

VERMONT HOUSE WAYS AND MEANS COMMITTEE HEARING
MARKET BASED SOURCING DRAFT LEGISLATION
JOHN KINNEY – WARNER MEDIA

THURSDAY APRIL 25, 2019

1. Good afternoon Chairwoman Ancel and Members of the Committee my name is John Kinney, I am Vice President of State and Local Taxes for Warner Media. I am pleased to be here on behalf of Warner Media, the Motion Picture Association of America (MPAA) and its member companies to urge adoption of their proposed amendment, which is before you for consideration. I want to provide some background on the industry and reasons we are proposing this important amendment. We fully support the move to market based sourcing and would like to explain our companies' markets.
2. Background on Television Business of MPAA Members
3. Types of companies
 - a. National broadcast and cable networks
 - b. TV distribution companies
4. Nature of business activities
 - Produce and distribute television programming through two methods
 - As wholesaler – through cable, satellite, telecom systems, Internet
 - As retailer – direct to consumer (DTC)
 - Nature of Revenue Streams
 - Ad revenues
 - License fees
 - Subscriber fees – small but rapidly growing revenue stream.
5. Three methods of apportionment for broadcast industry

- COP – income-producing activities
- Customer location or location of payor – commercial domicile or billing address
- Viewing audience – look through to our customers’ customers

6. Reasons Why Customer Location for Business and Individual Customers is a Better Method for National Broadcasters than Viewing Audience

- States primarily adopted viewing audience decades ago. Iowa and Rhode Island (MTC member states) used to apply the legacy viewing audience apportionment and adopted the customer location apportionment in 2015. In fact all ten states, which have adopted the MPAA’s customer location apportionment are MTC member states. Massachusetts, however, adopted the look through method.
- National broadcasters transact business with advertisers and distributors, not viewing public
 - These customers are the ones
 - (i) with whom the broadcaster has privity of contract,
 - (ii) to whom they provide services and programming and
 - (iii) from whom they derive their revenue.
 - Using the commercial domicile of the advertisers and distributors as the customer location is reasonable because it’s the location where a broadcaster’s customer’s negotiates its contracts and where their principal management makes business decisions to enter into agreements with broadcasters.
- Additionally, a growing portion of our revenue is from DTC Consumer business – customer location or location of payor method would be the subscriber billing address for individual customers.

- Market sourcing intended to reflect where the taxpayer's market is. For national broadcasters it's where our direct customers (advertisers and program distributors - like cable and satellite) or individuals are located.
 - A broadcaster's true market is where the advertisers and distributors themselves are based because that's where we seek and negotiate deals with those customers. Broadcasters are for the most part wholesalers and should be treated as such when dealing as wholesalers.
 - "TPP market-based sourcing example: Firestone producing tires in Ohio, selling them to GM in Michigan and then GM producing vehicles with tires and parts from other manufacturers/wholesalers and then distributing the vehicles throughout the U.S. Your market rules would not source any of Firestone's tire sales to GM to KY. Firestone's sales would be sourced to Michigan and GM's vehicle sales to KY dealers would be sourced to KY.
- Difficulty/challenges of using viewing audience under current industry business models vs. 30 years ago
- Lack of information on substantial portion of revenue streams – from satellite, telecom, Internet
- Problems with reasonable approximation – use of population – demographics applicable to different types of networks and genres of programming
 - It's inaccurate. Population may sound right, but it produces results that don't come close to reflecting where consumers view our different genres of programming.

7. Advantages of customer location

- Reflects where our market and our customers are located – whether business customers or individual customers
- Certainty
- Ease of use/availability of information

- Results cannot be manipulated
- Avoidance of disputes

8. List of states with customer location

- This customer location apportionment has been adopted in 10 states including Rhode Island TN, TX, FL, IA, LA, MI, IL, WI and most recently, KY

Thank you for the opportunity to testify and I will be happy to answer any questions.