REVENUE STREAMS

Harnessing Digital Media Commerce To Reinvest in New York's Towns and Cities

By Lee Shaker & Antoine Haywood *on behalf of*
The Alliance for Community Media of New York

Alliance For Community Media of New York

THE ALLIANCE FOR COMMUNITY MEDIA OF NEW YORK

Building Community Through Media Since 1978

This report is brought to you by the Alliance for Community Media of New York (ACMNY), an alliance of more than 50 Public, Education, and Government (PEG) community media centers statewide. The ACMNY facilities provide local access to critical digital media services, community news and information, and hands-on media education opportunities. ACMNY members employ more than 300 people and serve more than 20,000 media makers and media learners annually. ACMNY organizations provide vital and increasingly necessary digital inclusion opportunities to rural and urban working class communities.

Alliance For Community Media of New York

The ACMNY represents more than 50 community media centers statewide.

Traditionally funded by fees paid by cable television subscribers, ACMNY community media centers are vital conduits of Public, Educational, and Governmental information that bolsters New York's communities. Today, many towns and cities throughout the state lack their own local radio station, television station, or newspaper. In numerous communities, ACMNY media centers provide the only substantial local news and information available to residents.

Overall, ACMNY organizations offer a wide range of services that are especially vital in high-stakes moments such as regional elections, severe weather emergencies, and the onset of a global pandemic. ACMNY organizations broadcast town hall meetings with critical local information, simulcast religious services during emergency lockdowns, honor community heroes during Memorial Day broadcasts, interview local candidates ignored by other media, and provide health information about the immediate local area that national media gloss over. In short, hyperlocal community media operations fill civic needs that distant commercial media cannot monetize and thus do not address.

EXECUTIVE SUMMARY

New York's towns and cities are losing millions of dollars in tax revenue every year as consumers switch from traditional media goods to digital media goods and services. Sales tax collected on the sale of a physical DVD is not collected from a digital download of the same movie. Subscriptions to streaming services like Netflix, Disney+, and Spotify are also untaxed. With each passing year, the amount of lost tax revenue in New York's towns and cities is increasing and the strain on local government budgets is growing. The existence of vital services—like the Public, Educational, and Governmental broadcasting provided by members of the Alliance for Community Media of New York (ACMNY)—is threatened. Meanwhile, more than 30 other states have imposed some form of taxation on digital media goods and services. In Florida alone, local towns, cities, and the state are generating more than $1 billion annually from a fair and uniform revenue process that funds critical local services, builds local infrastructure, and creates local jobs.

The time has come for New York State to update its tax code to address the growth of digital media goods and services.

Without action, New York State risks being left behind in the race to attract people and local investments. New York and its communities will be hard-pressed to pay for road repairs, library services, public safety, community media, and a myriad of other public services supported by revenue derived from the consumption of traditional media goods. But this is a moment of opportunity. Workable legal frameworks to tax digital media goods and services exist that would generate at least **$250-500 million** annually in new tax revenues for New York immediately.

Within this context, this report contains three in-depth sections that sequentially:

1) Outline the impact on public budgets of consumers' transition to new digital media goods and services;

2) Detail four separate strategies that states and communities are pursuing nationwide to generate revenue from the consumption of digital media goods and services;

3) Estimate the revenue available to New York's governments from placing a tax upon the purchase of digital media goods and services.

The time has come for New York State to update its tax code to address the growth of digital media goods and services. Technological changes that alter the delivery of mediated entertainment do not eliminate the long-established rationale for taxing such entertainments. Rather, these technological advances have simply swept past existing legal codes. New York's legislators can modernize the state's tax code to treat traditional and digital media products equitably while also shoring up public budgets statewide. In doing so, legislators will bolster a range of important public services—like the ACMNY community media centers—that their constituents depend upon.

PREFACE

Making Sense of a Global Crisis at the Local Level

When the COVID-19 shutdown disrupted community life in New York's Shore Sound area, Larchmont-Mamaroneck Community Media (LMC Media) leveraged all of its assets—staff, technology, and expertise—to help residents stay connected and informed. Virtual town council and school board meetings ensured transparency and participation in local government; Community Conversations, a weekly live talk program, kept residents abreast of topics ranging from refugee mask-making efforts to therapy resources for quarantined couples; and an array of live streamed religious services, Memorial Day ceremonies, and high school graduations helped residents experience a sense of community despite the isolating conditions. These initiatives reached people throughout the Shore Sound area; LMC Media even connected teens to quarantined senior citizens to share tech tips for coping with a quarantine.

Community media centers across New York provided hyperlocal health coverage during the COVID-19 pandemic.

For example, North Shore TV in Long Island collaborated with Northwell Health to live-stream the first vaccination in the country. In the New Dutchess Area, PANDA TV 23 partnered with the Town of Rhinebeck to produce PSAs and a long-form program focused on community members' mental health. Open Stage Media in Schenectady curated long-form lectures and reports from CDC scientists to help its viewers find credible information during a period of confusion.

Like LMC Media, many other ACMNY community media centers stepped up to help their communities navigate pandemic problems. Small operations such as Lockport Community Television (LCTV), Putnam Valley's Community Media Department, and Tompkins County's government access channel made a difference in communities where local journalism is limited. Put succinctly, community media centers performed essential services in a time of crisis. Monroe County's Penfield Community TV retooled on the fly to restore public meeting access for the Town of Penfield and the Penfield Central School

District. Similarly, ACMNY member operations in Manhattan, the Bronx, and beyond provided extensive, exclusive coverage of local elections, ballot issues, and voter incentives during 2020's unconventional election season. LCTV, serving the Niagara Falls area, readily televised/streamed call-in talk shows, government meetings, graduations, and sporting events. Lockport's Mayor Michelle Roman even expressed gratitude in the *Niagara Gazette* by emphasizing LCTV's value as "they provide opportunities for our community to have access to our local government and services."

The abrupt pivot to remote learning during the COVID-19 shutdown created a vacuum of media expertise that New York's community media centers filled.

BronxNet conducted weekly online lessons to help teachers acquire the necessary media skills to produce remote lessons. In Brooklyn, BRIC Arts Media worked with the Brooklyn Board of Education to cablecast specific K-12 classes 15 hours a week to better serve students without home broadband access.

Despite their small staff size, ACMNY member operations creatively integrated old and new technology to meet hyperlocal communication needs in towns and villages throughout the state. Staff at Public Access Northern Dutchess Area (PANDA TV 23) used their technical expertise to distribute programs that addressed mental health concerns and motivational challenges. Open Stage Media, serving Schenectady and Albany, helped vulnerable senior citizens learn where, when, and how to get vaccinations locally. For residents who were uncertain about the accuracy of information they saw and heard online, access to a trustworthy ACMNY member was a lifeline. Meanwhile, North Shore TV in Lake Success, Long Island, leveraged its technical ability to live stream the first COVID-19 vaccine administered in the U.S.

In urban areas, larger operations such as Queens Public Television (QPTV), Manhattan Neighborhood Network (MNN), BronxNet TV, and BRIC Community Media in Brooklyn creatively filled communication gaps by collaborating with public institutions and local officials to disseminate vital news and information in multiple languages. Additionally, ACMNY member operations played a critical role in supporting the remote education of thousands of New York school children during the COVID-19 crisis. In Brooklyn and the Bronx, ACMNY member operations facilitated an array of online and televised learning programs to supplement remote learning materials provided by schools. They worked with public school

educators and the NYC Department of Education to televise educational programming that especially benefited students who live in the 29% of NYC households without broadband. QPTV, BRIC, and BronxNet also offered an impressive lineup of virtual community conversations, jazz performance programs, and other cultural programming. For QPTV, the Queens Public Library and Queens Memory Project became primary partners that utilized the community media center to feature and distribute a two-part documentary portraying an intimate Queens perspective of pandemic life. In Brooklyn, BRIC provided virtual production and distribution to major arts institutions that would have otherwise perished during lockdown.

As everybody adjusted to the 'new normal', New York's community media centers provided support for small businesses navigating a new commercial landscape.

BRIC Arts Media in Brooklyn partnered with the Department of Small Business Services and the Lincoln Center to provide online classes for local businesses. This programming taught media literacy skills with an emphasis on communicating with customers during a lock-down.

The contributions that ACMNY member operations make to their communities extend beyond pandemic-specific content. BronxNet regularly leverages partnerships with major health institutions to help address inequities and cover a wide range of health topics, from heart health, to diabetes prevention and care, to exercise, healthy eating and more. When Summer Youth programs were being cut in the summer of 2020, BronxNet offered paid 6-month internships to students through strategic partnerships—part of a three-decade long commitment to career building internships that has served thousands of high school and college students from the area. BronxNet's story is repeated by dozens of other centers statewide, from Rochester Community Television's work with hard-to-reach micro-neighborhoods throughout Rochester to the MNN's El Barrio Firehouse Community Media Center that produces live Spanish-language Town Hall events.

In all, the ACMNY members' response to the pandemic reinforced the role they play in providing invaluable community information services in the digital age. These community media centers adroitly served their communities despite being overworked, understaffed,

and challenged by broadband connectivity problems throughout the state. Yet, despite their tangible contributions and value, the existence of ACMNY community media centers is imperiled. As consumers cancel their cable TV subscriptions, they can continue to access ACMNY members' content through internet service often provided by the exact same companies over the exact same wires—but the fees that communities have traditionally collected from the commercial use of public rights-of-way disappear because of a loophole. These fees provide the funding that ACMNY members depend upon to support their public-interest work. Unless legislative action is taken, all of the contributions made by LMC Media, PANDA TV 23, BronxNet, QPTV, and the other ACMNY members will gradually disappear as their funding ebbs, exacerbating the growing crisis of "local information deserts" that towns and cities statewide are already facing.

Producing virtual replacements for thousands of canceled in-person events was a key activity for community media centers during 2020-21.

These broadcasts connected viewers with local cultural outlets, non-profits, legislators, educational facilities, and health providers. In doing so, community media centers emerged as a vital link between the public and important local institutions. For example, Open Stage Media in Schenectady partnered with local museums, like the Albany Institute of History and Art, to offer their content to the public while their physical facilities were closed.

In Larchmont-Mamaroneck, this budgetary strain is already apparent. On November 5, 2021, the Village of Larchmont issued a notice to withdraw from a long-standing cable TV agreement it initiated with the Town and Village of Mamaroneck in 1982. This agreement established LMC Media and a revenue-sharing mechanism that allocated funds collected from cable TV subscriptions to LMC Media and other municipal concerns. As reported in the *Larchmont Loop,* Larchmont's community leaders are concerned about sustaining their village capital fund as expected revenue from cable fees declines. Two options to address these costs have been debated: charging taxpayers for the overrun or reallocating existing, but dwindling, cable fee funds away from LMC Media. As consumers shift towards media goods and services provided over the internet and once-reliable revenue from cable TV fees declines, difficult choices like this are bound to grow more common for New York's community leaders. Such decisions threaten the existence of local, public communication infrastructure that New Yorkers have spent over fifty years building.

INTRODUCTION

Digital Media and New York's Public Budgets

Newspapers, broadcast television, and other analog media are becoming relics of the 20th century: the future of media is digital. From *Squid Game* to *The Mandalorian,* the television people watch is increasingly provided by streaming services like Hulu, Disney+, and Netflix. Consumers rent films from Amazon, Apple, and Google—not Blockbuster or a local family-owned video store. Trips to Best Buy or Target to buy CDs are now replaced by iTunes store purchases and Spotify subscriptions. And, as the public's attention moves online, traditional systems that tax media entertainment goods and services are being left behind.

Today in New York, digital entertainment goods and services generate substantial untaxed revenues. While CDs, DVDs, and printed books are taxed, downloads of music, movies, and e-books remain untaxed. Similarly, app-based television packages from Sling TV, Hulu, and YouTube provide access to the same channels as traditional cable companies—but these internet-based packages are not subject to sales or other taxes.

With appropriate safety precautions, community media centers statewide worked during the pandemic to cover community events for viewers who did not feel safe attending them in-person.

Ceremonies for Veterans Day, COVID Remembrance, and civil rights protests were among the many significant occasions broadcast and archived.

The lack of a clear system to tax digital entertainment in New York is unfair and problematic. Netflix, for example, now has an advantage over companies like Charter, Altice, or Comcast that provide similar services: Netflix offers a video entertainment service that is untaxed while traditional cable companies' video entertainment services are taxed. Consumers, often older and with lower incomes, who rely upon legacy media services like cable television must pay taxes that online consumers avoid. And,

as entertainment spending shifts to digital marketplaces, tax revenue derived from this spending is diminished since many digital goods and services remain untaxed.

Even as consumers spend more on digital media, tax revenue collected as a result of spending on traditional forms of mediated entertainment remains vital to New York. Statewide, cable franchise fees still generate over $200 million of public revenue annually. These funds help sustain an array of important local community services throughout the state. Road repair projects, public libraries, local community media, and many other priorities depend upon cable subscription fees that contribute to government budgets. But as consumers switch from old cable television packages to new, internet-based entertainment products, cable franchise fees decline. In New York City alone, the annual franchise fee revenue decreased by 20% since 2015. This means NYC collected $25 million less in cable franchise fees during 2021 than it did in 2015. Meanwhile, NYC and communities through the state must still pay to maintain the public rights of way that are traversed by broadband and cable infrastructure, putting pressure on local governments to raise the necessary funds through property tax increases or other means. Without legislative action, budget gaps will only grow as consumption of traditional media goods and services wanes.

Action taken now can address looming budget shortfalls and prepare New York for the continuing transition to an app-driven, internet-based entertainment landscape.

As of 2021, a majority of states—liberal and conservative, from Florida to Washington—have adopted new laws to tax digital entertainment goods and services. These states employ a variety of tactics, but they collectively demonstrate both the legality and revenue potential of legislation focused on digital entertainment. New York has the advantage of learning from the plethora of tactics employed by other states. Action taken now can address looming budget shortfalls and prepare New York for the continuing transition to an app-driven, internet-based entertainment landscape.

The report that follows has three sections. First, we explore the budgetary impact of the transition from the media products and services that dominated the 20th century—cable television, print books, DVDs—to the digital media of the 21st century. Second, we summarize four common approaches being employed by governments across the United States to collect revenue from new digital media goods and services. Finally, we model the revenue that major digital media companies like Netflix generate in New York which, in turn, supports estimates of the uncollected tax income that is available to the state's governments.

SECTION 1

The Transition to Digital Media & Its Impact on Public Budgets

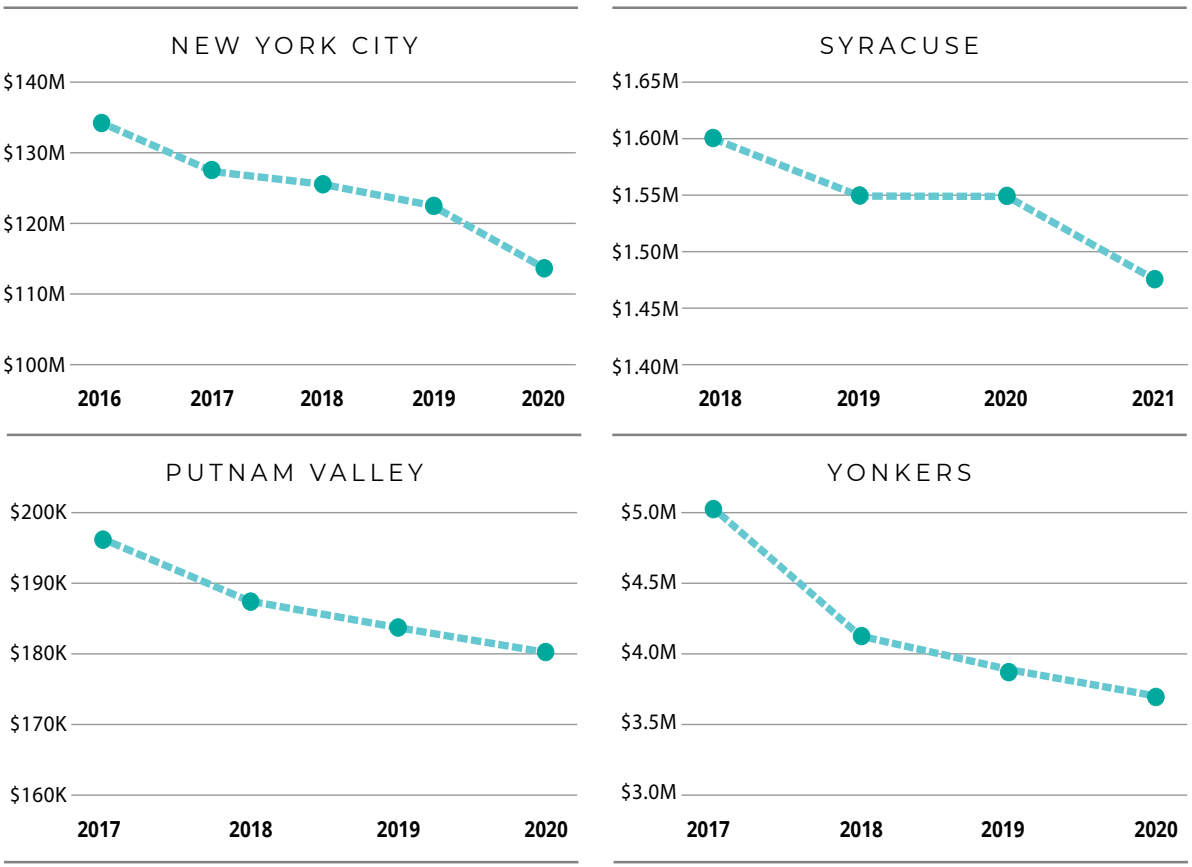
For decades, consumption of entertainment media goods and services generated revenue for governments through two systems. First, the standard local and state sales tax typically applied to books, records, CDs, DVDs, and other physical media goods (except for newspapers). Second, the Federal Cable Communications Policy Act of 1984 (often simply referred to as the Cable Act) authorized governments to establish Local Franchise Authorities (LFAs). In turn, these LFAs levy fees upon cable television services. These two revenue pillars still stand today; however, as the following sections explain, they are rapidly deteriorating as untaxed digital entertainment media consumption explodes.

Cable Franchise Fees and Declining Revenue

Over the past forty years, billions of dollars have been transferred annually from cable providers and subscribers to local and state coffers nationwide. The Cable Act enables local governmental bodies to negotiate franchise agreements (and franchise fees) with cable companies to ensure local access to quality services while also providing compensation for the private use of locally controlled public rights-of-way (poles, streets, and sidewalks). Communities also were able to use these agreements to charge Public, Educational, and Governmental (PEG) fees to support the creation and distribution of Public, Educational, and Governmental channels that provide important local public information services.

In recent years, cable franchise fees have produced more than $200 million of annual revenue for New York communities. But this revenue is eroding (see Figure 1). Franchise fee revenue in NYC alone declined from $136 million in 2015 to $113 million in 2020. So far, declining franchise fee revenue is most noticeable in urban areas well served by broadband. But, similar decreases are increasingly present in suburban and rural areas. It is reasonable to expect that this trend will continue and possibly accelerate as broadband services expand.

FIGURE 1: Declining Cable Franchise Fee Revenue in New York Communities



Waning cable fee revenue correlates with the declining popularity of traditional cable television services. According to the FCC, cable subscriptions peaked at about 70 million households nationally in the early 2000s.[1] Over the next decade, growing competition from direct-to-home satellite TV operators took an increasingly large part of the pay-TV market. Then, internet-based television companies began developing competitive, viable alternatives to both cable and satellite service options. (Notably, neither satellite nor internet-based television providers are subject to franchise or PEG fees.) In 2015, 100 million US households subscribed to a multi-channel TV service and two-thirds of these subscriptions were to services that collected a franchise fee. Five years later, in 2020 nearly one-fifth of those subscribers had canceled their cable or satellite service. Today, the franchise fee pertains to less than 60 million pay-TV households nationwide.[2]

1. *For nearly two decades, ending in 2017, the FCC produced an Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming. These reports provide the foundation for the historical discussion of cable subscriptions in this paper.*

2. *2020 reports in* Variety *and* The Hollywood Reporter *put the total number of households that subscribe to a cable or satellite package at 83 million. But, about 25 million of these households subscribe to either DirecTV or Dish Networks (which are not subject to the franchise or PEG fees).*

Despite the decline in the number of cable subscriptions, franchise fee revenue generally increased or at least held steady until roughly 2018. In short, higher prices preserved cable operators' top-line revenues while protecting franchise fee compensation. For example, in 2011 Comcast generated a national average of $69.50 per month from each subscriber who paid for television services. By 2021, this figure had risen to $97.70—an increase of 40% over the intervening decade.[3] So, even in the face of accelerating subscriber losses, for many years cable operators were able to protect their total revenues which, in turn, supported franchise fee revenues.

Meanwhile during the 2010s, an array of internet-based alternatives to cable and satellite TV developed. Netflix launched its streaming service in 2007; Hulu followed in 2008. These forerunners ushered in a boom of "over-the-top" (OTT) television. HBO, Disney, CBS/Viacom, Comcast, and others all created streaming services to capitalize on this emerging market. In addition, internet-based bundles of legacy cable channels like ESPN and TBS were marketed by companies like Google (YouTube) and Sling TV. As these services matured, consumers steadily migrated from cable and satellite subscriptions to internet-based alternatives. In 2013, Netflix reported that it had 28 million paying subscribers in North America; by 2021 the company reported 74 million paying subscribers in North America.[4] By 2021, Disney reported more than 39 million US subscribers for its Hulu service. And, outside media reported that the new Disney+ service accumulated more than 30 million US subscribers within two years of its November 2019 launch.

The growth of internet-based television services is tremendous—but New York and its communities are not participants in this digital entertainment economy. Franchise fees are not collected from satellite and internet-based television companies, even ones that rely upon cable's physical infrastructure to compete. Sling TV and Hulu provide bundled channel subscriptions like cable and often deliver video content through wired networks. These internet TV companies use the same physical infrastructure and public rights-of-way as Charter (Spectrum) or Altice's (Optimum) cable offerings but they do not pay the same franchise fees. Consequently, as consumers pivot from old cable packages

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3. *Comcast's average revenue figures are provided by nScreenMedia, a research consultancy focused on the television industry.*

4. *Netflix lumps subscribers in the United States and Canada together into a 'North America' category in its official financial reports. This accounting practice is taken into account in our calculations that follow later in this paper.*

to new digital alternatives, they leave behind the revenue structure that has helped to sustain public services in New York for decades. Without action, the effects of this revenue loss will be felt from Niagara Falls to the tip of Long Island and all points in between.

The Sales Tax and Media Products

A separate, but related, challenge to public budgets is the loss in sales tax revenue as entertainment-related commerce moves from physical to digital goods and services. Businesses that sell books, records, DVDs and other tangible media goods must collect sales tax in New York. Meanwhile, businesses that sell (or rent) eBooks, MP3s, and digital copies of films or shows are not required to collect sales tax for transactions with New York residents.

The distributed nature of retail sales makes it difficult to calculate how much tax revenue New York is losing because of the transition from physical to digital media. Still, it is clear that digital entertainment spending is substantial and has grown at the expense of the sale of physical media goods. Nationwide, revenue from DVD sales fell more than 75% from 2005 to 2018. Similarly, the sale of CDs in the U.S. generated more than $13 billion in 2000 and only about $1 billion in 2015. During this period, streaming services (like Spotify and Netflix) and digital entertainment retail stores (like iTunes and Amazon) flourished as consumers purchased more online.

There is little rationale for digital media goods to remain untaxed in New York. The long-standing ban on taxing internet sales made by out-of-state vendors was overturned by the Supreme Court in 2018 in a bipartisan ruling.[5] Vendors like Amazon routinely collect and remit sales tax for physical items sold to New York customers. Some intangible entertainment goods—like videogame downloads—are also subject to a sales tax in New York. Not applying a sales tax to other intangible media goods is a vestige of a legal regime developed in the mid-20th century when most consumer spending was directed to tangible goods. Today, about two-thirds of consumer spending is for intangible goods and services. Sales tax laws, however, have lagged, leading to an increase in lost revenue over time. According to *Bloomberg Tax,* states that face shortfalls are acting to "modernize their tax codes and capture new revenue to replenish their pandemic-wounded budgets." [6]

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5. See *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018) for more detail.

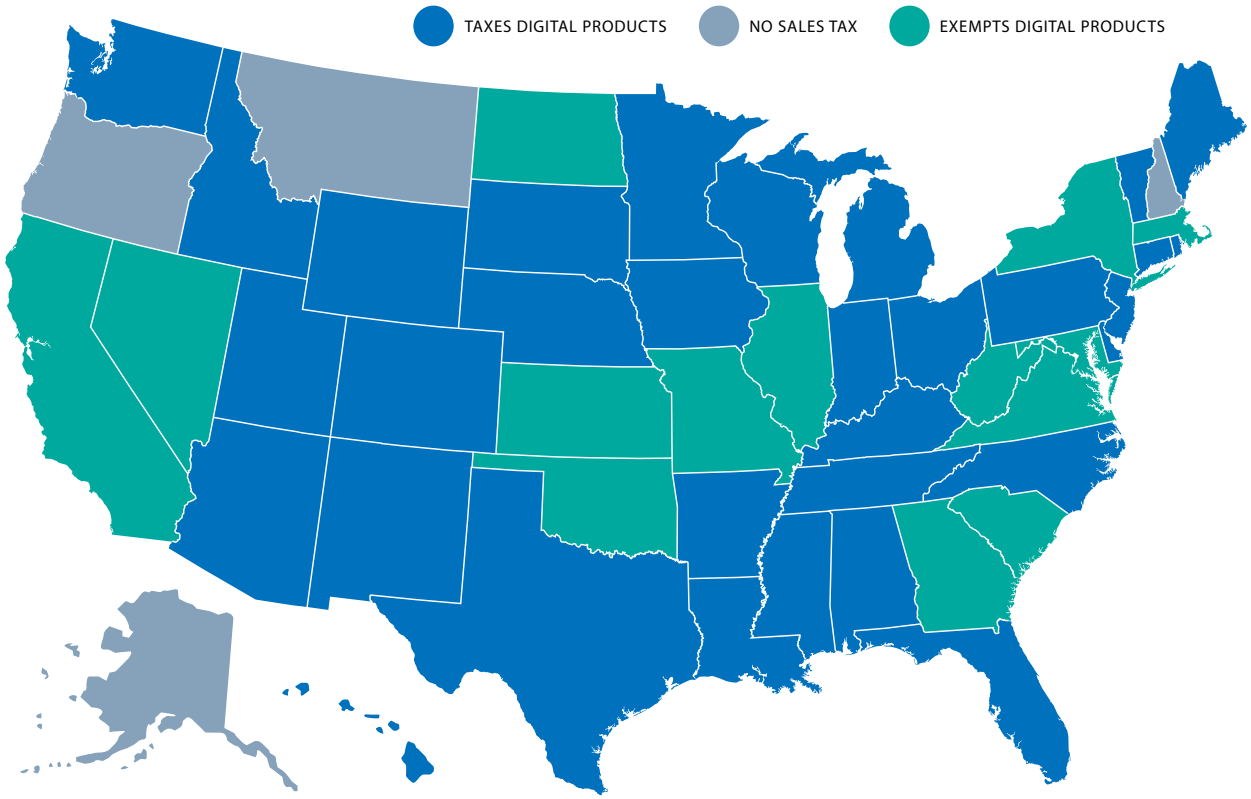
6. *https://news.bloombergtax.com/daily-tax-report-state/taxing-tech-giants-on-cash-strapped-states-agendas-in-new-year*

SECTION 2

Existing Revenue Models for Digital Goods and Services

More than 30 states generate revenue from digital entertainment goods and services today (see Figure 2). A handful—Alaska, Montana, New Hampshire, and Oregon—have neither a sales tax nor an alternative tax on digital goods. Several others—including New York and California—still operate according to state laws that exempt digital goods and services from taxes. But the number of states that do not tax streaming providers or the sale of digital entertainment downloads is dwindling. Even some cities in no-tax states, such as Chicago, have imposed their own levies upon digital entertainment. Thus far, there are four common approaches to taxing digital goods and services: updating sales tax laws, adding or extending a tax on the gross receipts of businesses in specific industries, creating tax legislation specific to media-related commerce, and attempting to extend the reach of

FIGURE 2: Many States Tax Digital Products and Services



https://news.bloombergtax.com/daily-tax-report-state/taxing-tech-giants-on-cash-strapped-states-agendas-in-new-year

cable franchise fees to new digital media products and services. Each approach is discussed in detail below.

Broadening the Sales Tax

As states explore ways to generate additional revenue from digital goods, perhaps the most expedient route is to extend the sales tax to intangible goods. As Connecticut governor Ned Lamont stated in 2019, "Our current sales tax is designed for a Sears Roebuck economy driven by over-the-counter sales. Today we live in an Amazon economy, which is driven by e-commerce, digital downloads and consumer services." The failure to adjust tax statutes with the changing economy is costly. While there is no standard for taxing digital goods and services on local and state levels, many states like Minnesota, Connecticut, and Tennessee have recently defined digital entertainment products and services as taxable.

Minnesota, for example, defined online movies and television, streaming music, audio books, e-books, greeting cards, and interactive videogames (but not digital educational materials) as taxable as of July 1, 2013. The tax rate for these digital goods and services is the same as the tax rate for tangible goods traditionally covered by the sales tax: 6.875% (plus as much as 1% in addition in certain locales). Notably, the statewide sales tax rose from 6.5% to 6.875% after the Clean Water, Land and Legacy Amendment (Legacy Amendment) passed in 2008. This legislation also required that 19.75% of the incremental additional sales tax revenue collected would be dedicated "to support arts, arts education and arts access, and to preserve Minnesota's history and cultural heritage." So, in complementary steps, Minnesota broadened the array of goods and services addressed by its sales tax, treated similar digital and tangible goods equally, and created a dedicated stream of revenue for local arts and culture.[7]

Minnesota broadened the array of goods and services addressed by its sales tax, treated similar digital and tangible goods equally, and created a dedicated stream of revenue for local arts and culture.

Other states take slightly different approaches to applying a sales tax to intangible goods. In Connecticut, the sales tax upon digital entertainment products increased in 2019 from 1% to 6.35%. This approach put digital and tangible goods in parity. Connecticut's law, compared to Minnesota, covered a broader array of digital media goods. Beyond music and video entertainment, products like clip art, podcasts, and smartphone apps were also included. Notably, the Connecticut law exempted educational and periodical news products and maintained a 1% tax rate for software used for business purposes.

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7. *Colorado has pursued an approach similar to Minnesota's. In January 2021, the state rewrote the definition of tangible property in its sales and use tax code to explicitly include digital downloads and streaming services. One important difference is that, rather than pursuing a legislative approach, Colorado's Department of Revenue followed an administrative process to amend its rules to extend the reach of its sales tax.*

The Connecticut system followed a model put in place by Tennessee on January 1, 2009, which extended the sales tax to 'specified digital products' including motion pictures, musical videos, news and entertainment programs, ringtones, and digital books.[8] Tennessee, like Connecticut, exempted digital newspapers and magazines as well as certain business-related software and computing services. But Tennessee set a blanket tax rate of 9.5% for digital goods which supersedes the typical sales tax rate of 7% statewide + a local surcharge. In sum, Connecticut and Tennessee sought to include a wide array of digital activity in their sales tax bases while sheltering certain key activities. Both states projected tens of millions of dollars in additional annual revenue as a result of their legislation.

Taxing Gross Receipts

As an alternative to extending the sales tax, some states tax the gross receipts of companies which provide digital goods and services. For example, Delaware, one of the five states without a sales tax, requires streaming platforms to pay a gross receipts tax, applicable to all vendors of goods and services (tangible or otherwise) operating in the state. Delaware's gross receipts tax is less than 1% while, separately, the state imposes a 2.125% tax on cable and satellite television services. Meanwhile, pending legislation in Massachusetts would impose a 5% levy upon revenues derived from streaming entertainment providers that gross in excess of $250,000 annually and offer audio, video, or computer-generated or computer-augmented entertainment delivered at least in part through communication facilities located in public rights-of-way. Notably, the 5% rate matches the long-standing federal cap on cable franchise fees, which is also positioned as compensation for a company's use of public right-of-way.

In Delaware, the gross receipts tax as a whole is the fifth-largest source of state revenue (though media businesses supply only a portion of the total). This revenue flows into the state's general operating budget and the expenditure of streaming-related funds are not restricted. The Massachusetts legislation, in contrast, contains stipulations that dictate how the revenue generated by the gross receipts tax on streaming services is distributed. More specifically, the pending Massachusetts bill allocates one-fifth of the proceeds to the state's general fund, two-fifths to local governments according to each community's proportional share of the state's population, and two-fifths to local community media centers throughout the state (also following a proportional formula).

There are several possible rationales for employing a gross receipts tax instead of a sales tax. In some circumstances, a gross receipts tax is pursued because it reaches transactions within the supply chain and not just at the final point of consumption. This allows for a lower overall rate and may shift some burden from the public. A gross receipts tax also alters the optics of imposing a tax, perhaps making it is less visible to the public. Avoiding an existing

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8. *Additionally, Tennessee had previously extended its sales tax to satellite television services and set the rate at 8.25%.*

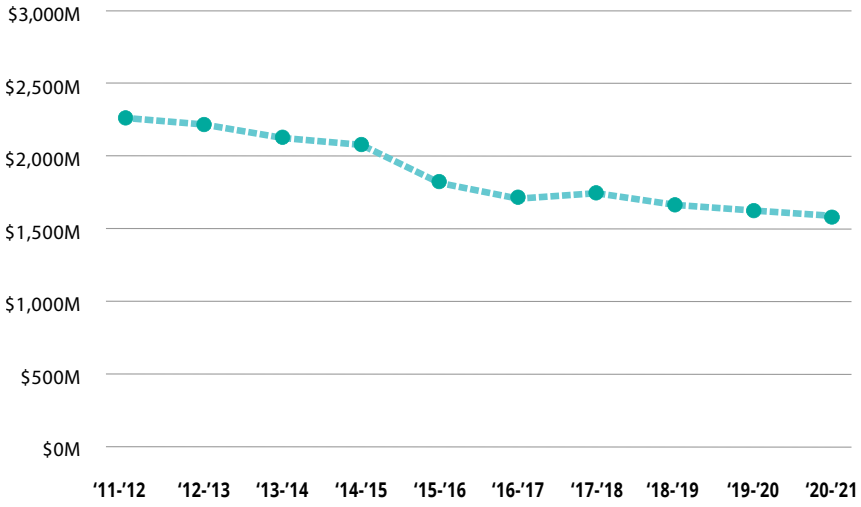
sales tax infrastructure creates potential separation between revenues collected by taxing digital products. This may be useful if, as in Massachusetts, there is a planned formula for distributing tax proceeds.

Specific Communication Service Taxes

Creating a special consumption tax that specifically targets communication-related activities is another approach to generating revenue. Florida, well-known for not collecting a state income tax, has imposed a Communications Services Tax (CST) for decades. The CST applies to a broad range of activities that includes telephone services, direct-to-home satellite communications, and streaming services. It does not, however, apply to internet access. Florida's base sales tax rate is 6%, but the statewide CST is 7.44%. Plus, there is a local surcharge that varies and adds as much as an additional 7.6% for a total CST that can reach 15%.[9] In recent years, FL's CST has netted roughly $1.6 billion annually for state and local budgets. But this sum has decreased over the past decade (see Figure 3).

In 2015, Florida reduced the CST by 1.73%, which reduced the revenue the tax generated. In addition, revenue has likely been adversely affected by two other factors. First, as seen nationally, consumers in Florida are migrating from legacy media services to lower-cost digital replacements. Simultaneously, streaming providers that are adding customers have been slow to collect the CST. For example, Spotify only began collecting the tax in February 2021, nearly ten years after their service launched in the United States. The second factor possibly undermining revenue collection is a shift in accounting practices. Legacy cable and telecommunications companies may use aggressive accounting to diminish revenue that is allocated to the sale of paid television subscriptions. Pay TV is often a portion of bundled packages that also include broadband, telephone, and home security services. Because of the Federal Internet Tax Freedom Act, revenue collected from providing broadband service is not subject to the CST. Hence, allocating a larger portion of a bundle's total cost to broadband service, instead of television, reduces consumers' bills and offers a marketplace advantage to providers.

FIGURE 3: Total Florida State and Local CST Revenue



Source: http://edr.state.fl.us/Content/revenues/reports/detailed-revenue-report/index.cfm

9. *This system is broadly applied to disparate communication activities except direct-to-home satellite services which are taxed at a statewide rate of 11.44% and are not subject to a local surcharge.*

Like Florida, Chicago also recently extended an existing special tax to include streaming entertainment. For many decades, Chicago has applied a 9% amusement tax to the cost of entering, witnessing, viewing, or participating in sporting events, concerts, movies, pub crawls, tours, and other forms of in-person entertainment. This surcharge sidesteps the Illinois state sales tax which only applies to tangible goods and caps any local sales tax surcharge at 4.75%. In 2015, Chicago moved to expand its amusement tax to streaming entertainment (downloaded movies, music, or videogames were excluded). This extension was challenged in the state court system in *Labell v. City of Chicago*,[10] and the constitutionality of Chicago's tax on streaming services was affirmed. Shortly after this judicial outcome, Chicago's northern neighbor, Evanston, launched its own 5% streaming amusement tax.[11]

Neither Florida nor Chicago discloses the remittances made by digital entertainment companies as a result of their communication-specific taxes. As a result, it is impossible to report how much revenue these taxes generate from the consumption of digital goods and services. But in both Florida and Chicago, digital providers are gradually adding these taxes to consumers' bills. Legal challenges to both tax approaches have been exhausted and new paradigms for the treatment of digital entertainment services have been established.

Expanding the Franchise Fee

Meanwhile, local governments in Indiana, Texas, Georgia, Missouri, Arkansas, California, Nevada, and several other states have recently been engaged in litigation to extend cable franchise fees to streaming digital entertainment services (and, in some cases, direct-to-home satellite services). The nuances of these claims differ, but the basic premise is consistent: distribution of streaming services depends on equipment that uses public rights-of-way, therefore companies like Netflix and Spotify should compensate local governments for right-of-way access. Nonetheless, applying this old utility-fee framework to new digital services is challenging. Netflix and the other defendants have argued that they do not own, operate, or rent physical infrastructure in public rights-of-way. They claim that treating streaming services as public utilities misplaces a financial burden that should ultimately rest with internet service providers (ISPs). However, one common interpretation of the Internet Tax Freedom Act suggests that information transmission infrastructure operated by ISPs is not subject to right-of-way fees.

Thus far, attempts to apply the cable franchise fee model to streaming services have been unsuccessful. This issue is being litigated in at least thirteen states and there is no conclusive overall outcome. In Nevada and California, courts have found that the franchise fee does not apply to streaming services because they do not directly utilize public rights-of-way or meet the established definition of a video service provider. But in Georgia, Ohio, and elsewhere, the interpretation of existing state laws is still ongoing and may yield different results. While streaming providers have sought relief from federal courts, state-by-state resolution is the current trend.

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10. *147 N.E.3d 732 (Ill. App. Ct. 1st Dist. 2019),* appeal denied, *144 N.E.3d 1175 (Ill. 2020).*

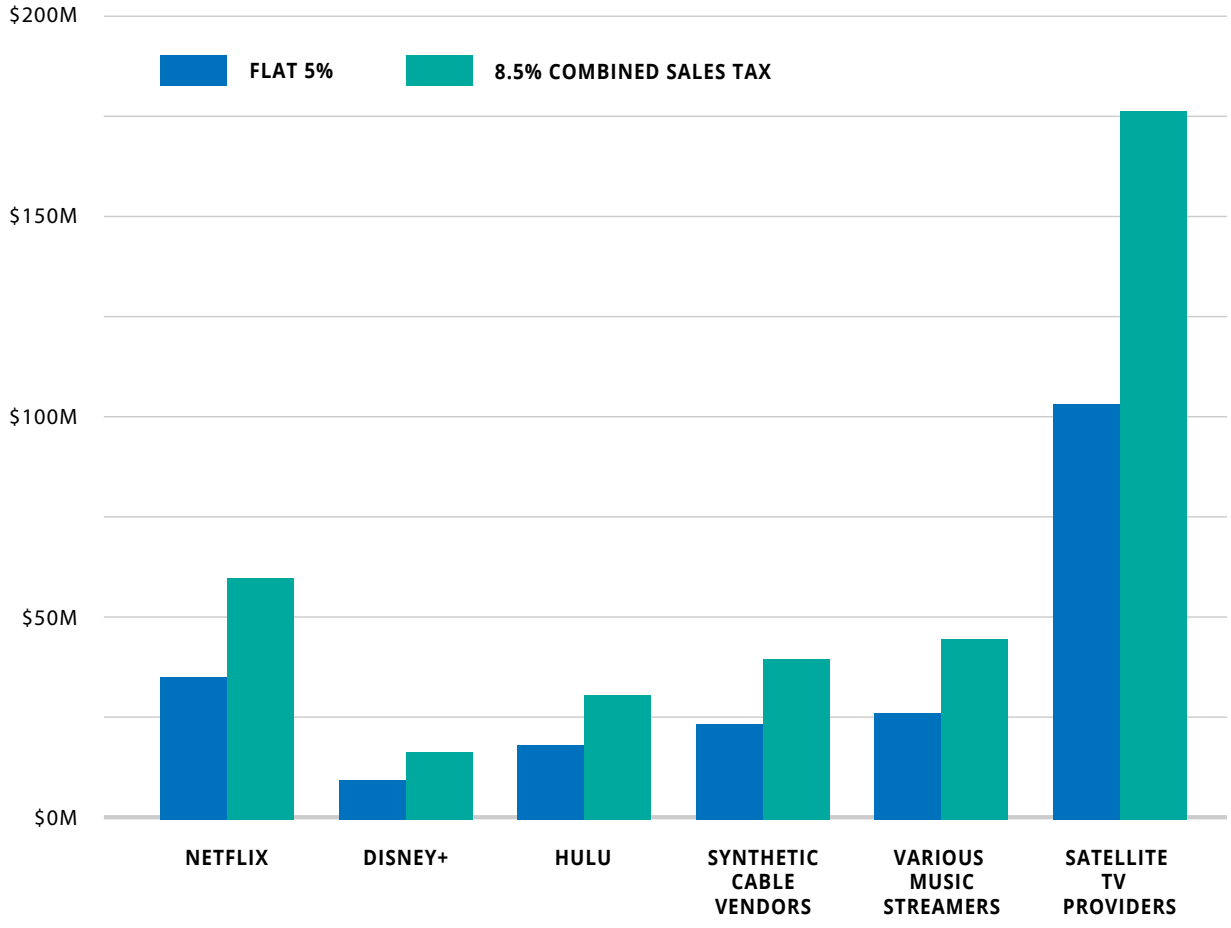
11. *Note that the amusement tax in Chicago and Evanston does not apply to traditional cable television subscriptions which are instead subject to franchise and PEG fees.*

SECTION 3

Potential Revenues for New York State

Digital entertainment goods and services present a substantial revenue opportunity to New York (Figure 4). Netflix and its growing array of streaming entertainment competitors do not disclose subscriber numbers state-by-state or even by country in some cases. Companies like Disney very carefully dole out information about how much subscribers pay for their streaming services. Amazon also does not report its product-by-product sales anywhere. Yet, even simple calculations suggest that millions of New York households buy digital media goods and subscribe to streaming services. It is plausible that New Yorkers collectively spend billions of dollars annually on digital entertainment

FIGURE 4: New York's Potential Annual Tax Revenues from Streamers



goods and services. Even a relatively small levy on this economic activity would yield substantial revenue for New York State and its communities.

Netflix

At the end of September 2021, Netflix reported that it had over 74 million paying subscribers in the U.S. and Canada combined. On average, each of these subscribers paid $14.68 per month or $176.16 annually. According to the U.S. Census, just under 90% of the combined population of the U.S. and Canada resides in the U.S. and over 6% of the U.S. population (and households) resides in New York. This means about 5.5% of the total population of the U.S. and Canada resides in New York. Relative to the rest of the country, New York has similar rates of broadband subscribers (82.8% of NY households vs. 82.7% of households nationwide) and a median household income of $68,486—more than $5,000 above the national average.

With these calculations in mind, it is reasonable to estimate that 5.5% of Netflix's revenue in the United States and Canada is derived from sales to New Yorkers. If this is the case, Netflix's own financial reports suggest that it is likely to be generating more than $700 million annually from business within New York. Taxing this revenue at the 5% rate—in line with the traditional amount imposed by the franchise fee on cable television—would generate more than $35 million per year in New York. Taxing this at the combined state-city sales tax rate in place in New York City of 8.5% would generate more than $60 million every year.

Netflix's Streaming Video Competitors

While Netflix is the largest streaming video service, it has many competitors. HBO Max, Disney+, Hulu, Apple TV+, Paramount+, Peacock, ESPN+, and many others are smaller but still amount to substantial, growing businesses. Like Netflix, none of these providers publicly disclose detailed information about their subscribers. But, by taking the overall number of U.S. subscribers that they report to investors and following the same population logic outlined above, estimates of their New York businesses can be calculated.

Disney, which operates Hulu, ESPN+, and Disney+ only provides global counts of subscribers and Average Revenue Per User (ARPU) to its investors. But public reports in July 2021 asserted that Disney+ had 38 million North American subscribers who paid $8 a month for the service. Meanwhile, Hulu is only offered in the United States, so Disney's disclosed subscriber base of 39.1 million in its July 2021 quarterly report is entirely domestic. Subscribers to the Hulu streaming service paid $13.15 per month on average. Using these

TABLE 1: Potential Tax Revenue from Digital Media Consumption in Select NY Cities

	Households (2019 Census)	% of NY Households	5% Tax on Netflix	8.5% Tax on Netflix	5% Tax Total Revenues	8.5% Tax Total Revenues
Albany	42,408	0.58%	$205,642	$349,592	$1,405,827	$2,389,906
Buffalo	109,163	1.49%	$529,347	$899,890	$3,618,759	$6,151,890
NYC	3,211,000	43.73%	$15,570,594	$26,470,010	$106,444,805	$180,956,168
Rochester	87,679	1.19%	$425,168	$722,785	$2,906,563	$4,941,157
Schenectady	26,574	0.36%	$128,861	$219,064	$880,929	$1,497,580
Syracuse	57,114	0.78%	$276,954	$470,822	$1,893,332	$3,218,664

Note: Total Tax Revenue columns sum possible revenues from streaming video, music, and satellite TV services.

numbers as a foundation, Disney is generating about $200 million annually from Disney+ and $375 million annually from Hulu in New York. Taxing this combined revenue at a 5% rate would yield more than $28 million annually. Taxing this combined revenue at the combined 8.5% state-city sales tax rate in place in New York City would generate nearly $50 million every year.

Precise numbers for other streaming video services are more difficult to estimate. Apple has never disclosed even the global number of subscribers for Apple TV+, let alone the number of subscribers in any single country or state. There is also scant information available about the number of *paying* Apple TV+ subscribers or the ARPU. Public disclosures of subscriber figures for HBO Max blend digital-only subscriptions with the subscribers to HBO's traditional premium cable offering. Services such as Peacock and Paramount+ are still nascent. Individually, these services may not yet reach millions of subscribers in New York. But collectively, they still offer a substantial, growing revenue opportunity.

Internet-based Live TV Streamers

Streaming services such as YouTube TV, Hulu Live, and Sling TV offer "live TV" streaming services that bundle cable channels like MTV and CNN into packages delivered over broadband internet connections. Each of these services has many fewer subscribers than over-the-top services like Netflix. Yet, in spite of their relatively small scale, these services

present a compelling revenue opportunity because they are substantially more expensive than Netflix or Disney+.

Sling TV, YouTube TV, and Hulu Live each has 2 to 4 million U.S. subscribers. In 2021, they collectively reported more than 10 million paying subscribers with monthly plans starting at $35 (Sling TV), $64.99 (Hulu Live), and $65 (YouTube TV). The ARPU for Hulu Live ($84.09) is disclosed in Disney's financial reports; precise figures are not available for Sling (which is owned by Dish, the satellite provider) or YouTube TV (owned by Google/Alphabet). Still, taking Hulu Live's ARPU and assuming an ARPU of the minimum cost for Sling and YouTube suggests that a 5% annual tax on subscriptions in New York (estimated to be roughly 615,000 total) would generate about $24 million annually. An 8.5% tax rate would yield more than $40 million per year. Furthermore, these estimates would be bolstered by any revenue collected from competing "synthetic" cable bundles from providers like fuboTV and DirecTV Stream.

Streaming Music Services

Streaming music services like Spotify and Apple Music offer yet another revenue opportunity for New York. Spotify's 2021 financial disclosures show that roughly 50 million of its paying subscribers are in North America. This reasonably translates to approximately 2.7 million subscribers in New York. Apple has publicly disclosed very limited information about its Music service, but news reports in 2019 indicated that it had surpassed Spotify in the number of paid subscribers in the U.S. At the time, Apple reportedly had 28 million subscribers (to Spotify's 26 million subscribers). Spotify has had strong subscriber growth in the past two years as it invested in exclusive podcast partnerships, so it may have reclaimed the lead in market share. Still, it would be conservative to estimate that Apple currently has approximately 30 million US subscribers and 2 million subscribers in New York. While other smaller providers, like Tidal and YouTube Music Premium, lag substantially behind Apple and Spotify, they still collectively have as many as 1 million subscribers in New York.

In recent disclosures, Spotify has reported an ARPU of roughly $5 a month globally. This figure is depressed by low rates charged in large countries like Brazil, Mexico, and Indonesia that have lower income levels. In the United States, the base subscription price for both Apple Music and Spotify is $9.99 and it is likely that the services have monthly ARPU near that number. Both services offer a half-price student plan as well as family subscriptions that cost about $15/month. Conservatively assuming an ARPU of $8.50/month across these services, and a combined subscriber base in New York of about 5.2 million

suggests that music streaming is a $500+ million annual business in the state. Taxed at 5%, the music streaming business would generate more than $25 million annually for New York; at 8.5%, the music streaming business would yield more than $45 million annually for New York.

Satellite TV Services

Satellite television packages have been a popular alternative to cable television for decades, but they exist outside the traditional tax framework of many states. Because they do not rely upon the public right-of-way to distribute their product, they are not generally subject to franchise fees. And, because they are an intangible service, they have not typically been subject to the sales tax. Consequently, in many states specific taxes target subscriptions to DirecTV or Dish. For example, an 11.44% tax is applied to satellite TV services in Florida, Tennessee applies an 8.25% tax to such services, and Connecticut has levied a pair of taxes on satellite television services that are 11.35% combined.[12] Yet, satellite television service is not subject to similar taxes in New York.

In the face of new digital competition, subscriptions to both direct-to-home satellite TV providers have declined in recent years. Despite this decline, nearly 24 million Americans subscribed to either DirecTV or Dish in 2021. If these subscriptions are evenly distributed nationwide by population, then approximately 1.45 million New York households subscribe to a satellite television package. Recent news reports provide an ARPU figure of $132/month for DirectTV and $96/month for Dish. Combined, a 5% tax on satellite subscriptions in New York would generate more than $100 million annually; an 8.5% tax would yield more than $175 million annually.

Generating Revenue from the Sale and Rental of Digital Entertainment Products

The sale and rental of digital entertainment products—eBooks, movies, songs, etc.—offers another compelling revenue opportunity. Projecting the amount of revenue that could be collected from these exchanges is very difficult. Nonetheless, common sense suggests the total could be substantial. The domestic eBook market is currently $6 billion. Video-on-demand rentals and film or episode purchases in the U.S. are additional multi-billion-dollar businesses. The tangible versions of these products—books, songs, DVDs—are all subject to sales tax in New York. Digital versions could be easily taxed as well.

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12. *A portion of the revenue that Connecticut collects from the sale of satellite television services funds the state's Public, Educational and Governmental Programming and Educational Technology Investment Account which makes grants to increase the quantity, quality and variety of PEG programming produced in Connecticut.*

CONCLUSION

Connecting Digital Media to Community Resilience

Overall, New York is allowing billions of dollars of digital media-related activity statewide to proceed untaxed. This is not the result of deliberate, intentional policymaking but rather of technological change outpacing legislative change. Traditional media goods and services are taxed in New York, yielding hundreds of millions of dollars of tax revenues annually. This revenue is rapidly declining; extending the logic of existing taxes to address digital media goods and services would reverse this trend. Without addressing the shifting media landscape in the state's tax policy, budgets throughout New York will be stretched thinner and thinner every year.

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By following the roadmaps provided by dozens of other states, New York can simply and legally bring parity to the taxation of tangible and intangible entertainment media goods and services. In doing so, the state could conservatively raise more than $200 million in annual revenue at a 5% tax rate or about $400 million annually at an 8.5% tax rate. This is revenue that New York needs.

Implementing a tax on digital entertainment goods and services will allow New York's lawmakers to invest in many important priorities: local infrastructure, workforce development, public education, digital inclusion, and so on. Funding the ACMNY members should be one of these key priorities—and, interestingly, the community media centers they operate support all of these priorities. ACMNY members offer local media production and distribution in communities that otherwise lack media access, they train the next generation of skilled media professionals, and they are open to everyone in the state regardless of race, religion, employment status, age,

income, gender, or educational attainment. Despite these many contributions, the ACMNY community media centers are at risk. The transition from cable television and other local media to streaming providers specifically, and negatively, impacts the historical funding mechanism for ACMNY members. As the COVID-19 calamity clearly demonstrated, New Yorkers need the local media infrastructure that ACMNY members provide. In turn, ACMNY members need a new, dedicated funding stream to stabilize their operations for the decades to come.

Connecting the funding of local community media centers to the consumption of digital media is symmetrical and historically appropriate. Doing so would strengthen both local economies and civic cultures in New York. The ACMNY members urge New York's legislators to adopt a new framework for taxing digital entertainment media goods and services that includes dedicated funding for community media centers. As local newspapers disappear, communities are increasingly starved for legitimate, stabilizing sources of local information. Citizens need access to school board or city council meetings and local officials need avenues to communicate with their constituents. An investment in community media centers is an investment in the health and functioning of every community throughout every district of New York.

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