From:	Susan A
To:	Senate Finance Committee
Subject:	SB 113
Date:	Thursday, March 06, 2025 1:01:46 PM

Public Testimony on Senate Bill 113: Concerns and Recommendations

To the Honorable Members of the Alaska State Legislature,

I am writing to express my concerns regarding Senate Bill 113, which aims to amend existing tax structures for digital businesses in Alaska. While the bill's intent to address revenue generation is understandable, I believe it poses several legal, economic, and social challenges that require careful consideration. Below are the primary issues with SB 113:

1. Constitutional and Legal Issues

Commerce Clause Violations: SB 113 could potentially violate the Commerce Clause of the U.S. Constitution by imposing burdensome taxation and compliance requirements on out-of-state digital businesses. This could create a discriminatory tax structure that impacts interstate commerce, as evidenced by the Supreme Court's ruling in South Dakota v. Wayfair, Inc. (2018), where the Court found that such taxation could disproportionately affect out-of-state sellers (South Dakota v. Wayfair, Inc., 2018).

Retroactive Taxation: The retroactive application of tax changes outlined in SB 113 could face legal challenges under due process protections, especially if businesses are penalized for periods before the law was enacted. Retroactive taxation is a constitutional concern that could be challenged in court, as businesses would have no way of preparing for these retroactive tax liabilities.

2. Economic and Business Impacts

Economic Burden on Small Businesses: SB 113 could impose significant compliance costs and administrative burdens on small businesses, particularly digital platforms, which may struggle to meet new requirements. This could especially affect small Alaska Native corporations (ANCs) and businesses run by Alaska Native entrepreneurs, as they may not have the resources to manage the new regulations (Reeves, 2022). The complexity and costs could hinder the growth of small businesses, further entrenching economic disparity.

Increased Costs for Consumers: By imposing additional taxes on digital businesses, SB 113 could result in higher prices for consumers, especially those who rely on online shopping for affordable goods. Low-income individuals, particularly in rural and remote areas, would be disproportionately impacted by increased costs. For many, digital commerce represents a vital economic lifeline, and price increases would make essential goods less accessible.

3. Equity and Discriminatory Impacts

Impact on Low-Income Individuals: The increased costs of goods due to new taxation would directly affect low-income individuals who are already struggling to afford basic necessities. The bill risks raising the cost of living for these individuals, who are highly reliant on affordable digital products and services. This economic pressure would disproportionately affect rural Alaskans and low-income urban residents, further exacerbating economic inequality (Baker, 2020).

Disproportionate Burden on Rural Communities: Digital commerce is especially important in rural Alaska, where access to goods can be limited. SB 113 may impose higher prices on essential goods, disproportionately affecting those living in isolated areas. This could further isolate these communities, making them more economically vulnerable.

Digital Entrepreneurs and Equity: Many low-income individuals turn to the digital economy as a source of income through freelance work, online sales, and other ventures. However, SB 113 does not provide any special relief or exemptions for low-income digital entrepreneurs. These individuals may struggle to meet compliance requirements, resulting in further economic barriers for those trying to escape poverty through digital businesses.

4. Violation of Alaska Native Rights and Tribal Sovereignty

Impact on Alaska Native Corporations and Tribes: SB 113 does not explicitly account for the potential impact on Alaska Native corporations (ANCs) or tribal sovereignty. Many ANCs are involved in digital business, and additional tax burdens could harm their economic sustainability. Tribal businesses could also face the risk of disproportionate financial strain if the tax law does not adequately account for their unique status under federal law, including the Alaska Native Claims Settlement Act (ANCSA) (Kenyon & Turner, 2021).

Conflict with Subsistence Economies: Native communities, particularly those with strong ties to subsistence economies, may find it difficult to participate in the digital economy if tax burdens make it unprofitable to do so. The bill does not seem to consider how these taxes may affect Native communities' ability to sustain their traditional livelihoods while simultaneously engaging in the modern digital economy.

5. Regulatory and Administrative Issues

Lack of Clear Implementation Guidelines: SB 113 introduces new requirements without providing adequate implementation guidelines or transitional provisions. Small businesses, especially those in low-income areas, may find it difficult to adjust to the new regulatory environment without clear instructions. This lack of clarity could lead to non-compliance and unnecessary penalties.

Confusion Over Local Taxing Authority: The bill's provisions could lead to conflicts with local governments regarding taxing authority. Local municipalities may seek to impose additional taxes, creating a complex and inconsistent taxation landscape across Alaska. This could create burdens for businesses, particularly small and digital ones, that operate across various localities.

6. Recommendations for Improvement

Introduce exemptions for small businesses and digital entrepreneurs in low-income and rural communities to mitigate the impact of these taxes.

Clarify how Alaska Native corporations and tribes will be affected by the changes and ensure that their rights are respected.

Provide a grace period and clear guidance to help businesses transition to the new tax system without facing immediate penalties.

Ensure that taxes do not disproportionately impact low-income consumers or raise the cost of essential goods, especially in rural or remote areas.

I strongly oppose this bill as written.
Susan Allmeroth
Two Rivers
Myself

References

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Kenyon, D. S., & Turner, C. J. (2021). Alaska Native corporations: Challenges in the modern economy. Native American Law Journal, 38(1), 65-78. https://doi.org/10.1093/amlaw.2021.38.1

Reeves, M. L. (2022). Small business challenges and opportunities in the digital economy. Alaskan Economic Review, 17(3), 56-72. https://doi.org/10.1080/ae.2022.17.3

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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.

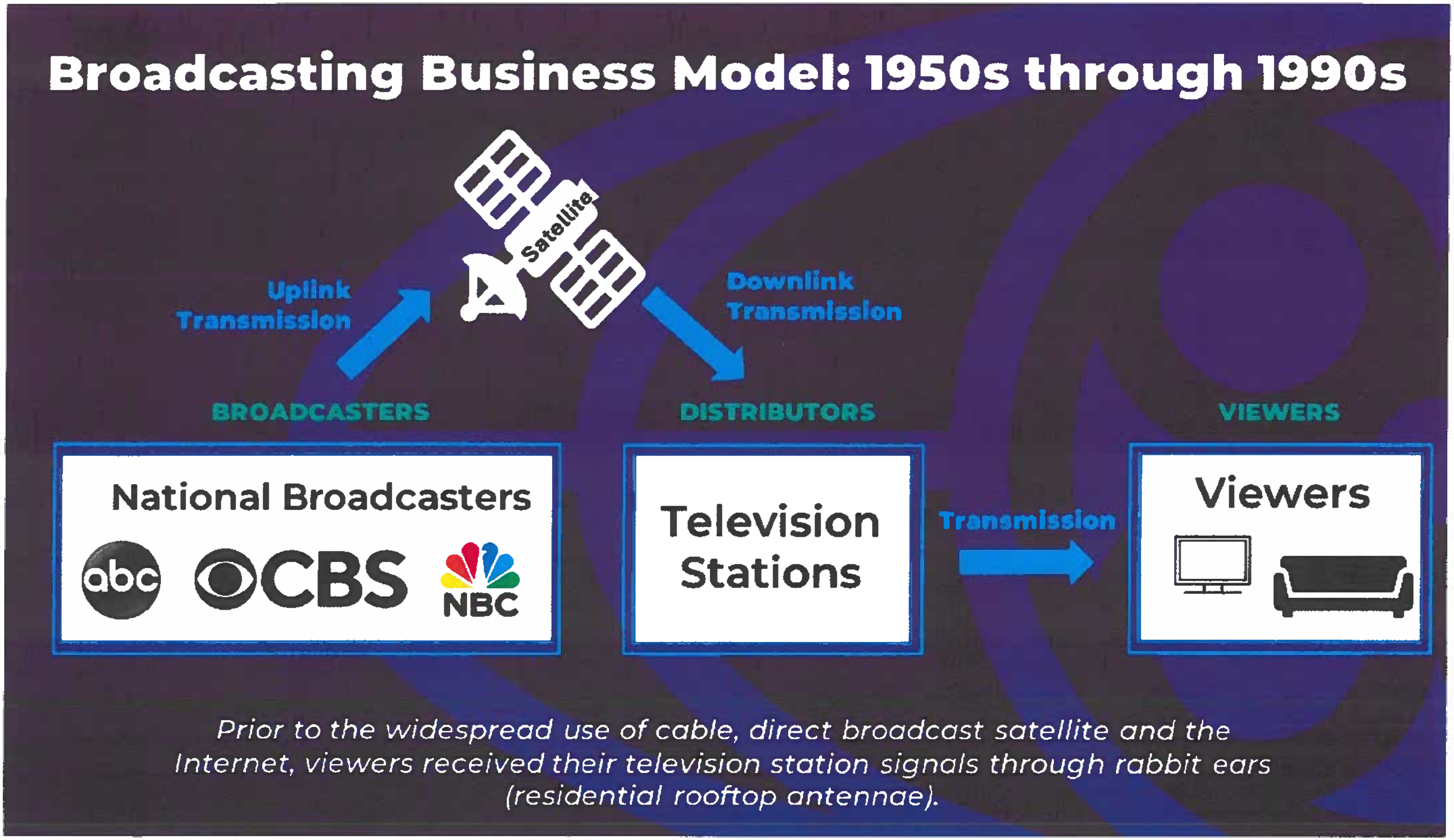
For the purposes of determining the sales factor for a commercial broadcaster under this section, receipts from the sale of advertising services or licensing fees for the right to use a film is in this state if the commercial domicile of a business customer, or the address of an individual customer in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

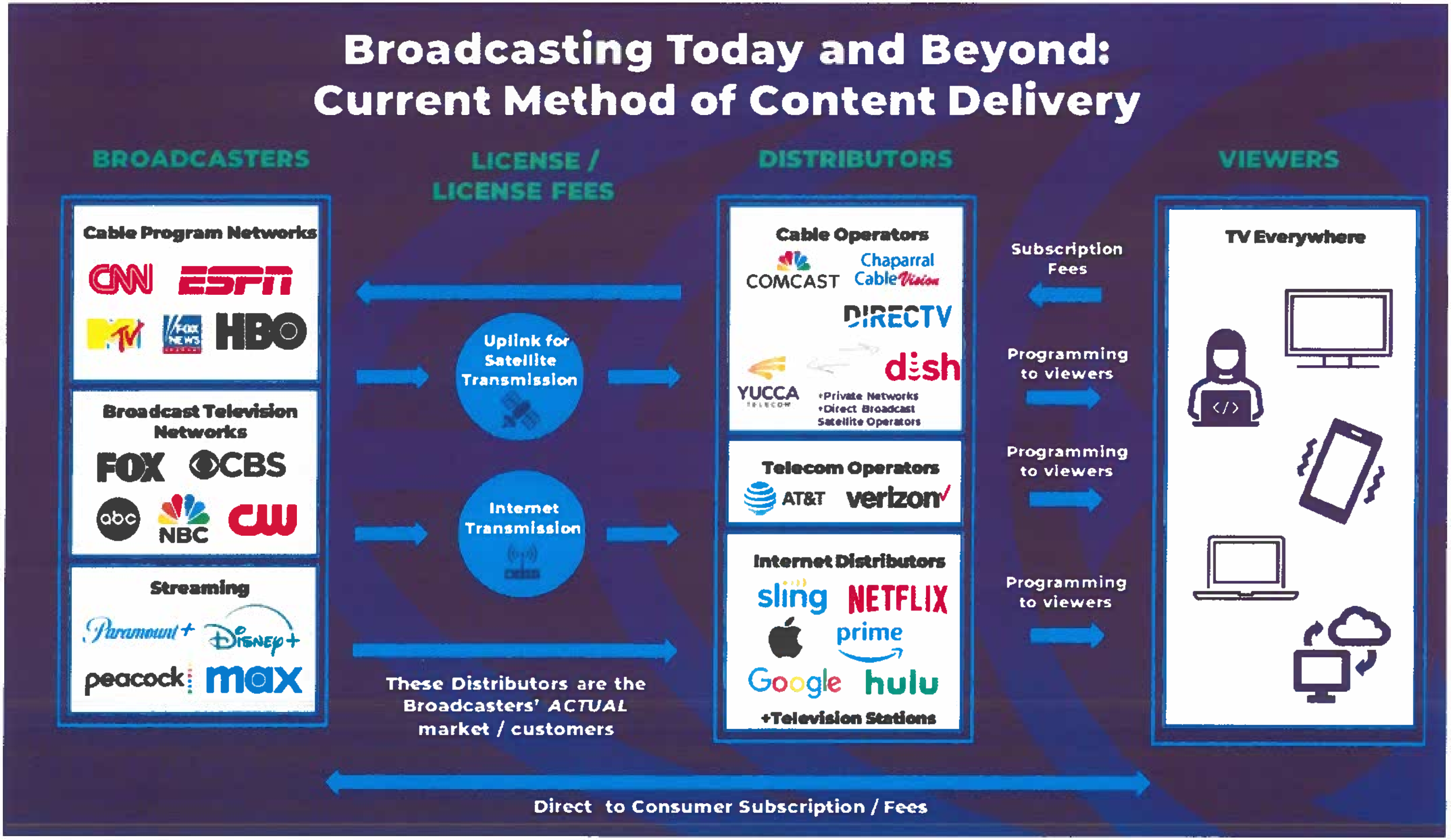
"advertising service" means an agreement to include the advertising content in the programming of a commercial broadcaster;

"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
Satellite
Uplink Transmission
Downlink Transmission
BROADCASTERS
DISTRIBUTORS
VIEWERS
National Broadcasters
abc
CBS
NBC
Television Stations
Transmission
Viewers
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
LICENSE / LICENSE FEES
DISTRIBUTORS
VIEWERS
Cable Program Networks
Broadcast Television Networks
Streaming
Uplink for Satellite Transmission
Internet Transmission
These Distributors are the Broadcasters' ACTUAL market / customers
Cable Operators
•Private Networks
•Direct Broadcast Satellite Operators
Telecom Operators
Internet Distributors
+Television Stations
Subscription Fees
Programming to viewers
Programming to viewers
Programming to viewers
TV Everywhere
Direct to Consumer Subscription / Fees

March 24, 2025

The Honorable Donny Olson
Co-Chair, Senate Finance Committee
State Capitol Bldg., Room 508
Juneau, AK 99801

RE: Senate Bill 113

Dear Chair Olson:

On behalf of CTIA®, the trade association for the wireless communications industry, I am writing to express our support for an amendment to Senate Bill 113 that would allow communications companies to retain the current apportionment methodology for income tax purposes. As you know, SB 113 proposes to change the apportionment method for sales of services and intangibles from "cost of performance (COP) sourcing" to "market-based sourcing."

Communications companies operate differently from other industries affected by this shift. Wireless services are inherently mobile, making market-based sourcing difficult to implement with accuracy.

While we understand the bill's intent to ensure that companies that have limited or no investment or employees in Alaska pay their fair share of income taxes, the communications industry does not fall into this category. Wireless providers maintain extensive infrastructure, including cell towers, fiber networks, and switching facilities, to provide reliable service to consumers and businesses. The industry also supports thousands of jobs in Alaska and contributes substantial tax revenue through property taxes, sales taxes, and customer fees.

Under the three-factor apportionment applicable under current law, communications companies allocate significant portions of their multistate income to Alaska under both the property and payroll factors. We believe that the current three-factor apportionment with COP sourcing appropriately reflects how communications companies earn income in Alaska.

Wireless providers are currently investing billions of dollars per year nationally – and tens of millions in Alaska – to upgrade and expand wireless networks to keep up with rapidly-growing consumer demand for mobile broadband. CTIA supports tax policies that promote investment, innovation, and economic growth. Retaining COP sourcing for communications companies will help ensure continued network expansion in Alaska.

Thank you for considering our request to retain COP sourcing for the communications industry.

Sincerely,

Annissa Reed

Annissa Reed
Director, State and Local Affairs