

MEASURING THE ECONOMICS DRIVING INVESTMENTS  
AND ACCESS FOR DIVERSITY ACT OF 2020

SEPTEMBER 18, 2020.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

[To accompany H.R. 5567]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5567) to amend the Communications Act of 1934 to require the Federal Communications Commission to consider market entry barriers for socially disadvantaged individuals in the communications marketplace report under section 13 of such Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 5567, the “Measuring the Economics Driving Investments and Access for Diversity Act of 2020” or the “MEDIA Diversity Act

of 2020”, was introduced on January 9, 2020, by Rep. Billy Long (R–MO) and Rep. Marc A. Veasey (D–TX), and was referred to the Committee on Energy and Commerce. The purpose of this legislation is to require the Federal Communications Commission (FCC) to consider market entry barriers in the communications marketplace for socially disadvantaged individuals.

H.R. 5567 does this by requiring the FCC to consider, with the input of its Office of Communications Business Opportunities of the Commission, market entry barriers for socially disadvantaged individuals in the communications marketplace. The FCC will report the results pursuant to section 13(d) of the Communications Act of 1934, which requires the FCC to assess the state of competition in the communications marketplace and publish its findings in the last quarter of every even-numbered year.

## II. BACKGROUND AND NEED FOR LEGISLATION

### LACK OF COMMUNICATIONS MARKETPLACE DIVERSITY

Ownership of communications and media distribution outlets by women and people of color has traditionally been—and continues to be—very low.<sup>1</sup> Yet, viewpoint and ownership diversity have long been cited by Congress (as well as the FCC) as constituting a compelling governmental interest both for Congress and the FCC.<sup>2</sup> Some have suggested that the lack of ownership opportunities by women and people of color is the result of several factors, including lack of access to capital, and limited opportunities.<sup>3</sup> Without consistent and continued review and assessment of factors and solutions to increase participation by women and people of color in the communications marketplace, these discrepancies will continue.

### COMMUNICATIONS MARKETPLACE REPORT

The Communications Act of 1934, as amended, requires the FCC to biennially submit a report on the state of the communications marketplace (Report) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.<sup>4</sup>

The Report (1) assesses the state of competition in the communications marketplace; (2) assesses the state of deployment of communications capabilities; (3) assesses whether any laws, regulations, regulatory practices, or marketplace practices pose a barrier to competitive entry into the communications marketplace; (4) describes the agenda of the FCC for the next 2-year period for addressing the challenges and opportunities in the communications marketplace; and (5) describes the actions that the FCC has taken to address challenges and opportunities in the communications marketplace.<sup>5</sup>

<sup>1</sup>See, e.g., Federal Communications Commission, *Fourth Report on Ownership of Commercial Broadcast Stations* (Feb. 14, 2020); Government Accountability Office, *Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Is Difficult to Assess* (April 11, 2008) (GAO 08–383).

<sup>2</sup>Michelle C. Forelle, *The FCC and the Problem of Diversity*, *International Journal of Communication* (2015).

<sup>3</sup>Ivy Planning Group LLC, Prepared for the Office of General Counsel, FCC, *Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing*, (Dec. 2000).

<sup>4</sup>47 U.S.C. § 163(a).

<sup>5</sup>47 U.S.C. § 163(b).

In assessing the state of competition in the communications marketplace, the FCC currently considers all forms of competition, such as intermodal competition, facilities-based competition, competition from new and emergent communications services, and market entry barriers for entrepreneurs and other small businesses in the communications marketplace.<sup>6</sup>

### III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop or consider H.R. 5567:

The Subcommittee on Communications and Technology held a hearing on January 9, 2020, entitled “Lifting Voices: Legislation to Promote Media Marketplace Diversity.” The Subcommittee received testimony from the following witnesses:

- Maurita Coley, Esq., President and CEO, Multicultural Media, Telecom and Internet Council
- Clint Odom, Senior Vice President, Advocacy & Policy & Executive Director, Washington Bureau, National Urban League
- Catherine J.K. Sandoval, Associate Professor, Santa Clara University School of Law
- Diane Sutter, President/CEO, ShootingStar Inc.

### IV. COMMITTEE CONSIDERATION

Representatives Long (R–MO) and Veasey (D–TX) introduced H.R. 5567, the “Measuring the Economics Driving Investments and Access for Diversity Act of 2020” or the “MEDIA Diversity Act of 2020”, on January 9, 2020, and the bill was referred to the Committee on Energy and Commerce. Subsequently, H.R. 5567 was referred to the Subcommittee on Communications and Technology on January 10, 2020.

On March 10, 2020, the Subcommittee on Communications and Technology met in open markup session, pursuant to notice, to consider H.R. 5567. No amendments were offered during consideration of the bill. The Subcommittee on Communications and Technology then agreed to a motion by Mr. Doyle, Chairman of the subcommittee, to favorably forward H.R. 5567, without amendment, to the full Committee on Energy and Commerce by a voice vote.

On July 15, 2020, the full Committee met in virtual open markup session, pursuant to notice, to consider the bill H.R. 5567. There were no amendments offered to the bill during its consideration. Upon conclusion of consideration of the bill, the full Committee agreed to a motion on final passage by Mr. Pallone, Chairman of the committee, to order H.R. 5567 reported favorably to the House, without amendment, by a voice vote, a quorum being present.

### V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee ad-

<sup>6</sup> 47 U.S.C. § 163(d).

vises that there were no record votes taken on H.R. 5567, including the motion for final passage of the bill.

#### VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

#### VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

#### VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to require the Federal Communications Commission to consider, with the input of its Office of Communications Business Opportunities of the Commission, market entry barriers for socially disadvantaged individuals in the communications marketplace.

#### X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 5567 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

#### XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 5567 contains no earmarks, limited tax benefits, or limited tariff benefits.

## XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

## XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

### *Section 1. Short title*

Section 1 designates that the short title of this Act may be cited as the “Measuring the Economics Driving Investments and Access for Diversity Act of 2020” or the “MEDIA Diversity Act of 2020”.

### *Sec. 2. Considering Market Entry Barriers for Socially Disadvantaged Individuals*

Section 2 requires the Federal Communications Commission to consider, with the input of its Office of Communications Business Opportunities of the Commission, market entry barriers for socially disadvantaged individuals in the communications marketplace.

## XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

## COMMUNICATIONS ACT OF 1934

### TITLE I—GENERAL PROVISIONS

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#### SEC. 13. COMMUNICATIONS MARKETPLACE REPORT.

(a) **IN GENERAL.**—In the last quarter of every even-numbered year, the Commission shall publish on its website and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the state of the communications marketplace.

(b) **CONTENTS.**—Each report required by subsection (a) shall—

(1) assess the state of competition in the communications marketplace, including competition to deliver voice, video,

audio, and data services among providers of telecommunications, providers of commercial mobile service (as defined in section 332), multichannel video programming distributors (as defined in section 602), broadcast stations, providers of satellite communications, Internet service providers, and other providers of communications services;

(2) assess the state of deployment of communications capabilities, including advanced telecommunications capability (as defined in section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302)), regardless of the technology used for such deployment;

(3) assess whether laws, regulations, regulatory practices (whether those of the Federal Government, States, political subdivisions of States, Indian tribes or tribal organizations (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), or foreign governments), or demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services;

(4) describe the agenda of the Commission for the next 2-year period for addressing the challenges and opportunities in the communications marketplace that were identified through the assessments under paragraphs (1) through (3); and

(5) describe the actions that the Commission has taken in pursuit of the agenda described pursuant to paragraph (4) in the previous report submitted under this section.

(c) EXTENSION.—If the President designates a Commissioner as Chairman of the Commission during the last quarter of an even-numbered year, the portion of the report required by subsection (b)(4) may be published on the website of the Commission and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate as an addendum during the first quarter of the following odd-numbered year.

(d) SPECIAL REQUIREMENTS.—

(1) ASSESSING COMPETITION.—In assessing the state of competition under subsection (b)(1), the Commission shall consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet.

(2) ASSESSING DEPLOYMENT.—In assessing the state of deployment under subsection (b)(2), the Commission shall compile a list of geographical areas that are not served by any provider of advanced telecommunications capability.

(3) CONSIDERING SMALL BUSINESSES.—In assessing the state of competition under subsection (b)(1) and regulatory barriers under subsection (b)(3), the Commission shall consider market entry barriers for entrepreneurs and other small businesses in the communications marketplace in accordance with the national policy under section 257(b).

(4) *CONSIDERING SOCIALLY DISADVANTAGED INDIVIDUALS.*—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 market entry barriers for socially disadvantaged individuals in the communications marketplace in accordance with the national policy under section 257(b).*

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