

6.16.20 Testimony Mary Peterson

H. 954, Sec. 11

Section 11 seeks to extend marketplace facilitator (MPF) collection/remittance responsibilities to the new Universal Service Charge (USC) paradigm passed last year.

All states marketplace facilitator laws (except WA), as well as the NCSL marketplace facilitator model, are limited to **sales tax**. Marketplace facilitators (Amazon, EBay, Etsy, etc.) have worked diligently with states on MPF legislation, and continue to work through all of the technical complexities of collecting *sales tax* on third party sales on their platforms.

Respectfully, Vermont should defer consideration of extending MPF to other fees/charges, such as USC, until additional considerations, including the national policy context and technical issues, can be addressed.

Relevant Legis

- **H. 513, Act 79, Sec 7 (Last Year's Broadband Bill)**
 - Sec. 7 was passed to comply with the 2015 Federal Telecommunications Tax & Fee Collection Fairness Act
 - Imposes collection/remittance responsibility for the Universal Service Charge onto the seller of prepaid telecommunications services (such as calling cards) – rather than the provider of the telecommunications service
 - NOTE: Telecommunications Service Providers provide service, directly sell prepaid services in their physical and online stores, sell those prepaid services on marketplaces, and wholesale the prepaid services to bundlers. Marketplaces generally are not in the retail business on prepaid services, and only operate as MPF on the transactions.
- **H. 536, Act 46, Sec 3 (Last Year's Ed Finance Bill, Marketplace Facilitator Provision)**
 - In wake of Wayfair, imposes **sales tax** collection/remittance responsibility onto the marketplace where they are not selling directly, but facilitating third party sellers
 - All states (except WA), as well as NCSL model legislation, limit MPF laws to the **sales tax**
 - **NCSL Model MPF, fn 1**
To the extent a state imposes other taxes and fees on the consumer for sales of products and services included in their marketplace facilitator legislation the state needs to determine whether, when, to what extent, and how such other taxes and fees should be incorporated into marketplace collection requirements.
 - Makes sense, since there are myriad other single purpose charges and fees on various products in individual jurisdictions, but 99% of state revenue attached to

transactions is attributable to sales tax. The sales tax is obviously huge revenue source for states.

- Marketplaces have been working diligently to solve technical problems for all the complexity of sales tax in various jurisdictions on third party transactions
- **H. 954, Sec. 11 (This Year's technical Miscellaneous Tax Bill)**
 - Put forward by provider/seller of prepaid communication services
 - Would extend MPF to Universal Service Charge
 - Would make VT an outlier on MPF for other charges/fees aside from sales tax
 - Would introduce yet even more complexity to marketplace facilitators efforts to correctly code and remit for the nascent MPF provisions.
 - The software for sales tax largely relies on two inputs – sourcing the sale and applying that jurisdiction(s) sales tax rate(s).
 - Other fees would require further product differentiation, more detailed invoicing, and separation of revenue streams for remittance
 - Need sophisticated coding and testing to eliminate risk of applying the fee to the wrong products, and/or incorrectly remitting the two different revenues
 - Early work has shown realistically it could take even the most diligent marketplace facilitators two years to responsibly implement this particular change for USC in VT.
 - steps include purchase of additional product data; coding for that data; complex changes to invoicing, communication and remittance processes; testing
 - This provision is complicated and controversial – consideration should be deferred. In the future, interested parties such as Tax; Department of Public Service; NCSL, Marketplaces; Carriers and/or Sellers of prepaid services should be consulted.
 - Ideally, discussion of extension of MPF to other fees/charges should not be piecemeal, but undertaken on an orderly, holistic basis within Vermont as well as in concert with NCSL and other states.