

116TH CONGRESS
2D SESSION

H. R. 8154

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

SEPTEMBER 1, 2020

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

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. BROADCAST INCUBATOR PROGRAM.**

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

3 (1) Our Nation continues to respond to the on-
4 going COVID–19 pandemic, and all Americans must
5 have access to accurate, reliable information.

6 (2) Americans are fighting racial injustice, and
7 promoting local and diverse media will play an im-
8 portant role in limiting misinformation.

9 (3) Congress should commit to promoting
10 media diversity and pledging to work with media en-
11 tities and diverse stakeholders to develop common-
12 ground solutions to eliminate barriers to media di-
13 versity.

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

23 (5) Having independent, diverse, and local
24 media that provide exposure to a broad range of
25 viewpoints and the ability to contribute to the polit-

1 ical debate is central to sustaining informed engage-
2 ment.

3 (6) It is in the public interest to encourage
4 source, content, and audience diversity on our Na-
5 tion's shared media platforms.

6 (7) The survival of small, independent, and di-
7 verse media outlets that serve diverse audiences and
8 local media markets is essential to preserving local
9 culture and building understanding on important
10 community issues that impact the daily lives of resi-
11 dents.

12 (8) Research by the American Society of News
13 Editors, the Radio Television Digital News Associa-
14 tion, the Pew Research Center, and others has docu-
15 mented the continued challenges of increasing diver-
16 sity among all types of media entities.

17 (9) With increasing media experience and so-
18 phistication, it is even more important to have mi-
19 nority participation in local media to ensure a di-
20 verse range of information sources are available and
21 different ideas and viewpoints are expressed to
22 strengthen social cohesion among different commu-
23 nities.

24 (10) The constriction in small, independent,
25 and diverse media outlets and limited participation

1 of diverse populations in media ownership and deci-
2 sionmaking are combining to negatively impact our
3 goal of increasing local civic engagement and civic
4 knowledge through increased voter participation,
5 membership in civic groups, and knowledge of local
6 political and civil information.

7 (11) The Advisory Committee on Diversity and
8 Digital Empowerment of the Commission, and pred-
9 ecessor Federal advisory committees, have rec-
10 ommended for decades that the Commission adopt
11 an incubator program providing structural rule
12 changes to facilitate new and diverse entrants into
13 the marketplace.

14 (12) The Broadcast Incubator Program estab-
15 lished under this section is consistent with the na-
16 tional policy described in section 257(b) of the Com-
17 munications Act of 1934 (47 U.S.C. 257(b)): “to
18 promote the policies and purposes of this Act favor-
19 ing diversity of media voices, vigorous economic com-
20 petition, technological advancement, and promotion
21 of the public interest, convenience, and necessity”.

22 (b) ESTABLISHMENT.—Not later than 270 days after
23 the date of the enactment of this Act, the Commission
24 shall promulgate regulations establishing a program, to be
25 known as the “Broadcast Incubator Program”, to support

1 the entry of new and diverse voices in the broadcasting
2 industry by providing for an established broadcaster and
3 an emerging broadcaster to enter into a qualifying incuba-
4 tion relationship with respect to one or more incubated
5 stations of the emerging broadcaster.

6 (c) QUALIFYING INCUBATION RELATIONSHIP.—

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

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

16 (i) a limit, expressed in terms of a
17 number of broadcast stations, on how
18 many broadcast stations of which an
19 emerging broadcaster may have effective
20 control on the day before the date on
21 which the established broadcaster and the
22 emerging broadcaster submit the applica-
23 tion for the Program under subsection (d);

24 (ii) a cap, expressed in terms of a dol-
25 lar amount, on the gross revenue that the

1 emerging broadcaster may earn during the
2 calendar year ending most recently before
3 the date on which the established broad-
4 caster and the emerging broadcaster sub-
5 mit the application for the Program under
6 subsection (d); and

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

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

15 (II) if any incubated station
16 under such relationship will be a tele-
17 vision broadcast station, any class or
18 assignment of television broadcast sta-
19 tion (except for a low power television
20 station or a television translator sta-
21 tion).

22 (B) Criteria for the incubation activities
23 that the established broadcaster shall perform
24 as part of such relationship. Such activities
25 shall include the provision by the established

1 broadcaster to the emerging broadcaster of
2 training, financing, or access to resources.

3 (C) A requirement that the established
4 broadcaster and the emerging broadcaster es-
5 tablish mutually agreed-upon goals for such re-
6 lationship.

7 (D) A requirement that the established
8 broadcaster and the emerging broadcaster es-
9 tablish a mutually agreed-upon limitation on
10 the amount of equity (if any) that the estab-
11 lished broadcaster may hold in the emerging
12 broadcaster.

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

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

19 (G) A requirement that, upon successful
20 completion of such relationship in accordance
21 with the application approved by the Commis-
22 sion under subsection (d) and in compliance
23 with the other requirements for the Program
24 established by the Commission, the emerging

1 broadcaster shall have effective control of each
2 incubated station under such relationship.

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

12 (d) APPLICATION PROCESS.—

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

19 (2) PROCESS, FORMS, AND MATERIALS.—The
20 Commission shall develop an application process and
21 related forms and materials necessary to carry out
22 the Program.

23 (3) APPLICATION REVIEW PROCESS.—

24 (A) DEADLINE.—

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

7 (ii) ADDITIONAL TIME NEEDED BY
8 COMMISSION.—If the Commission deter-
9 mines that, because an excessive number of
10 applications have been filed at one time,
11 the Commission needs additional time for
12 employees of the Commission to process
13 the applications, the Commission may ex-
14 tend the deadline described in clause (i) for
15 not more than 45 days.

16 (B) OPPORTUNITY FOR APPLICANT TO
17 CURE DEFICIENCY.—If the Commission deter-
18 mines that an application is materially defi-
19 cient, the Commission shall provide the appli-
20 cants a 15-day period to cure the defect before
21 denying the application. If such period would
22 extend beyond the deadline under subparagraph
23 (A) for approving or denying the application,
24 such deadline shall be extended through the end
25 of such period.

1 (C) EFFECT OF DENIAL.—Denial of an ap-
2 plication for participation in the Program shall
3 not preclude the applicants from resubmitting
4 the application or any applicant from submit-
5 ting a new application for participation in the
6 Program at a later date.

7 (4) CERTIFICATIONS.—The Commission shall
8 require each applicant submitting an application for
9 participation in the Program to certify to the Com-
10 mission in the application that, as of the date of the
11 submission of the application—

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

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

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

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

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

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

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

17 (e) WAIVER OF LOCAL OWNERSHIP RULES.—

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

1 the extent necessary to permit the established broad-
2 caster—

3 (A) to hold a cognizable interest in any in-
4 cubated station under the qualifying incubation
5 relationship; and

6 (B) to hold a cognizable interest in—

7 (i) if the established broadcaster had
8 effective control of an AM or FM radio
9 broadcast station (except for a low power
10 radio station or a radio translator station)
11 on the day before the date on which the es-
12 tablished broadcaster and the emerging
13 broadcaster submitted the application for
14 the Program under subsection (d), 1 radio
15 broadcast station in excess of the number
16 of radio broadcast stations in which the es-
17 tablished broadcaster is permitted to hold
18 a cognizable interest under section
19 73.3555(a) of such title in a radio market
20 that is—

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

22 and

23 (II) selected by the established
24 broadcaster;

1 (ii) if the established broadcaster had
2 effective control of a television broadcast
3 station (except for a low power television
4 station or a television translator station)
5 on the day before the date on which the es-
6 tablished broadcaster and the emerging
7 broadcaster submitted the application for
8 the Program under subsection (d), 1 tele-
9 vision broadcast station in excess of the
10 number of television broadcast stations in
11 which the established broadcaster is per-
12 mitted to hold a cognizable interest under
13 section 73.3555(b) of such title in a DMA
14 that is—

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

16 and

17 (II) selected by the established
18 broadcaster; or

19 (iii) if the established broadcaster had
20 effective control of an AM or FM radio
21 broadcast station (except for a low power
22 radio station or a radio translator station)
23 and a television broadcast station (except
24 for a low power television station or a tele-
25 vision translator station) on the day before

1 the date on which the established broad-
2 caster and the emerging broadcaster sub-
3 mitted the application for the Program
4 under subsection (d), either (at the option
5 of the established broadcaster)—

6 (I) 1 radio broadcast station in
7 excess of the number of radio broad-
8 cast stations in which the established
9 broadcaster is permitted to hold a
10 cognizable interest under section
11 73.3555(a) of such title in a radio
12 market determined in the same man-
13 ner as under clause (i); or

14 (II) 1 television broadcast station
15 in excess of the number of television
16 broadcast stations in which the estab-
17 lished broadcaster is permitted to hold
18 a cognizable interest under section
19 73.3555(b) of such title in a DMA de-
20 termined in the same manner as
21 under clause (ii).

22 (2) DETERMINATION OF COMMISSION DE-
23 SCRIBED.—The determination described in this
24 paragraph is a determination that an established
25 broadcaster and an emerging broadcaster have en-

1 tered into and are successfully carrying out a quali-
2 fying incubation relationship under the Program in
3 accordance with an application approved by the
4 Commission under subsection (d) and are in compli-
5 ance (with respect to such relationship) with the
6 other requirements for the Program established by
7 the Commission.

8 (3) SPECIFICATION OF RADIO MARKETS AND
9 DMAS.—

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

13 (i) if the highest-ranked radio market
14 or DMA in which an incubated station
15 under the qualifying incubation relation-
16 ship is located is ranked not lower than 25,
17 all radio markets or DMAs;

18 (ii) if the highest-ranked radio market
19 or DMA in which an incubated station
20 under the qualifying incubation relation-
21 ship is located is ranked lower than 25 but
22 not lower than 75, the radio markets or
23 DMAs ranked lower than 25;

24 (iii) if the highest-ranked radio mar-
25 ket or DMA in which an incubated station

1 under the qualifying incubation relation-
2 ship is located is ranked lower than 75 but
3 not lower than 100, the radio markets or
4 DMAs ranked lower than 75;

5 (iv) if the highest-ranked radio mar-
6 ket or DMA in which an incubated station
7 under the qualifying incubation relation-
8 ship is located is ranked lower than 100
9 but not lower than 150, the radio markets
10 or DMAs ranked lower than 100; and

11 (v) if the highest-ranked radio market
12 or DMA in which an incubated station
13 under the qualifying incubation relation-
14 ship is located is ranked lower than 150,
15 the radio markets or DMAs ranked lower
16 than 150.

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

19 (i) a DMA ranking refers to the
20 rankings of DMAs based on the number of
21 television households, as determined by
22 Nielsen Media Research and published
23 most recently before the granting of the
24 waiver in the Nielsen Station Index Direc-
25 tory and Nielsen Station Index United

1 States Television Household Estimates (or
2 any successor publication); and

3 (ii) a radio market ranking refers to
4 the rankings of radio markets based on
5 population, as determined by Nielsen
6 Media Research and published most re-
7 cently before the granting of the waiver in
8 Radio Market Survey Population,
9 Rankings & Information (or any successor
10 publication).

11 (4) TERMINATION OF WAIVER.—The Commis-
12 sion shall specify in the regulations promulgated
13 under subsection (b) when a waiver granted under
14 paragraph (1) shall terminate.

15 (f) TERMINATION OF PARTICIPATION IN PROGRAM.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), if the Commission determines that an es-
18 tablished broadcaster and an emerging broadcaster
19 are not successfully carrying out a qualifying incuba-
20 tion relationship in accordance with the application
21 approved by the Commission under subsection (d) or
22 are not in compliance (with respect to such relation-
23 ship) with the other requirements of the Program
24 established by the Commission, the Commission
25 shall terminate the qualifying incubation relationship

1 under the Program and the participation of the es-
2 tablished broadcaster and the emerging broadcaster
3 in the Program with respect to such relationship.

4 (2) EXCEPTION FOR TRANSFER OF INCUBATED
5 STATION.—

6 (A) IN GENERAL.—The transfer by an
7 emerging broadcaster of effective control of an
8 incubated station to another person shall not
9 terminate the qualifying incubation relationship
10 under the Program, and such other person shall
11 be substituted as a party to such relationship,
12 if—

13 (i) such other person meets the re-
14 quirements for an emerging broadcaster
15 under the Program;

16 (ii) such other person and the estab-
17 lished broadcaster continue, with respect to
18 such station, to successfully carry out the
19 qualifying incubation relationship in ac-
20 cordance with the application approved by
21 the Commission under subsection (d) and
22 to comply with the other requirements of
23 the Program established by the Commis-
24 sion; and

1 (iii) in a case in which the original
2 emerging broadcaster retains effective con-
3 trol of any incubated station under the
4 qualifying incubation relationship, such
5 emerging broadcaster and the established
6 broadcaster continue, with respect to any
7 such station, to successfully carry out the
8 qualifying incubation relationship in ac-
9 cordance with the application approved by
10 the Commission under subsection (d) and
11 to comply with the other requirements of
12 the Program established by the Commis-
13 sion.

14 (B) TREATMENT AS SINGLE QUALIFYING
15 INCUBATION RELATIONSHIP.—If, after a trans-
16 fer described in subparagraph (A), the original
17 emerging broadcaster retains effective control of
18 any incubated station under the qualifying incu-
19 bation relationship, any such station and any
20 station of which effective control has been so
21 transferred shall be treated as being part of a
22 single qualifying incubation relationship.

23 (3) REVOCATION OF WAIVER PROHIBITED.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the Commission may not, as

1 a penalty for or consequence of the termination
2 under paragraph (1) of a qualifying incubation
3 relationship between an established broadcaster
4 and an emerging broadcaster, revoke any waiver
5 granted to the established broadcaster under
6 subsection (e)(1) as a result of such relation-
7 ship.

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

20 (g) EXCLUSION FROM QUADRENNIAL REVIEW.—The
21 Program, the regulations promulgated by the Commission
22 under this section, and any waiver granted under sub-
23 section (e)(1) shall not be subject to review under section
24 202(h) of the Telecommunications Act of 1996 or section
25 11 of the Communications Act of 1934 (47 U.S.C. 161).

1 (h) IMPLEMENTATION AND ENFORCEMENT.—The
2 Commission shall implement and enforce this section as
3 if this section is a part of the Communications Act of 1934
4 (47 U.S.C. 151 et seq.). A violation of this section, or a
5 regulation promulgated under this section, shall be consid-
6 ered to be a violation of the Communications Act of 1934,
7 or a regulation promulgated under such Act, respectively.

8 (i) CONSIDERATION IN COMMUNICATIONS MARKET-
9 PLACE REPORT.—Section 13(d) of the Communications
10 Act of 1934 (47 U.S.C. 163(d)) is amended by adding at
11 the end the following:

12 “(4) CONSIDERING EFFECTIVENESS OF BROAD-
13 CAST INCUBATOR PROGRAM.—In assessing the state
14 of competition under subsection (b)(1) and regu-
15 latory barriers under subsection (b)(3), the Commis-
16 sion, with the input of the Office of Communications
17 Business Opportunities of the Commission, shall
18 consider the efficacy of the Broadcast Incubator
19 Program established under section 2 of the Broad-
20 cast Diversity in Leadership Act in promoting com-
21 petition.”.

22 (j) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to limit the development by the
24 Commission of additional programs or policies to promote

1 the entry of new and diverse voices in the broadcasting
2 industry.

3 (k) DEFINITIONS.—In this section:

4 (1) BROADCAST STATION.—The term “broad-
5 cast station” has the meaning given such term in
6 section 3 of the Communications Act of 1934 (47
7 U.S.C. 153).

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

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

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

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

23 (A) has effective control of a broadcast
24 station (including any class or assignment of
25 television broadcast station and any class of

1 AM or FM radio broadcast station) that such
2 person would be unable to continue to operate
3 successfully without a qualifying incubation re-
4 lationship under the Program; or

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

12 (6) ESTABLISHED BROADCASTER.—The term
13 “established broadcaster” means a person who—

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

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

23 (7) INCUBATED STATION.—The term “incu-
24 bated station” means a broadcast station—

1 (A) of which an emerging broadcaster has
2 (or plans to acquire) effective control; and

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

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

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

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

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