

Interstate Broadcaster Report



Pursuant to SB 193 from the 2019 Legislative Session

Outline of Presentation



**Brief Background and
Key Terms**



Key Findings



**Possible Tax Policy
Alternatives**

Key Terms in Corporate Taxation



Nexus



Federal Taxable Income



Apportionment

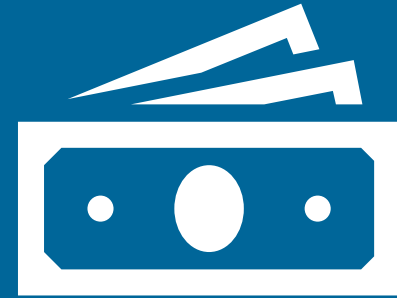
$$\frac{\textit{Oregon Sales}}{\textit{U.S. Sales}}$$

Key Details Related to Broadcasters



Who is an interstate broadcaster?

ORS 314.680(1) "Broadcasting" means the activity of transmitting **any one-way electronic signal** by conduits of communications.



Which income is apportioned?

Comcast Case

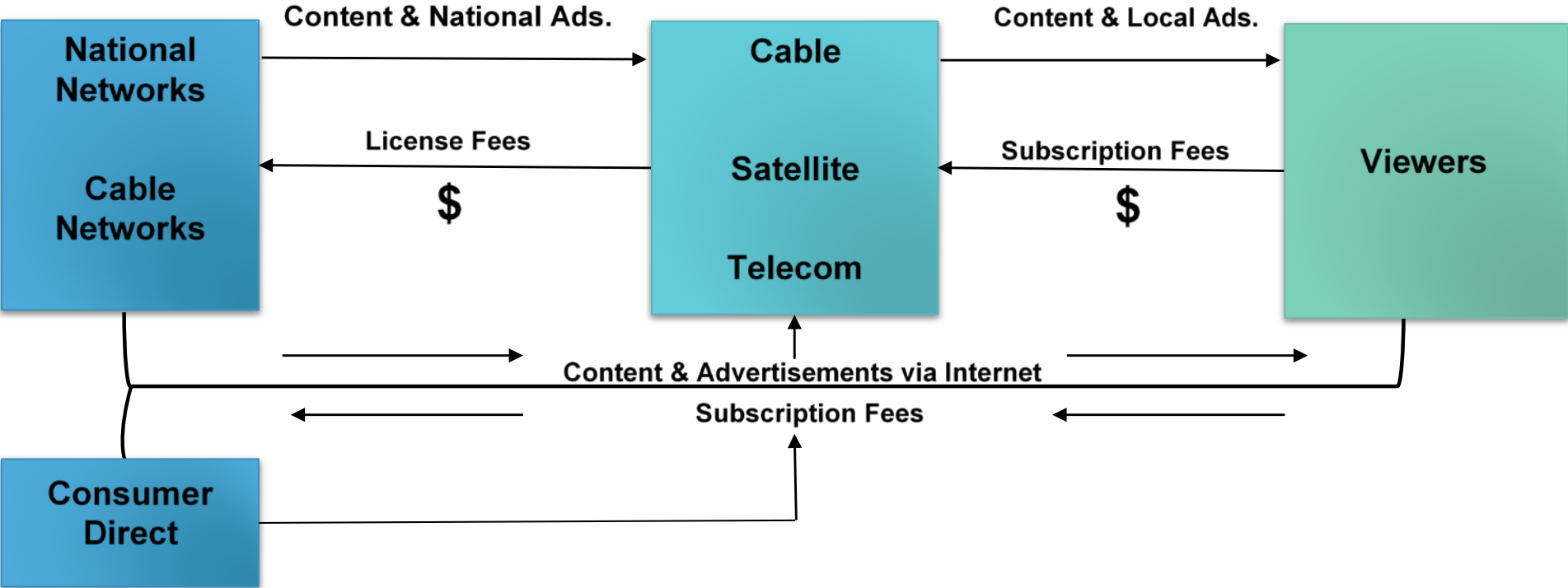
- **All income** not specifically addressed in statute
 - Excludes tangible personal property and real property
- Fact specific?

Industry Description

Content Production

Distribution

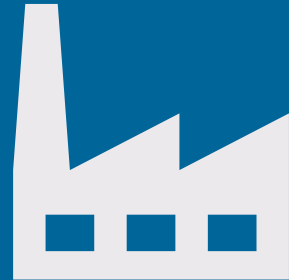
End-Users



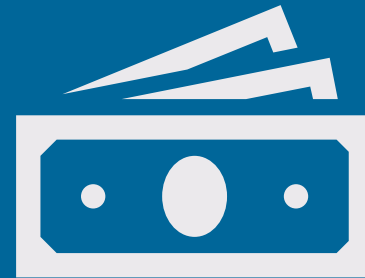
Overview of Key Findings



**Breadth of
broadcasting
definition**



**Ongoing significant
industry change**



**Revenue impact
depends on
assumptions**

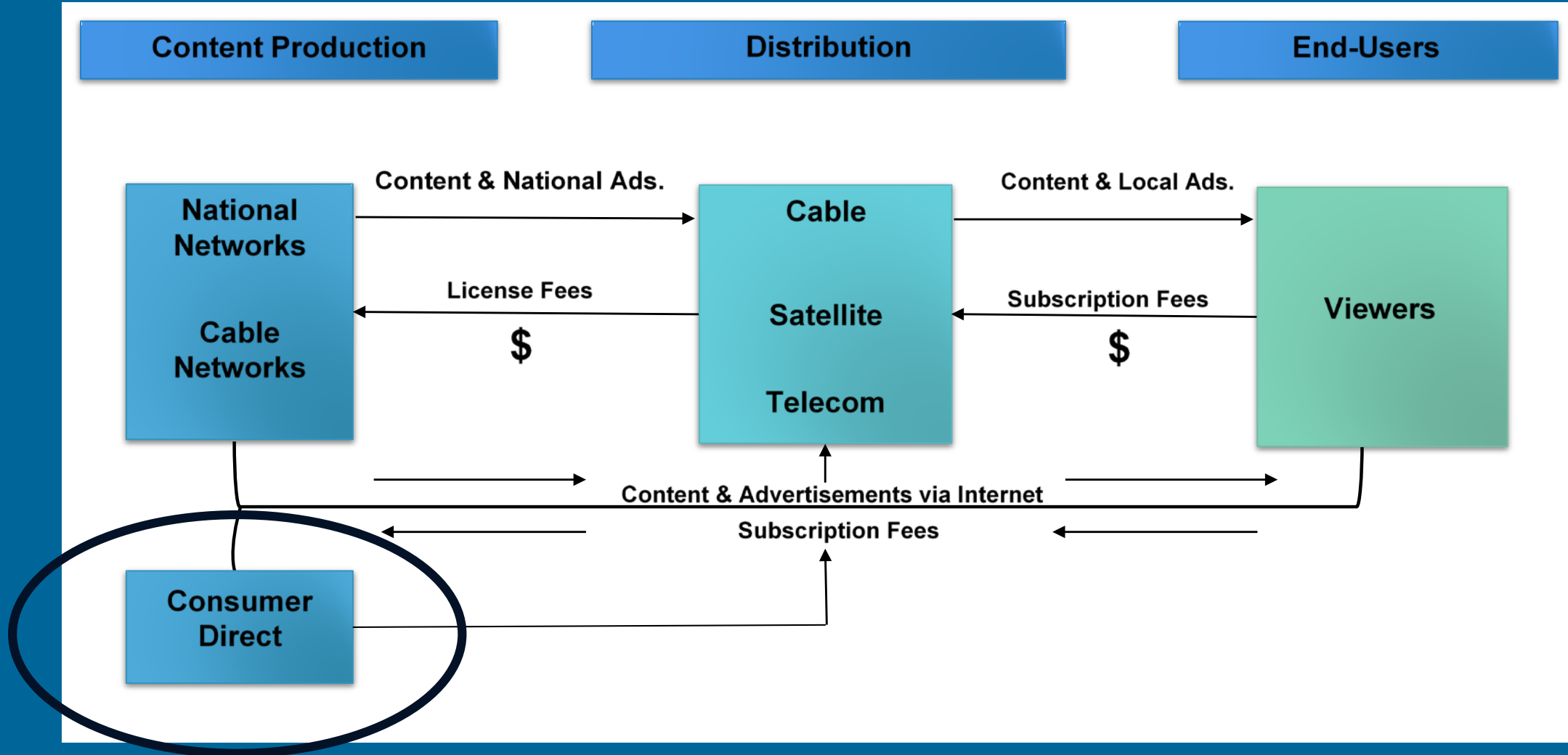


**Statutory direction on
apportionment
calculation may help**

Broadcasting Definition

- “Broadcasting” means the activity of transmitting **any one-way electronic signal**
- Expected to encapsulate an increasing number of industries as technology improves
 - Potentially an increase in appeals to DOR
- Policy intent in today’s environment?

Ongoing Industry Change



Revenue Impact and Assumptions

- **What gives a company (economic) nexus?**
 - OAR 150-317-0020(3)
 - (d) Receives significant gross receipts attributable to customers in Oregon;
 - (e) Receives significant gross receipts attributable to the use of taxpayer's intangible property in Oregon;
- **Revenue impacts under different scenarios**

Revenue Impacts

- Background on data
- Revenue impact if assuming no nexus under audience
- Revenue impact if assuming nexus exists
- Current year revenue estimates

Background on Broadcaster Data

- Checkbox on tax return- is corporation a broadcaster?
- Asks for receipts from broadcasting and total receipts under both
 - Audience
 - Commercial Domicile
- Confusion over what 'interstate broadcaster' means
 - Highlights difference between statutory definition and industry definition
- DOR outreach to taxpayers
- As of 2017, 11 taxpayer-year combinations

Current Status of Data

- Information for 2014-2018
- 74 taxpayer-year combinations
- Number of broadcaster taxpayers increased steadily over this period
- DOR asked for total gross receipts from broadcasting, gross receipts under commercial domicile, gross receipts under audience method
- After outreach, DOR obtained full information on roughly 60% of the 74 taxpayer-year combinations

Revenue Impacts

Assuming No Nexus

- Assuming **no nexus exists** under the audience method of apportionment
- Change from audience to commercial domicile
 - Yields a total of \$5 Million to the state during the 2014-2018 period
 - Roughly \$1 Million annually
- This estimate is consistent with revenue impact in the 2014 legislation and industry's perspective at the time

Revenue Impacts

Assuming Nexus Exists

- Assuming **nexus exists** under the audience method
 - Almost all observations indicate a revenue loss as a result of the move to commercial domicile method
- Scale the observations up to represent 100% of observations
 - 2014-2018, estimated aggregate revenue loss of \$40 Million
 - Roughly \$10 Million lost annually

Bottom Line: Nexus assumption fundamentally changes revenue estimate

Revenue Impacts

Current Baseline

- **Option: Pass No Legislation**
- Current law in 2020 is audience method
- In absence of legislation, audience method will be used
 - This is our **baseline**
- No legislation = No revenue impact relative to baseline
 - Comparing audience method to itself
- **But, definition of broadcasting remains very broad under this policy option**

Revenue Impacts

Permanent Commercial Domicile

- Option: make commercial domicile method permanent
- Sources receipts to states based on immediate customer's domicile
- Baseline for comparison is audience method
- Estimated \$10 Million loss annually, compared to baseline

Revenue Impacts

Repeal Broadcaster Statutes

- **Option: Repeal broadcaster statutes entirely**
- **Result**
 - Default to Market-Based sourcing
 - This is Oregon's default for intangibles/services
 - DOR Rules
 - MTC Adopted
 - Currently used for other intangible services
 - Rules indicate that companies providing a service to an audience should apportion based on audience
 - Back to some of the concerns under audience method
 - However, not all receipts would be subject to broadcaster statutes

Direction on Apportionment Calculation

Stakeholders may benefit from greater statutory direction on calculations

- Audience method is current law for 2020
 - Statute Audience ratio: Oregon audience / total U.S. audience
- DOR Rules: OAR 150-314-0465
 - If ratings numbers are unavailable or inappropriate for some reason
 - Broadcast population in Oregon relative to U.S.
 - Cable system population in Oregon relative to U.S.

Direction on Apportionment Calculation

Stakeholders may benefit from greater statutory direction on calculations

- Potential Guidance?

- Cable Networks use data on the share of households that pay for cable TV in Oregon relative to U.S. share
- Allow entities with national and cable networks to separate revenue streams for apportionment
- Other guidance dependent on policy choice?

Tax Policy Alternatives

(in no particular order)



Return to audience factor



Make domicile permanent



Repeal Broadcaster Statutes//Market-Based Sourcing

Additional questions?

