VAI* in the State of Florida.

102. Because VAI did not engage in any trade or business operations in the State of Florida, the income received by VAI relating to its ownership and management of its passive, indirect ownership interest in Cellco is nonbusiness income allocated to its state of commercial domicile outside the State of Florida.

103. Because the income received by VAI relating to its ownership and management of its passive, indirect ownership interest in Cellco is nonbusiness income properly allocated to the state of VAI's commercial domicile outside the State of Florida, VAI is entitled to payment of the Claims with respect to the Claim Period.

#### COUNT IX

#### **EVEN IF THE INCOME RECEIVED BY VAI FAILS TO SATISFY THE NONBUSINESS INCOME DEFINITION IN FLA. STAT. § 202.03(1)(R), VAI WAS NOT ENGAGED IN A UNITARY BUSINESS WITH CELLCO**

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

105. While "nonbusiness income" is allocable to the state of commercial domicile of the taxpayer, income characterized as "business income" is apportioned to the states in which a taxpayer has trade or business operations.

106. Irrespective of whether the income received by a foreign taxpayer is deemed "business income" by the laws of a state, the Due Process Clause and the Commerce Clause require that a "unitary business" exist between the foreign taxpayer and the in-state affiliate before a state may properly tax an apportioned share of such income.

107. Under the Due Process Clause and the Commerce Clause, the existence of a

unitary business requires functional integration, centralization of management and economies of scale. If any one of these three factors is lacking, no unitary business exists between the foreign taxpayer and the in-state affiliate.

108. No functional integration exists between Cellco and VAI because under the Agreement VAI is precluded from in any way participating in the line of business engaged in by Cellco.

109. No functional integration exists between Cellco and VAI because, even if VAI were permitted to compete with the business operations of Cellco, the wireless operations conducted by the Vodafone group outside the United States are not integrated or otherwise compatible with the Verizon Wireless network operated by Cellco.

110. No centralization of management exists because VAI, holding merely a passive, indirect, minority interest in Cellco, has no control over the management and day-to-day operations of Cellco.

111. No economies of scale exist because VAI, holding merely a passive, indirect, minority interest in Cellco, does not contribute in any way to the efficiencies of the business operations of Cellco.

112. Because neither functional integration, centralization of management nor economies of scale are present with respect to the relationship between Cellco and VAI, no unitary business exists under the Due Process Clause and the Commerce Clause.

113. Because no unitary business exists between Cellco and VAI under the Due Process Clause and the Commerce Clause, the State of Florida may not tax an apportioned share of the income received by VAI.

114. Because the State of Florida is not permitted to tax an apportioned share of the

income received by VAI, VAI is entitled to payment of the Claims with respect to the Claim Period.

COUNT X

**EVEN IF THE STATE OF FLORIDA IS PERMITTED TO TAX AN APPORTIONED SHARE OF THE INCOME RECEIVED BY VAI, THE PARTNERSHIP PROPERTY OWNED BY CELLCO SHOULD BE EXCLUDED FROM THE NUMERATOR OF VAI'S PROPERTY FACTOR FOR APPORTIONMENT PURPOSES**

115. VAI realleges and reincorporates the allegations of paragraphs 1 through 114 as if fully set forth herein.

116. Fla. Stat. § 220.15 provides that taxpayers doing business within and without the state must apportion their income to the State of Florida based on a three-factor formula.

117. The three-factor formula employed by Fla. Stat. § 220.15 generally relates to a fraction the numerator of which addresses the property, payroll and sales of a taxpayer assignable to the State of Florida and the denominator of which addresses the property owned, payroll and sales of a taxpayer everywhere.

118. The primary goal of the three-factor apportionment formula contained in Fla. Stat. § 220.15 is to tax only that portion of a taxpayer's business operations bearing a certain relationship to the State of Florida.

119. Fla. Stat. § 220.15 requires that a taxpayer include the value of certain real and tangible property "owned or rented and used" *by the taxpayer* in the State of Florida in the numerator of the property factor of its apportionment calculations.

120. The Florida Revised Uniform Partnership Act, Fla. Stat. § 620.81001, et. seq., governs the formation and operation of general partnerships in the State of Florida.

121. Fla. Stat. § 620.8203 provides that "property acquired by a partnership is property



of the partnership and not of the partners individually."

122. The Delaware Revised Uniform Partnership Act, Title 6 of the Delaware Code, Section 15-101, et. seq., governs the formation and operation of general partnerships in the State of Delaware.

123. Title 6 of the Delaware Code, Section 15-203 provides that "unless otherwise provided in a statement of partnership existence or a statement of qualification and in a partnership agreement, property acquired by a partnership is property of the partnership and not of the partners individually."

124. The Agreement contains no provision directly or indirectly contradicting the fact that property acquired with Celco funds remains property of Celco and not its direct or, in the case of VAI, indirect, partners.

125. Whether evaluated under Florida or Delaware law, property originally contributed to and subsequently acquired by Celco remains property of Celco.

126. Because property originally contributed to and subsequently acquired by Celco remains property of Celco, such property is not properly included in the numerator of VAI's property factor for purposes of apportioning income to the State of Florida under Fla. Stat. § 220.15.

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

a. directing that the Department pay VAI the amount of the Claims because the relationship between VAI and the State of Florida is insufficient to support an obligation to pay corporate income taxes under Fla. Stat. § 220.11;

b. in the alternative, directing that the Department pay VAI the amount of the

Claims because to the extent regulations promulgated by the Department required VAI to pay corporate income taxes to the State of Florida, such regulations are an unconstitutional and invalid exercise of delegated legislative authority under Fla. Stat. § 120.52(8) because they enlarge, modify and contravene the specific powers and duties granted by Fla. Stat. § 220.11;

c. in the alternative, directing that the Department pay VAI the amount of the Claims because VAI's contacts with the State of Florida were insufficient to satisfy the jurisdictional requirements of the State of Florida;

d. in the alternative, directing that the Department pay VAI the amount of the Claims because VAI lacked sufficient nexus with the State of Florida under the Due Process Clause;

e. in the alternative, directing that the Department pay VAI the amount of the Claims because VAI lacked a physical presence in the State of Florida and, therefore, lacked "substantial nexus" with the State of Florida under the Commerce Clause;

f. in the alternative, directing that the Department pay VAI the amount of the Claims because, irrespective of VAI's physical presence in the state, VAI lacked "substantial nexus" with the State of Florida under the Commerce Clause;

g. in the alternative, directing that the Department pay VAI the amount of the Claims because the corporate income taxes paid to the state by VAI were not "fairly related" to the services provided by the State of Florida to VAI as required by the Commerce Clause;

h. in the alternative, directing that the Department pay VAI the amount of the Claims because the income received by VAI was nonbusiness income allocable to the state of VAI's commercial domicile;

i. in the alternative, directing that the Department pay VAI the amount of the

Claims because VAI was not engaged in a unitary business with Cellco as required by the Due Process Clause and the Commerce Clause;

j. in the alternative, confirming that even if the State of Florida is permitted to tax an apportioned share of the income received by VAI, the partnership property owned by Cellco is excluded from the numerator of VAI's property factor for apportionment purposes under Fla. Stat. § 220.15; and

k. Such other relief as is just and equitable.

DATED this 8<sup>th</sup> day December, 2011

AKERMAN SENTERFITT

By: 

Michael J. Bowen  
Florida Bar No. 0071527  
Peter O. Larsen  
Florida Bar No. 0849146  
50 North Laura Street, Suite 3100  
Jacksonville, FL 32202  
Phone: (904) 798-3700  
Fax: (904) 798-3730

Attorneys for Vodafone Americas Inc.