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TO: Commissioner Mark Nunnely
FROM: Bill Weld, Mo Cowan, Mike Solet
RE: MPAA Proposed Market Sourcing - Meeting Follow-up
DATE: August 5, 2015

Thank you for the opportunity to meet with you and your team to discuss sales factor apportionment of advertising revenues and the “commercial domicile” apportionment methodology proposed by the Motion Picture Association of America, Inc. (“MPAA”). I believe your review of our arguments and submissions will help you to see that measurement of the advertising revenues of MPAA members by an “audience method” is wrong from a technical, analytical and policy perspective and produces a burdensome and unfair result. As such, it is inconsistent with the Baker administration’s goal of creating a business-friendly environment.

Today we take up your kind invitation to provide some of the “intellectual underpinnings” of our position.

States began using an “audience” methodology in the 1980s, a time which is ancient history in the context of the technological changes which have impacted our industry. The modern trend has been to adopt a customer based sourcing rule. Seven states have abandoned the audience measure since 2004, including Texas and Iowa this year and Oregon in 2014. Massachusetts, in adopting the audience approach now, is clearly an outlier.

MPAA acknowledges that the Massachusetts Legislature adopted a market rule in 2013. We do not have any concerns with that change, only with the use of audience as a measure of market with respect to our members, since it is advertisers, not the viewing public, which constitute our market. The use of audience under the regulations is based on the assumption, in this particular case the erroneous assumption, that the location of the actual viewers of advertising is the location “intended” by the advertisers who are our customers. In fact, our advertisers impose no geographic requirements whatsoever, contractual or otherwise. While they are keenly interested in demographics, they are entirely

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Liberty Mutual Group, Massachusetts Mutual Life Insurance, Staples, TJX Companies, and State Street Corporation. Attachment 2 demonstrates that Massachusetts will receive its "fair share" under the commercial domicile method when compared to the Commonwealth's percentage of population and percentage of cable households. Massachusetts ranked 12th in the MPAA members' average US tax liability before market sourcing and would rank 9th highest in the US under the MPAA's proposed commercial domicile regime for advertising receipts. The "audience" method for advertising receipts propels Massachusetts to the 7th highest taxing jurisdiction in the US, well in excess of the Commonwealth's US population or cable household ranking of 14th highest in the US.

MPAA urges the new administration to please revisit the apportionment regulation, to amend it to better respond to the actual facts of our industry, and thereby to better serve the interests of fairness to taxpayers and friendliness to the business community.

• **The number of viewers that Comedy Central gets on YouTube versus regular TV is staggering/Business Insider – New York Times**

JASON GUERRASIO

JUNE 23, 2015

We like to be on our personal devices more than we like to watch TV.

A New York Times Magazine article, "Comedy Central in the Post-TV Era," takes a closer look at the network and the man behind its recent string of hit shows, Kent Alterman, president of content and original programming at the cable network.

While the article examines the way Comedy Central cultivates talent and is always developing new shows that will hit the ever-changing comedy zeitgeist, one striking section in the piece was the revelation of how out of date the Nielsen ratings system is.

Nielsen is the industry standard in audience measurement of a show. And when it comes to setting advertising prices for shows, the numbers generated by Nielsen set those figures said

Comedy Central president of content and original programming Kent Alterman.

However, as Alterman explained, the system Comedy Central and many others are held to is not holding up with today's viewing habits.

He said:

"What we sell is called C3 ratings: how many people watched a show in the first three days, without fast-forwarding through the commercials."

That rating is so out of date that, according to the Times piece, even Viacom's chief executive (Comedy Central is under the Viacom umbrella), Philippe Dauman, voiced his frustration about Nielsen to a conference call of reporters last November, in which he said the service had "not caught up to the marketplace."

The stats* of how we watch Comedy Central's most popular shows are staggering:

"Inside Amy Schumer" Season 3

YouTube streams: 27 million

Facebook streams: 4.5 million

Hulu streams: 1.2 million

Snapchat streams: 4.2 million

Linear television: 1.4 million

"Roast of Justin Bieber"

Justin Bieber Hannibal Buress

YouTube streams: 9.2 million

Facebook streams: 5.3 million

Comedy Central website show stars: 6.1 million

Snapchat streams: 3 million

Linear television: 7 million

"Key & Peele" Season 4A

"Key & Peele" Season 4A

YouTube streams: 195 million

Facebook streams: 50 million

Hulu streams: 10 million

Video-on-demand plays: 5 million

Linear television: 2 million

"Broad City" Season 2

"Broad City" Season 2

YouTube streams: 5.7 million

Facebook streams: 2.9 million

Hulu streams: 8.4 million

Snapchat streams: 1.8 million

Linear television: 1.2 million

In the Times story, a Nielsen spokesperson noted that the company has proposed a comprehensive "measurement framework" to account for multiple platforms but that the industry has not yet agreed on a standard.

*According to The Times, stats are made up of total streams of clips on YouTube, Facebook, or Snapchat over the course of a season or show. Hulu streams include episode starts and clips. Linear figures are average per episode. Source: Comedy Central and Nielsen Media Research.

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WHAT YOU DON'T GET: Comcast and its NBCUniversal entertainment group have not been involved in the latest round of discussions with Apple. Their channels include NBC, USA, Bravo and Syfy.

*Apple's service has not been finalized yet.

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A LA CARTE NETWORK

HBO Now

\$14.99 a month, with an Apple TV device*

OFFERING: All HBO original programming, live and on demand. The service will be available in early April.

*HBO Now will also be available through Cablevision at a price that has yet to be determined.

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A LA CARTE NETWORK

CBS All Access

\$5.99 a month

OFFERING: Live TV available in 14 United States cities, including New York and Los Angeles. Available everywhere in the United States are 6,500 on-demand episodes for current and past season of shows, including "The Good Wife," "CSI: Miami," "MacGyver" and "I Love Lucy."

WHAT YOU DON'T GET: Some sports content is blocked, including NFL games.

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A LA CARTE NETWORK

Nickelodeon Noggin

\$5.99 a month

OFFERING: The service, which doesn't have advertising, is targeted at preschoolers and includes series such as "Blue's Clues," "Little Bear" and "Ni Hao, Kai-lan." Noggin is available on iPhone, iPad and iPod Touch devices.

WHAT YOU DON'T GET: Current Nickelodeon shows.

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ON DEMAND

Netflix

Starts at \$7.99 a month

OFFERING: Thousands of movies and television episodes are included, including original series like "House of Cards," "Orange Is the New Black" and "Unbreakable Kimmy Schmidt."

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ON DEMAND

Amazon Prime

\$99 a year*

**Attachment 2
 Commissioner Mark Nunnally Memorandum**

**MASSACHUSETTS
 MOTION PICTURE ASSOCIATION OF AMERICA, INC.
 ANALYSIS OF MEMBER COMPANY RANKING OF CORPORATE
 INCOME TAX LIABILITY BASED ON VARIOUS
 APPORTIONMENT METHODOLOGIES**

Massachusetts Ranking Before Market Sourcing	Massachusetts Ranking Using Commercial Domicile for Advertising	Massachusetts Ranking Per Regulations
12th Highest	9th Highest	7th Highest
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MASSACHUSETTS Cable Household Ranking		14th highest
MASSACHUSETTS Ranking Based on Population		14th highest