116TH CONGRESS
2D SESSION

H. R. ______

To direct the Federal Communications Commission to establish a broadcast incubator program to support the entry of new and diverse voices in the broadcasting industry by providing for an established broadcaster and an emerging broadcaster to enter into a qualifying incubation relationship.

IN THE HOUSE OF REPRESENTATIVES

Mr. WALDEN introduced the following bill; which was referred to the Committee on

A BILL

To direct the Federal Communications Commission to establish a broadcast incubator program to support the entry of new and diverse voices in the broadcasting industry by providing for an established broadcaster and an emerging broadcaster to enter into a qualifying incubation relationship.

1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Broadcast Diversity in Leadership Act”.

SEC. 2. BROADCAST INCUBATOR PROGRAM.

(a) FINDINGS.—Congress finds the following:

(1) Our Nation continues to respond to the ongoing COVID–19 pandemic, and all Americans must have access to accurate, reliable information.

(2) Americans are fighting racial injustice, and promoting local and diverse media will play an important role in limiting misinformation.

(3) Congress should commit to promoting media diversity and pledging to work with media entities and diverse stakeholders to develop common-ground solutions to eliminate barriers to media diversity.

(4) The principle that an informed and engaged electorate is critical to a vibrant democracy is deeply rooted in our laws of free speech and underpins the virtues on which we established our Constitution: “in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity”.

(5) Having independent, diverse, and local media that provide exposure to a broad range of viewpoints and the ability to contribute to the political debate is central to sustaining informed engagement.

(6) It is in the public interest to encourage source, content, and audience diversity on our Nation’s shared media platforms.

(7) The survival of small, independent, and diverse media outlets that serve diverse audiences and local media markets is essential to preserving local culture and building understanding on important community issues that impact the daily lives of residents.

(8) Research by the American Society of News Editors, the Radio Television Digital News Association, the Pew Research Center, and others has documented the continued challenges of increasing diversity among all types of media entities.

(9) With increasing media experience and sophistication, it is even more important to have minority participation in local media to ensure a diverse range of information sources are available and different ideas and viewpoints are expressed to
strengthen social cohesion among different communities.

(10) The constriction in small, independent, and diverse media outlets and limited participation of diverse populations in media ownership and decisionmaking are combining to negatively impact our goal of increasing local civic engagement and civic knowledge through increased voter participation, membership in civic groups, and knowledge of local political and civil information.

(11) The Advisory Committee on Diversity and Digital Empowerment of the Commission, and predecessor Federal advisory committees, have recommended for decades that the Commission adopt an incubator program providing structural rule changes to facilitate new and diverse entrants into the marketplace.

(12) The Broadcast Incubator Program established under this section is consistent with the national policy described in section 257(b) of the Communications Act of 1934 (47 U.S.C. 257(b)): “to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity”.
(b) Establishment.—Not later than 270 days after
the date of the enactment of this Act, the Commission
shall promulgate regulations establishing a program, to be
known as the “Broadcast Incubator Program”, to support
the entry of new and diverse voices in the broadcasting
industry by providing for an established broadcaster and
an emerging broadcaster to enter into a qualifying incuba-
tion relationship with respect to one or more incubated
stations of the emerging broadcaster.

(c) Qualifying Incubation Relationship.—

(1) Requirements.—The Commission shall
establish in the regulations promulgated under sub-
section (b) requirements for a qualifying incubation
relationship under the Program that include the fol-
lowing:

(A) Eligibility criteria that an established
broadcaster and an emerging broadcaster shall
meet in order to enter into such relationship,
including—

(i) a limit, expressed in terms of a
number of broadcast stations, on how
many broadcast stations of which an
emerging broadcaster may have effective
control on the day before the date on
which the established broadcaster and the
emerging broadcaster submit the application for the Program under subsection (d);

(ii) a cap, expressed in terms of a dollar amount, on the gross revenue that the emerging broadcaster may earn during the calendar year ending most recently before the date on which the established broadcaster and the emerging broadcaster submit the application for the Program under subsection (d); and

(iii) a requirement for the established broadcaster to have effective control of—

(I) if any incubated station under such relationship will be a radio broadcast station, any class of AM or FM radio broadcast station (except for a low power radio station or a radio translator station); and

(II) if any incubated station under such relationship will be a television broadcast station, any class or assignment of television broadcast station (except for a low power television station or a television translator station).
(B) Criteria for the incubation activities that the established broadcaster shall perform as part of such relationship. Such activities shall include the provision by the established broadcaster to the emerging broadcaster of training, financing, or access to resources.

(C) A requirement that the established broadcaster and the emerging broadcaster establish mutually agreed-upon goals for such relationship.

(D) A requirement that the established broadcaster and the emerging broadcaster establish a mutually agreed-upon limitation on the amount of equity (if any) that the established broadcaster may hold in the emerging broadcaster.

(E) A minimum duration of 2 years for such relationship.

(F) An option, which may be exercised upon the agreement of the established broadcaster and the emerging broadcaster, for such relationship to continue on an ongoing basis.

(G) A requirement that, upon successful completion of such relationship in accordance with the application approved by the Commis-
sion under subsection (d) and in compliance
with the other requirements for the Program
established by the Commission, the emerging
broadcaster shall have effective control of each
incubated station under such relationship.

(2) DETERMINATION OF SUCCESSFUL RELA-
TIONSHP.—The Commission shall provide in the
regulations promulgated under subsection (b) for the
determination of whether a qualifying incubation re-
relationship is being carried out successfully or has
been completed successfully to be made by the Com-
mission on a case-by-case basis based on information
provided in the application process and related forms
and materials.

(d) APPLICATION PROCESS.—

(1) JOINT APPLICATION.—The Commission
shall require an established broadcaster and an
emerging broadcaster who propose to enter into a
qualifying incubation relationship under the Pro-
gram to submit to the Commission a joint applica-
tion for participation in the Program.

(2) PROCESS, FORMS, AND MATERIALS.—The
Commission shall develop an application process and
related forms and materials necessary to carry out
the Program.
(3) APPLICATION REVIEW PROCESS.—

(A) DEADLINE.—

(i) IN GENERAL.—Except as provided in clause (ii) and subparagraph (B), the Commission shall approve or deny an application for participation in the Program not later than 90 days after the date of the submission of the application.

(ii) ADDITIONAL TIME NEEDED BY COMMISSION.—If the Commission determines that, because an excessive number of applications have been filed at one time, the Commission needs additional time for employees of the Commission to process the applications, the Commission may extend the deadline described in clause (i) for not more than 45 days.

(B) OPPORTUNITY FOR APPLICANT TO CURE DEFICIENCY.—If the Commission determines that an application is materially deficient, the Commission shall provide the applicants a 15-day period to cure the defect before denying the application. If such period would extend beyond the deadline under subparagraph (A) for approving or denying the application,
such deadline shall be extended through the end
of such period.

(C) Effect of Denial.—Denial of an ap-
application for participation in the Program shall
not preclude the applicants from resubmitting
the application or any applicant from submit-
ting a new application for participation in the
Program at a later date.

(4) Certifications.—The Commission shall
require each applicant submitting an application for
participation in the Program to certify to the Com-
misson in the application that, as of the date of the
submission of the application—

(A) the applicant intends to participate, in
good faith, in the Program;

(B) in the case of an emerging broad-
caster, the applicant would be unable, without
the qualifying incubation relationship proposed
in the application—

(i) in the case of any incubated sta-
tion of which the applicant has effective
control as of such date, to continue to suc-
cessfully operate such station; and

(ii) in the case of any incubated sta-
tion of which the applicant proposes to ac-
quire effective control after such date, to
acquire such effective control;

(C) the applicants have established the
mutually agreed-upon goals required by sub-
section (c)(1)(C); and

(D) the applicants have established the
mutually agreed-upon limitation required by
subsection (c)(1)(D).

(5) LIMITATION ON REAPPLICATION BY ESTAB-
LISHED BROADCASTER AFTER FAILED RELATION-
SHIP.—If, in 3 or more instances, the Commission
has terminated the participation of an established
broadcaster in the Program under subsection (f) and
determined that such established broadcaster was
primarily at fault in causing the circumstances on
which the termination was based, such established
broadcaster may not submit another application for
participation in the Program.

(e) WAIVER OF LOCAL OWNERSHIP RULES.—

(1) IN GENERAL.—If the Commission makes
the determination described in paragraph (2) with
respect to an established broadcaster and an emerg-
ing broadcaster, the Commission shall, not earlier
than 1 year after making such determination, grant
to the established broadcaster a waiver of paragraph
(a) or (b) of section 73.3555 of title 47, Code of Federal Regulations (or any successor regulation) to the extent necessary to permit the established broadcaster—

(A) to hold a cognizable interest in any incubated station under the qualifying incubation relationship; and

(B) to hold a cognizable interest in—

(i) if the established broadcaster had effective control of an AM or FM radio broadcast station (except for a low power radio station or a radio translator station) on the day before the date on which the established broadcaster and the emerging broadcaster submitted the application for the Program under subsection (d), 1 radio broadcast station in excess of the number of radio broadcast stations in which the established broadcaster is permitted to hold a cognizable interest under section 73.3555(a) of such title in a radio market that is—

(I) specified in paragraph (3)(A); and
(II) selected by the established broadcaster;

(ii) if the established broadcaster had effective control of a television broadcast station (except for a low power television station or a television translator station) on the day before the date on which the established broadcaster and the emerging broadcaster submitted the application for the Program under subsection (d), 1 television broadcast station in excess of the number of television broadcast stations in which the established broadcaster is permitted to hold a cognizable interest under section 73.3555(b) of such title in a DMA that is—

(I) specified in paragraph (3)(A);

and

(II) selected by the established broadcaster; or

(iii) if the established broadcaster had effective control of an AM or FM radio broadcast station (except for a low power radio station or a radio translator station) and a television broadcast station (except
for a low power television station or a television translator station) on the day before the date on which the established broadcaster and the emerging broadcaster submitted the application for the Program under subsection (d), either (at the option of the established broadcaster)—

(I) 1 radio broadcast station in excess of the number of radio broadcast stations in which the established broadcaster is permitted to hold a cognizable interest under section 73.3555(a) of such title in a radio market determined in the same manner as under clause (i); or

(II) 1 television broadcast station in excess of the number of television broadcast stations in which the established broadcaster is permitted to hold a cognizable interest under section 73.3555(b) of such title in a DMA determined in the same manner as under clause (ii).

(2) Determination of commission described.—The determination described in this
paragraph is a determination that an established broadcaster and an emerging broadcaster have entered into and are successfully carrying out a qualifying incubation relationship under the Program in accordance with an application approved by the Commission under subsection (d) and are in compliance (with respect to such relationship) with the other requirements for the Program established by the Commission.

(3) SPECIFICATION OF RADIO MARKETS AND DMAS.—

(A) IN GENERAL.—The radio markets or DMAs (as the case may be) specified in this subparagraph are—

(i) if the highest-ranked radio market or DMA in which an incubated station under the qualifying incubation relationship is located is ranked not lower than 25, all radio markets or DMAs;

(ii) if the highest-ranked radio market or DMA in which an incubated station under the qualifying incubation relationship is located is ranked lower than 25 but not lower than 75, the radio markets or DMAs ranked lower than 25;
(iii) if the highest-ranked radio market or DMA in which an incubated station under the qualifying incubation relationship is located is ranked lower than 75 but not lower than 100, the radio markets or DMAs ranked lower than 75;

(iv) if the highest-ranked radio market or DMA in which an incubated station under the qualifying incubation relationship is located is ranked lower than 100 but not lower than 150, the radio markets or DMAs ranked lower than 100; and

(v) if the highest-ranked radio market or DMA in which an incubated station under the qualifying incubation relationship is located is ranked lower than 150, the radio markets or DMAs ranked lower than 150.

(B) MARKET RANKINGS.—For purposes of subparagraph (A)—

(i) a DMA ranking refers to the rankings of DMAs based on the number of television households, as determined by Nielsen Media Research and published most recently before the granting of the
waiver in the Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates (or any successor publication); and

(ii) a radio market ranking refers to the rankings of radio markets based on population, as determined by Nielsen Media Research and published most recently before the granting of the waiver in Radio Market Survey Population, Rankings & Information (or any successor publication).

(4) TERMINATION OF WAIVER.—The Commission shall specify in the regulations promulgated under subsection (b) when a waiver granted under paragraph (1) shall terminate.

(f) TERMINATION OF PARTICIPATION IN PROGRAM.—

(1) IN GENERAL.—Except as provided in paragraph (2), if the Commission determines that an established broadcaster and an emerging broadcaster are not successfully carrying out a qualifying incubation relationship in accordance with the application approved by the Commission under subsection (d) or are not in compliance (with respect to such relationship) with the other requirements of the Program
established by the Commission, the Commission shall terminate the qualifying incubation relationship under the Program and the participation of the established broadcaster and the emerging broadcaster in the Program with respect to such relationship.

(2) Exception for transfer of incubated station.—

(A) In general.—The transfer by an emerging broadcaster of effective control of an incubated station to another person shall not terminate the qualifying incubation relationship under the Program, and such other person shall be substituted as a party to such relationship, if—

(i) such other person meets the requirements for an emerging broadcaster under the Program;

(ii) such other person and the established broadcaster continue, with respect to such station, to successfully carry out the qualifying incubation relationship in accordance with the application approved by the Commission under subsection (d) and to comply with the other requirements of
the Program established by the Commission; and

(iii) in a case in which the original emerging broadcaster retains effective control of any incubated station under the qualifying incubation relationship, such emerging broadcaster and the established broadcaster continue, with respect to any such station, to successfully carry out the qualifying incubation relationship in accordance with the application approved by the Commission under subsection (d) and to comply with the other requirements of the Program established by the Commission.

(B) TREATMENT AS SINGLE QUALIFYING INCUBATION RELATIONSHIP.—If, after a transfer described in subparagraph (A), the original emerging broadcaster retains effective control of any incubated station under the qualifying incubation relationship, any such station and any station of which effective control has been so transferred shall be treated as being part of a single qualifying incubation relationship.

(3) REVOCATION OF WAIVER PROHIBITED.—
(A) IN GENERAL.—Except as provided in
paragraph (B), the Commission may not, as
a penalty for or consequence of the termination
under paragraph (1) of a qualifying incubation
relationship between an established broadcaster
and an emerging broadcaster, revoke any waiver
granted to the established broadcaster under
subsection (e)(1) as a result of such relation-
ship.

(B) EXCEPTION FOR WILLFUL AND KNOW-
ING VIOLATIONS.—If the Commission deter-
mines that the circumstances on which the ter-
mination under paragraph (1) of a qualifying
incubation relationship between an established
broadcaster and an emerging broadcaster is
based involve a willful and knowing violation by
the established broadcaster of this section or a
regulation promulgated under this section, the
Commission may revoke any waiver granted to
the established broadcaster under subsection
(e)(1) as a result of such relationship.

(g) EXCLUSION FROM QUADRENIAL REVIEW.—The
Program, the regulations promulgated by the Commission
under this section, and any waiver granted under sub-
section (e)(1) shall not be subject to review under section

(h) IMPLEMENTATION AND ENFORCEMENT.—The Commission shall implement and enforce this section as if this section is a part of the Communications Act of 1934 (47 U.S.C. 151 et seq.). A violation of this section, or a regulation promulgated under this section, shall be considered to be a violation of the Communications Act of 1934, or a regulation promulgated under such Act, respectively.

(i) CONSIDERATION IN COMMUNICATIONS MARKETPLACE REPORT.—Section 13(d) of the Communications Act of 1934 (47 U.S.C. 163(d)) is amended by adding at the end the following:

“(4) CONSIDERING EFFECTIVENESS OF BROADCAST INCUBATOR PROGRAM.—In assessing the state of competition under subsection (b)(1) and regulatory barriers under subsection (b)(3), the Commission, with the input of the Office of Communications Business Opportunities of the Commission, shall consider the efficacy of the Broadcast Incubator Program established under section 2 of the Broadcast Diversity in Leadership Act in promoting competition.”.

(j) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the development by the
Commission of additional programs or policies to promote
the entry of new and diverse voices in the broadcasting
industry.

(k) DEFINITIONS.—In this section:

(1) BROADCAST STATION.—The term “broadcast station” has the meaning given such term in
section 3 of the Communications Act of 1934 (47

(2) COGNIZABLE INTEREST.—The term “cognizable interest” has the meaning given such term in
note 1 to section 73.3555 of title 47, Code of Fed-
eral Regulations (as in effect on the date of the en-
actment of this Act).

(3) COMMISSION.—The term “Commission”
means the Federal Communications Commission.

(4) DMA.—The term “DMA” means a Des-
ignated Market Area, as determined by Nielsen
Media Research and published in the Nielsen Sta-
tion Index Directory and Nielsen Station Index
United States Television Household Estimates (or
any successor publication).

(5) EMERGING BROADCASTER.—The term
“emerging broadcaster” means a person who—

(A) has effective control of a broadcast
station (including any class or assignment of
television broadcast station and any class of
AM or FM radio broadcast station) that such
person would be unable to continue to operate
successfully without a qualifying incubation rel-
relationship under the Program; or

(B) plans to acquire effective control of a
broadcast station (including any class or assign-
ment of television broadcast station and any
class of AM or FM radio broadcast station)
that such person would be unable to acquire
without a qualifying incubation relationship
under the Program.

(6) ESTABLISHED BROADCASTER.—The term
"established broadcaster" means a person who—

(A) has effective control of a broadcast
station, including any class or assignment of
television broadcast station (except for a low
power television station or a television trans-
lator station) and any class of AM or FM radio
broadcast station (except for a low power radio
station or a radio translator station); and

(B) is established in the broadcasting in-
dustry, as determined by the Commission.

(7) INCUBATED STATION.—The term "incu-
bated station" means a broadcast station—
(A) of which an emerging broadcaster has
(or plans to acquire) effective control; and

(B) with respect to which an established
broadcaster performs (or will perform) incuba-
tion activities as part of a qualifying incubation
relationship under the Program.

(8) LOW POWER TELEVISION STATION.—The
term “low power television station” does not include
a low power television station that has been accorded
primary status as a Class A television licensee under
section 73.6001(a) of title 47, Code of Federal Reg-
ulations.

(9) PROGRAM.—The term “Program” means
the Broadcast Incubator Program established by the
regulations promulgated under subsection (b).

(10) RADIO MARKET.—The term “radio mar-
ket” means a radio market, as determined by
Nielsen Media Research and published in Radio
Market Survey Population, Rankings & Information
(or any successor publication).