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July 8, 2025

Massachusetts State House
Joint Committee on Advanced Information Technology, the Internet, and Cybersecurity
24 Beacon Street, Boston, MA 02133

Re: H. 91 – "An Act To Modernize Funding For Community Media Programming" (Oppose)

Dear Chair Galvin, Vice Chair Consalvo, and Members of the House Committee on Rules:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose H. 91 in advance of the hearing on July 10, 2025.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.[1] Therefore, proposed regulations on the interstate provision of digital services can have a significant impact on our members, including those that host or link to news content. CCIA values free speech and recognizes the important role of community media and news; however, H. 91 will not solve the challenges newsrooms are facing today and will instead have long-lasting, detrimental effects on Massachusetts' news and digital services industry.

H. 91 proposes "modernizing" funding for local community media by establishing a "process for the Department of Revenue to assess and recover payments from streaming entertainment operators." The overarching definition of "streaming entertainment operator" also loops in any organization that earns more than $250,000 in gross annual revenues from providing services to the state. This approach ignores the importance of streaming services to consumers online and how they bring value, choice, quality, and important information and programming regularly to internet users. The proposed bill's language carries a host of constitutional concerns and threats to innovation, as detailed below.

H. 91 is illegal and unconstitutional in numerous ways.

Similar to other taxes that have been enacted or considered, H.91 conflicts with the federal Internet Tax Freedom Act (ITFA), which prohibits states from imposing "discriminatory taxes on electronic commerce". Given that the proposed bill only targets a tax on specific streaming services, it is clear these provisions are likely to only target online business activities in a way that cannot be applied to offline activities, and therefore fall under the scope of a "discriminatory tax".

Previous efforts in various states have seen multiple challenges at both the state and federal levels. For example, Maryland's 2021 enactment of the "Digital Advertising Gross Revenues Tax" (DAGRT) was ruled "unconstitutional and illegal" by a state court. Many of these arguments also appear similarly applicable to the proposed tax under H.91, given the revenue share threshold as well as similar definitions in the bills. In times of facing a budget shortfall, it

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[1] For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at https://www.ccianet.org/members.

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would be imprudent to advance legislation that is likely to face a similar fate of costly litigation.[2]

H. 91 will harm overall innovation and business growth.

The proposal's approach that only singles out streaming services is discriminatory and inequitable. Additionally, the revenue threshold would also impact other businesses, including start-ups or those that are looking to scale. These kinds of bills are a targeted effort that aims to collect taxes from a relatively small number of taxpayers in a specific industry. This bill is designed with a non-neutral, narrow tax base that creates inefficiencies and incentivizes costly efforts to avoid the tax.

In fact, this kind of arbitrary requirement can create enormous tax burdens for crossing the growth threshold, likely being ruinous and significantly threatening innovation for startups with limited capital "runway." Such "cliffs" in effective marginal tax rates create enormous incentives for companies to avoid crossing relevant thresholds, which may lead to behavior that is extremely inefficient for companies serving the people of Massachusetts and may even drive startups and other innovative efforts out of the state due to how incremental revenue and the following incremental tax obligations could operate in both Massachusetts and other states.

Additionally, H. 91 would significantly narrow consumer choice, especially for those communities that prioritize the cost-effectiveness of streaming services compared to other, more expensive approaches. This kind of fee could even reduce funds that are available for investment in original programming and shows favored by Massachusetts audiences. Smaller creators rely on streaming services to reach their audiences and new ones, and this approach could indirectly harm those opportunities. Imposing these taxes stands to reduce diversity in media consumption, harming consumers greatly in the name of supporting community media programming.

Although well-intentioned, H. 91 stands to harm the very community media it seeks to help. The approach of subsidizing one industry at the expense of another undermines the very essence of community media and avoids finding a true and sustainable solution to ensure local media have the funds they need to be successful. Overall, this initiative assumes that the targeted companies operate in a static market, overlooking fierce competition and the fast-moving and dynamic nature of the very services they operate.

We appreciate your consideration of these comments and welcome opportunities to provide additional feedback on this and other technology policy matters.

Sincerely,

Kyle J. Sepe
Regional State Policy Manager, Northeast
Computer & Communications Industry Association

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[2] *Massachusetts budget secretary bracing for 'unavoidable deficiencies',* The Berkshire Eagle (Sept. 26, 2024) https://www.berkshireeagle.com/state/massachusetts-budget-secretary-bracing-for-unavoidable-deficiencies/article_8ccbcdaa-7c44-11ef-a2d3-ab7be5aa913a.html