



## Statement of Motion Picture Association

### Senate Bill 113

#### Senate Finance Committee

Co-Chairs Hoffman, Olson and Stedman and Members of the Senate Finance Committee, my name is Kathy Banuelos, and I am Senior Vice President of State Government Affairs for the Motion Picture Association. The members of the MPA are the major producers and distributors of movies, TV programs and streaming series and they are the owners of most of the national broadcast and cable networks.

Thank you for the opportunity to speak on SB 113 and the proposed change to market-based sourcing. Let me say at the outset, the issue I am speaking about- how income is apportioned for national broadcast and cable networks - is about the way to these networks, not about the amount of tax they pay.

Market-based sourcing, as proposed in SB 113, taxes companies on their revenue from their customers. Broadcast and cable networks have 3 types of customers and sources of revenue:

**Individuals who are subscribers to their streaming services:** When Peacock or HBO Max receives payments for subscriptions from those who live in Alaska, that revenue will go into the Alaska sales factor.

**Licensing customers:** When an Alaska local TV station licenses a show, such as The Office or Friends, that revenue received by the owner of that content (NBCUniversal in the case of The Office or Warner Bros. Discovery in the case Friends) will go into the Alaska sales factor.

**Advertising Customers:** When, for example, an Alaska car dealer buys an ad on a cable or broadcast network, that revenue would go into the Alaska sales factor.

These are all direct relationships between the broadcast and cable networks and their customers; their customers can be verified, so it makes it easier to administer this system, both for the taxpayer and the Department of Revenue.

This is the modern approach, and many states have adopted this by statute, such as in Illinois and Tennessee. My statement lists all the states that have adopted this approach.

We are aware that the MTC provides for the so-called "audience" method of taxing broadcast and cable networks. However, that approach was adopted by the MTC in the 1990's and the industry has undergone significant change since then. Since the broadcast and cable networks don't know who their customers are, this method will lead to uncertainty in the administration of the tax system.

We have suggested language that could be added to this bill and would welcome your support. I am happy to answer any questions.



# MOTION PICTURE ASSOCIATION

## **Market Based Sourcing for Taxation of National Broadcasters' Income**

### **Background**

States across the country are revising their tax codes to require multistate corporate taxpayers to apportion sales of services and sale or license (hereinafter 'sale') of intangible property using a market-based (meaning, where is the customer located) apportionment method. Under a market-based approach, sales of services and intangible property are assigned to the state in which the services are delivered to the customer, where the customer receives the benefit of the services or where the customer is located and where the intangible property is used.

### **Policy Objective using the Sales Factor**

The goal of the sales factor is to assign the receipts of a taxpayer, for the purpose of apportioning the taxpayer's income, based on the location of its customers, which represents its market. The sales factor should rely on information that is directly knowable by the taxpayer and that can be verified by a tax administrator.

### **Customers (Market) of Broadcast TV/Cable Networks**

The Motion Picture Association\* (MPA) member companies own national broadcast and cable networks subsidiaries, as well as TV distribution companies. Broadcasters and cable networks have three different types of customers and sources of revenue.

- **Advertising Customers** – Entities that purchase commercial advertising space on broadcast or cable networks.
- **Program Distributors/Licensing Customers** – Third-party distributors that license creative content from broadcasters, such as TV shows and movies.
- **Direct to Consumer** - Individual consumers who purchase subscriptions directly from streaming services.

Broadcasters have direct, contractual relationships with their customers and receive payments for services, such as broadcasting commercials or providing content to subscribers of

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\* The MPA's member companies are: Netflix Studios, LLC; Paramount Pictures Corporation; Prime Amazon MGM Studios; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment, Inc. In addition, several of the MPA's members have as corporate affiliates major news organizations (including ABC, NBC, and CBS News, and CNN) and dozens of owned-and-operated local television stations with broadcast news operations.

streaming services, or license/sale of intangibles, such as retransmission fees. There are clear, well-established methods of assigning sales based on where a broadcaster's actual customers are located.

#### **Customer Location Has Been Adopted in Many States.**

States that have adopted the broadcaster customer location method of apportionment include Idaho, Missouri, Rhode Island, Tennessee, Iowa, Illinois, Michigan, Louisiana, North Carolina, Kentucky, Florida, Texas, West Virginia, and Wisconsin. The majority of states adopting customer's commercial domicile apportionment did so as part of the transition to a market-based sourcing approach. Each state adopted this method as a basis for establishing certainty, accuracy and a fair measure of broadcaster apportionment that will not be outdated with continued advances in technology.

#### **Apportionment Based on Audience is Outdated.**

Broadcasting has substantially transformed since the "audience" sales apportionment method was proposed by the Multistate Tax Commission in the 1990's as a proxy for a broadcaster's market. The "audience" apportionment method does not capture a traditional broadcaster's actual customers. Viewers are the customers of a broadcaster's customers, e.g., cable operators and satellite distributors with whom broadcasters generate direct sales from the privity of contract between seller and customer. As a result, the "audience" method has critical deficiencies as a market approach to apportioning income, forcing the taxpayer broadcaster into making general estimates on audience share in an attempt to comply with the 'audience' apportionment rule.

#### **Recommended Amendment for Market Sourcing as Applied to Broadcasters**

The MPA respectfully recommends that if Alaska policy makers enact a market sourcing statute as proposed in Senate Bill 113 (SB 113), then the broadcasters' market should be based on the location of its customers, as determined by the customer's commercial domicile. This method is technically accurate, efficient to administer, simple to audit, and already defined in the Alaska income tax code. Below is our proposed amendment language. We are available to answer any questions and thank you for your consideration.

*For the purposes of determining the sales factor for a commercial broadcaster under this section, receipts from the sale of advertising services or licensing fees for the right to use a film is in this state if the commercial domicile of a business customer, or the address of an individual customer in the records of the broadcaster, is in this state. In this subsection:*

*"advertising service" means an agreement to include the advertising content in the programming of a commercial broadcaster;*

*"commercial broadcaster" means an entity engaged in the business of broadcasting and includes a cable program network, a television broadcast network, and a television distribution*

company but does not include a cable operating system or a direct broadcast satellite operating system:

"commercial domicile" has the meaning given in AS 43.19, art. IV, sec 1(b) (Multistate Tax Compact.)"



# Broadcasting Business Model: 1950s through 1990s



*Prior to the widespread use of cable, direct broadcast satellite and the Internet, viewers received their television station signals through rabbit ears (residential rooftop antennae).*

# Broadcasting Today and Beyond: Current Method of Content Delivery

## BROADCASTERS

### Cable Program Networks



### Broadcast Television Networks



### Streaming



## LICENSE / LICENSE FEES



These Distributors are the  
Broadcasters' **ACTUAL**  
market / customers

## DISTRIBUTORS

### Cable Operators



### Telecom Operators



### Internet Distributors



Subscription  
Fees



Programming  
to viewers



Programming  
to viewers

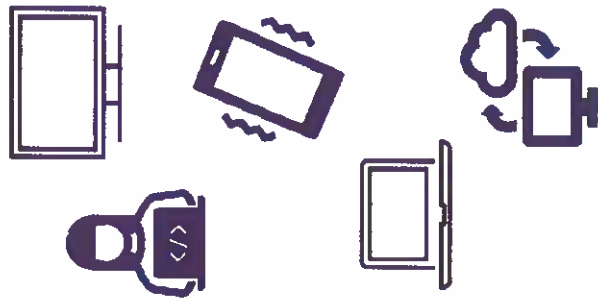


Programming  
to viewers



## VIEWERS

### TV Everywhere



Direct to Consumer Subscription / Fees