

108TH CONGRESS
2D SESSION

H. R. 4069

To amend the Communications Act of 1934 to prevent excessive concentration of ownership of the nation’s media outlets, to restore fairness in broadcasting, and to foster and promote localism, diversity, and competition in the media.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2004

Mr. HINCHEY introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to prevent excessive concentration of ownership of the nation’s media outlets, to restore fairness in broadcasting, and to foster and promote localism, diversity, and competition in the media.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Media Ownership Reform Act of 2004”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

- Sec. 3. Fairness in broadcasting.
- Sec. 4. Broadcasting ownership limitations.
- Sec. 5. Invalidation of media ownership deregulation.
- Sec. 6. Review process for media ownership.
- Sec. 7. Public interest reports.
- Sec. 8. Prevention of programming vertical integration.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The Communications Act of 1934 requires
 4 the Federal Communications Commission and broad-
 5 cast licensees to promote the public interest. The
 6 Commission has long had rules in place to promote
 7 the goals of localism, diversity, and competition.

8 (2) The Supreme Court, on numerous occa-
 9 sions, has upheld the Commission’s and Congress’s
 10 right to establish media protections because a mo-
 11 nopolization of ideas is antithetical to our democ-
 12 racy.

13 (3) In 1945, the Supreme Court declared, “the
 14 widest possible dissemination of information from di-
 15 verse and antagonistic sources is essential to the
 16 welfare of the public, that a free press is a condition
 17 of a free society”.

18 (4) In 1969, the Supreme Court declared, “it is
 19 the purpose of the First Amendment to preserve an
 20 uninhibited marketplace of ideas in which truth will
 21 ultimately prevail, rather than to countenance mo-

1 nopolization of that market, whether it be by the
2 Government itself or a private licensee”.

3 (5) Over the past two decades there has been
4 a gradual shift of control in the public’s airwaves
5 into the hands of fewer private entities.

6 (6) Private entities can exert control over the
7 public’s access to information as many of the rules
8 designed to foster diversity, competition, localism,
9 and production of independent news and entertain-
10 ment have been weakened or repealed.

11 (7) The past two decades have produced tech-
12 nological advances. Approximately 80 percent of
13 U.S. households subscribe to cable or satellite sys-
14 tems offering multiple channels of video program-
15 ming. The rapid growth of the Internet added an-
16 other source of information to traditional media out-
17 lets. Over 71 percent of Americans have some form
18 of online access.

19 (8) These advances have dramatically increased
20 the number of information pipelines into Americans’
21 homes. Despite the increase in information outlets,
22 ownership and control of those is shrinking. A hand-
23 ful of companies control a large portion of both pro-
24 gramming and distribution. Five companies now own
25 the broadcast networks, 90 percent of the top 50

1 cable networks, produce three-quarters of all prime
2 time programming, and control 70 percent of the
3 prime time television market share. The same com-
4 panies that own the nation's most popular news-
5 papers and networks also own over 85 percent of the
6 top 20 Internet news sites.

7 (9) While the Internet has become a new source
8 of information, the vast majority of Americans con-
9 tinue to rely on television, newspaper, and radio as
10 their primary sources of news information. Owner-
11 ship of traditional news sources has been consoli-
12 dated over the past 25 years. Two-thirds of Amer-
13 ica's independent newspapers have been lost since
14 1975 and according to the Department of Justice's
15 Merger Guidelines every local newspaper market in
16 the U.S. is highly concentrated.

17 (10) One-third of America's independent TV
18 stations have vanished since 1975 and there has
19 been a 34 percent decline in the number of radio
20 station owners since the Telecommunications Act of
21 1996. There has been a severe decline in the number
22 of minority owned broadcast stations. At the end of
23 the 1990's, minorities owned just 1.9 percent of the
24 U.S. television stations and 4 percent of the nation's
25 AM and FM radio stations.

1 (11) As the major networks have been allowed
2 greater vertical integration, the percentage of inde-
3 pendently produced pilots and new series on the four
4 national broadcast networks has declined from 87.5
5 percent in 1990 to 22.5 percent in 2002.

6 (12) The media ownership rules adopted by the
7 FCC on June 2, 2003 as part of its 2002 Biennial
8 Regulatory Review will allow further consolidation of
9 the media industry. Under the June 2, 2003, rul-
10 ing—

11 (A) in the largest metropolitan areas one
12 company is allowed to own three television sta-
13 tions, eight radio stations, the daily newspaper,
14 even if it is the only daily newspaper, the cable
15 system, the all-news channel on that cable sys-
16 tem, and the Internet news sites associated with
17 each of those enterprises;

18 (B) networks are able to purchase addi-
19 tional TV stations, further nationalizing broad-
20 cast TV and limiting local communities' ability
21 to influence what programming it will see;

22 (C) over 80 percent of U.S. markets where
23 TV mergers are permitted will qualify as highly
24 concentrated, according to the anti-trust market

1 definitions contained in the Department of Jus-
2 tice’s merger guidelines;

3 (D) the cross-media ownership that is per-
4 mitted would reduce the number of independent
5 daily news sources in many markets to a level
6 20 times above the threshold used by the De-
7 partment of Justice to trigger antitrust inves-
8 tigations in other industries; and

9 (E) in one-newspaper towns and cities, the
10 new cross-media ownership regulations would
11 permit one company to have a 90 percent mar-
12 ket share of the newspaper circulation, one-
13 third of the TV audience, and one-third of the
14 radio audience.

15 (13) The weakening of media protections, and
16 subsequent consolidation of the media industry, has
17 allowed companies to ignore their obligations to
18 serve the public interest and severely reduce local-
19 ism, diversity, and competition in today’s media.

20 (14) The current state of today’s media threat-
21 ens the ability of our democracy to function because
22 it does not allow for “the widest possible dissemina-
23 tion of information from diverse and antagonistic
24 sources” and shrinks the marketplace of ideas.

25 (b) PURPOSES.—The purposes of this Act are—

1 (1) to inform the public of the scope of media
2 rules and regulations that have been weakened and
3 lost over the past two decades;

4 (2) to restore fairness in broadcasting;

5 (3) to reduce media concentration;

6 (4) to ensure that broadcasters meet their pub-
7 lic interest requirements; and

8 (5) to promote diversity, localism, and competi-
9 tion in American media

10 **SEC. 3. FAIRNESS IN BROADCASTING.**

11 Section 315 of the Communications Act of 1934 (47
12 U.S.C. 315) is amended—

13 (1) by redesignating subsections (a) through (d)
14 as subsections (b) through (e), respectively; and

15 (2) by inserting before subsection (b) the fol-
16 lowing new subsection:

17 “(a) PUBLIC INTEREST OBLIGATION TO COVER PUB-
18 LICLY IMPORTANT ISSUES.—A broadcast licensee shall af-
19 ford reasonable opportunity for the discussion of con-
20 flicting views on issues of public importance. The enforce-
21 ment and application of the requirement imposed by this
22 subsection shall be consistent with the rules and policies
23 of the Commission in effect on January 1, 1987.”.

1 **SEC. 4. BROADCASTING OWNERSHIP LIMITATIONS.**

2 (a) ESTABLISHMENT OF BROADCASTING MULTIPLE
3 OWNERSHIP LIMITATIONS.—Part I of title III of the Com-
4 munications Act of 1934 is amended by inserting after
5 section 339 (47 U.S.C. 339) the following new section:

6 **“SEC. 340. BROADCASTING MULTIPLE OWNERSHIP LIMITA-**
7 **TIONS.**

8 “(a) NATIONAL TELEVISION AUDIENCE REACH LIM-
9 ITATION.—The Commission shall not permit any license
10 for a commercial television broadcast station to be grant-
11 ed, transferred, or assigned to any party (including all
12 parties under common control) if the grant, transfer, or
13 assignment of such license would result in such party or
14 any of its stockholders, partners, or members, officers, or
15 directors, directly or indirectly, owning, operating or con-
16 trolling, or having a cognizable interest in television sta-
17 tions which have an aggregate national audience reach ex-
18 ceeding 35 percent.

19 “(b) RADIO OWNERSHIP LIMITATIONS.—

20 “(1) NATIONAL RADIO OWNERSHIP LIMITA-
21 TIONS.—The Commission shall modify section
22 73.3555 of its regulations (47 C.F.R. 73.3555) to
23 establish provisions limiting the number of AM or
24 FM broadcast stations which may be owned or con-
25 trolled by one entity nationally. Such limitation shall

1 not exceed 5 percent of the total number of AM and
2 FM broadcast stations.

3 “(2) LOCAL RADIO OWNERSHIP LIMITATIONS.—
4 The Commission shall revise section 73.3555(a) of
5 its regulations (47 C.F.R. 73.3555) to provide
6 that—

7 “(A) in a radio market with 45 or more
8 commercial radio stations, a party may own,
9 operate, or control up to 6 commercial radio
10 stations, not more than 4 of which are in the
11 same service (AM or FM);

12 “(B) in a radio market with between 30
13 and 44 (inclusive) commercial radio stations, a
14 party may own, operate, or control up to 5 com-
15 mercial radio stations, not more than 3 of
16 which are in the same service (AM or FM);

17 “(C) in a radio market with between 15
18 and 29 (inclusive) commercial radio stations, a
19 party may own, operate, or control up to 4 com-
20 mercial radio stations, not more than 2 of
21 which are in the same service (AM or FM), ex-
22 cept that a party may not own, operate, or con-
23 trol more than 25 percent of the stations in
24 such market; and

1 “(D) in a radio market with 14 or fewer
2 commercial radio stations, a party may own,
3 operate, or control up to 3 commercial radio
4 stations, not more than 2 of which are in the
5 same service (AM or FM), except that a party
6 may not own, operate, or control more than 40
7 percent of the stations in such market.

8 “(c) CABLE/BROADCASTING OWNERSHIP RESTRIC-
9 TIONS.—The Commission shall not permit any license for
10 a commercial television broadcast station to be granted,
11 transferred, or assigned to any party (including all parties
12 under common control) if the grant, transfer, or assign-
13 ment of such license would result in such party or any
14 of its stockholders, partners, or members, officers, or di-
15 rectors, directly or indirectly, owning, operating or control-
16 ling, or having a cognizable interest in such station and
17 directly or indirectly owning or controlling a cable tele-
18 vision system whose service area overlaps in whole or in
19 part with such television broadcast station’s predicted
20 Grade B contour, computed in accordance with section
21 73.684 of the Commission’s regulations (47 C.F.R.
22 73.684).

23 “(d) NO GRANDFATHERING.—The Commission shall
24 require any party (including all parties under common
25 control) that holds licenses for commercial broadcast sta-

1 tions in excess of the limitations contained in subsection
2 (a), (b), or (c) to divest itself of such licenses as may be
3 necessary to come into compliance with such limitation
4 within one year after the date of enactment of this section.

5 “(e) SECTION NOT SUBJECT TO FORBEARANCE.—
6 Section 10 of this Act shall not apply to the requirements
7 of this section.

8 “(f) DEFINITIONS.—

9 “(1) NATIONAL AUDIENCE REACH.—The term
10 ‘national audience reach’ means—

11 “(A) the total number of television house-
12 holds in the Nielsen Designated Market Area
13 (DMA) markets in which the relevant stations
14 are located, or as determined under a successor
15 measure adopted by the Commission to delin-
16 eate television markets for purposes of this sec-
17 tion; divided by

18 “(B) the total national television house-
19 holds as measured by such DMA data (or such
20 successor measure) at the time of a grant,
21 transfer, or assignment of a license.

22 No market shall be counted more than once in mak-
23 ing this calculation. The Commission shall not pro-
24 vide any discount in the measurement of national

audience reach for UHF stations, or on the basis of any other class or category of television station.

“(2) COGNIZABLE INTEREST.—Except as may otherwise be provided by regulation by the Commission, the term ‘cognizable interest’ means any partnership or direct ownership interest and any voting stock interest amounting to 5 percent or more of the outstanding voting stock of a licensee.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 629 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004, is repealed. Subject to the amendments made by this subsection, section 202 of the Telecommunications Act of 1996 shall be applied as if such section 629 had not been enacted. This paragraph shall be effective as if enacted on the day after the date of enactment of Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004.

(2) Subsections (a) and (b) of section 202 of the Telecommunications Act of 1996 (Public Law 104–104; 110 Stat. 110) are repealed

(3) Section 202(c)(1) of such Act is amended—

1 (A) by striking “its regulations” and all
 2 that follows through “by eliminating” and in-
 3 serting “its regulations (47 C.F.R. 73.3555) by
 4 eliminating”;

5 (B) by striking “; and” at the end of sub-
 6 paragraph (A) and inserting a period; and

7 (C) by striking subparagraph (B).

8 **SEC. 5. INVALIDATION OF MEDIA OWNERSHIP DEREGULA-**
 9 **TION.**

10 (a) DEFINITION.—For purposes of this section, the
 11 term “media ownership proceeding” means the Federal
 12 Communications Commission proceeding on broadcast
 13 media ownership rules (MB Docket No. 02–277, MM
 14 Docket No. 01–235, MM Docket No. 01–317, and MM
 15 Docket No. 00–244).

16 (b) NEW RULES INVALIDATED.—Except as provided
 17 in subsection (d), the final rules adopted by the Federal
 18 Communications Commission pursuant to its media own-
 19 ership proceeding, and announced by the Commission on
 20 June 2, 2003, shall be invalid and without legal effect.

21 (c) REINSTATEMENT OF PREVIOUS RULES.—Except
 22 as provided in subsection (d), any rule of the Federal
 23 Communications Commission that was in effect on June
 24 1, 2003, and that was amended, repealed, or otherwise
 25 modified by the Commission pursuant to the media owner-

1 ship proceeding is hereby reinstated as it was in effect on
2 June 1, 2003. Any such rule shall be applied and enforced
3 both prospectively after the date of enactment of this Act
4 and retroactively to June 2, 2003, as if the media owner-
5 ship proceeding had not occurred.

6 (d) EXCEPTION.—This section shall not apply to the
7 limitations required by section 340 of the Communications
8 Act of 1934, as added by section 4 of this Act.

9 (e) USE OF BIENNIAL REVIEW PROHIBITED.—The
10 Federal Communications Commission shall not apply sec-
11 tion 202(h) of the Telecommunications Act of 1996 or sec-
12 tion 11(b) of the Communications Act of 1934 (47 U.S.C.
13 161(b)) to any review of broadcast media ownership rules
14 after the date of enactment of this Act.

15 **SEC. 6. REVIEW PROCESS FOR MEDIA OWNERSHIP.**

16 (a) FIVE-YEAR REVIEW PROCESS.—The Commission
17 shall, once each 5 years beginning in 2006, conduct a re-
18 view of—

19 (1) how the Commission’s regulations con-
20 cerning media ownership promote and protect local-
21 ism, competition, diversity of voices in the media, di-
22 versity in broadcast ownership, children’s program-
23 ming, small and local broadcasters, technological ad-
24 vancement; and

1 (2) what regulations should be strengthened,
2 added, eliminated, or altered, consistent with the
3 priorities described in paragraph (1).

4 (b) REPORT TO CONGRESS.—The Commission shall,
5 promptly after the conclusion of each review under sub-
6 section (a), submit a report thereon to Congress.

7 (c) PUBLICATION OF FINAL RULES PRIOR TO COM-
8 MENT; HEARINGS.—Before issuing any final rule con-
9 cerning limitations on media ownership, the Commission
10 shall—

11 (1) publish such rule in the Federal Register;

12 (2) conduct not less than 5 public hearings in
13 various regions of the country to afford the public
14 a reasonable opportunity to comment on such rule;
15 and

16 (3) widely advertise the time and place of such
17 hearings in advance.

18 **SEC. 7. PUBLIC INTEREST REPORTS.**

19 Section 309(k) of the Communications Act of 1934
20 (47 U.S.C. 309(k)) is amended by adding at the end the
21 following new paragraph:

22 “(5) PUBLIC INTEREST SERVICE REPORTS RE-
23 QUIRED.—For the purposes of enabling the Commis-
24 sion to render the determinations required by para-
25 graph (1)(A), each broadcast licensee, at least one

1 every 2 years, shall submit to the Commission and
2 publish, or otherwise make broadly available to the
3 public at no cost, a report on how the broadcast sta-
4 tion is meeting the requirement to serve the public
5 interest. The information in such report shall in-
6 clude—

7 “(A) the broadcaster’s attempts to ascer-
8 tain and satisfy local community needs;

9 “(B) the broadcaster’s use of public service
10 announcements;

11 “(C) the level and variety of the broad-
12 caster’s children’s programming and the extent
13 of the broadcaster’s restraint from improper
14 commercial advertising during children’s pro-
15 gramming; and

16 “(D) the level and variety of the broad-
17 caster’s nonentertainment programming, par-
18 ticularly public affairs programming; and

19 “(E) the broadcaster’s proposals for future
20 programming.”.

21 **SEC. 8. PREVENTION OF PROGRAMMING VERTICAL INTE-**
22 **GRATION.**

23 Part I of title III of the Communications Act of 1934
24 is amended by inserting after section 340 (as added by
25 section 3) the following new section:

1 **“SEC. 341. PREVENTION OF PROGRAMMING VERTICAL IN-**
2 **TEGRATION.**

3 “(a) LIMITATIONS ON VERTICAL INTEGRATION IN
4 THE ACQUISITION OF PROGRAMMING.—The Commission
5 shall, in accordance with subsection (b), prescribe rules
6 to prevent the persons controlling the distribution of video
7 programming over network distribution systems from ac-
8 quiring unreasonable proportions of such programming
9 from subsidiaries or affiliates contrary to the public inter-
10 est in the goals of diversity and competition in the media
11 marketplace.

12 “(b) MINIMUM STANDARDS.—The rules required by
13 subsection (a) shall, at a minimum—

14 “(1) for any of the four largest national tele-
15 vision networks, prohibit such network from distrib-
16 uting network produced programming over such net-
17 work in an amount that exceeds, for any month,
18 more than 60 percent of their primetime program-
19 ming;

20 “(2) for any other national television network,
21 other than a network described in paragraph (3),
22 prohibit such network from distributing network
23 produced programming over such network in an
24 amount that exceeds, for any month, more than 70
25 percent of their primetime programming;

1 “(3) for a national television network that has
2 been in operation for less than 3 years, prohibit such
3 network from distributing network produced pro-
4 gramming over such network in an amount that ex-
5 ceeds, for any month, more than 90 percent of their
6 primetime programming;

7 “(4) for a cable network that is owned or con-
8 trolled by a large cable operator or by a national tel-
9 evision network, prohibit such network from distrib-
10 uting network produced programming over such net-
11 works in an amount that exceeds, for any month,
12 more than 65 percent of their primetime program-
13 ming; and

14 “(5) for any other cable networks, prohibit such
15 network from distributing network produced pro-
16 gramming over such network in an amount that ex-
17 ceeds, for any month, more than 75 percent of their
18 primetime programming.

19 “(c) DEFINITIONS.—As used in this section:

20 “(1) NETWORK PRODUCED PROGRAMMING.—
21 The term ‘network produced programming’ means
22 programming that is owned or produced by an entity
23 controlled by or affiliated with the same entity own-
24 ing or controlling the network, or one over which the
25 network has sole or joint creative control, acts as the

1 distributor, or has a financial interest, but does not
2 include programming that is owned or produced, or
3 under the sole creative control, by an affiliated tele-
4 vision broadcast station that is not owned or con-
5 trolled by such network.

6 “(2) PRIMETIME PROGRAMMING.—The term
7 ‘primetime programming’ means programming
8 broadcast during the hours of 8 p.m. to 11 p.m.,
9 Monday through Sunday, but does not include news-
10 casts, sports programs, or telecasts of feature films.

11 “(3) CABLE NETWORK.—The term ‘cable net-
12 work’ means a cable channel that broadcasts video
13 programming which is primarily intended for the di-
14 rect receipt by a cable operator or a satellite oper-
15 ator for their retransmission to cable or satellite
16 subscribers, but does not include a cable channel
17 that reaches less than 16 million cable households.

18 “(4) LARGE CABLE OPERATOR.—The term
19 ‘large cable operator’ means a cable operator, as
20 such term is defined in section 602, that has
21 3,000,000 or more subscribers in the aggregate na-
22 tionwide.”.

○