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110TH CONGRESS *2d Session*	SENATE	REPORT 110–461

MEDIA OWNERSHIP ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2332

SEPTEMBER 15, 2008.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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MEDIA OWNERSHIP ACT OF 2007

SEPTEMBER 15, 2008.—Ordered to be printed

Mr. INOUYE, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2332]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2332) to promote transparency in the adoption of new media ownership rules by the Federal Communications Commission, and to establish an independent panel to make recommendations on how to increase the representation of women and minorities in broadcast media ownership, having considered the same, reports favorably thereon with amendments, and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2332 is to promote local programming and content in media by requiring the Federal Communications Commission (FCC) to seek public comment on any proposed changes to media ownership rules, to conduct a rulemaking to examine the impact of media ownership on local programming, and to solicit expert recommendations on how to increase minority and female ownership of broadcast media.

BACKGROUND AND NEEDS

For decades the FCC has sought to ensure that the allocation of broadcast licenses serves the public interest and promotes the core values of competition, diversity, and localism. As was noted by the Supreme Court more than 50 years ago, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press v. United States*, 326 U.S. 1 (1945).

The Communications Act of 1934 provides the FCC with the authority to grant licenses for the use of broadcast facilities, consistent with the "public interest, convenience, and necessity." The FCC views broadcasters as trustees of the public airwaves and imposes restrictions and obligations on broadcasters accordingly. The Supreme Court has upheld the regulation of broadcasters pursuant to public trustee constraints as constitutional since the *Red Lion* case was decided (*Red Lion Broadcasting Company v. FCC*, 395 U.S. 367 (1969)). Pursuant to this authority, the FCC has policies limiting both the national and local ownership of broadcast licenses.

Initially, the FCC reviewed common ownership issues on a case-by-case basis. As the industry developed, the FCC adopted bright-line rules addressing license ownership in national and local media markets, consistent with the public interest. Among other things, FCC rules limit the number of television stations and radio stations a single company can own in one market. In addition, the FCC's newspaper/broadcast cross-ownership rule prohibits the ownership of a television or radio station and the daily newspaper in the same market.

With the enactment of the Telecommunications Act of 1996 (1996 Act), Congress significantly loosened media ownership limits. The 1996 Act eliminated limits on national radio ownership and raised the cap on national television audience reach from 25 to 35 percent. The Act also eased local radio ownership limits by creating a sliding scale limit that allowed for as many as eight co-owned radio stations in the largest markets. The 1996 Act also mandated that the FCC review its media ownership rules every two years to "determine whether any of such rules are necessary in the public interest as the result of competition."

2002 BIENNIAL REVIEW

In 2002, the FCC released a Notice of Proposed Rulemaking announcing that the agency would review its full range of broadcast ownership rules. The public was asked to comment on the continued viability of these rules, in light of changes in the media marketplace and recent court decisions.[1] On June 2, 2003, led by then-FCC Chairman Michael Powell, the agency adopted its *2002 Biennial Review* decision, relaxing many of the FCC's media ownership rules.

The revised rules included a national television audience reach cap of 45 percent. With respect to local television ownership, the revised rules permitted one company to own two stations in markets with five or more television stations and three stations in markets with 18 or more television stations. With respect to local radio ownership, the revised rule retained existing caps, but adjusted the way stations are counted. The revised rules combined the radio/television and newspaper/broadcast cross-ownership restrictions into a single new media cross-ownership rule. Under this proposed rule, in markets with three or fewer television stations, no cross-ownership was permitted among television stations, radio stations, and daily newspapers in the same market. In markets with four to eight television stations, combinations were limited to one of the

[1] See *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002).

following: (1) a daily newspaper, one television station, and up to half of the radio station limit for that market; (2) a daily newspaper and up to the radio station limit for that market; or (3) two television stations and up to the radio station limit for that market. In markets with nine or more television stations, any combination that otherwise complies with the local television and local radio ownership rules was permitted. As a result, in a large market, one company could theoretically own as many as eight radio stations, three television stations, a daily newspaper, and the cable company.

The revised rules faced significant public criticism. In response to the *2002 Biennial Review* decision, more than three million individuals complained to the FCC. Congress also voiced its opposition. On September 16, 2003, the Senate voted 55-40 to support a "resolution of disapproval" of the FCC decision, pursuant to the Congressional Review Act. In addition, in omnibus appropriations legislation in 2004, Congress rolled back the FCC's new national television ownership cap from 45 to 39 percent.

Appeals of the FCC's *2002 Biennial Review* decision were consolidated in the Third Circuit. On June 24, 2004, the Third Circuit affirmed the FCC's general authority "to regulate media ownership," but remanded to the FCC the bulk of its rule changes in the *2002 Biennial Review* decision for further justification and record support.[2] The court also largely stayed the FCC's new rules from the *2002 Biennial Review* decision. As a result, the agency's previous rules continue to govern media ownership in this country. On June 13, 2005, the United States Supreme Court denied the petitions for the writ of certiorari seeking review of *Prometheus*.

On June 21, 2006, the FCC adopted a notice of proposed rulemaking seeking comment on the issues raised by the *Prometheus* remand, pursuant to its duty under section 202(h) of the 1996 Act which now requires the agency to review its media ownership rules on a quadrennial basis.[3] As part of its efforts to seek public comment, the FCC held six public field hearings across the United States. On November 13, 2007, FCC Chairman Kevin Martin published an editorial in *The New York Times* calling for the FCC to roll back its media ownership rules in order to permit newspaper/broadcast cross-ownership in the top 20 markets. Subsequently, on December 13, 2007, the Committee held a hearing on FCC oversight during which several members requested the FCC take additional time to solicit comment and consider its proposed changes to its media ownership rules. Just a month after the Martin editorial, on December 18, 2007, the FCC concluded its rulemaking by approving a revised set of ownership rules under which newspaper/broadcast cross-ownership is presumptively permissible in the top 20 markets. For other markets, the Commission determined that it would review transactions on a case-by-case basis, subject to a negative presumption, which may be overcome through evaluating: the level of concentration in the market; whether or not the combined

[2] See *Prometheus Radio Project, et al. v. FCC*, 373 F. 3d 372 (3rd Cir. 2004) (*Prometheus*).

[3] *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rule Making, 21 FCC Rcd 8834 (2006); see also *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Further Notice of Proposed Rule Making, 22 FCC Rcd 14215 (2007).

entity will significantly increase the amount of local news in the market; whether or not the combined newspaper and broadcast outlets will continue to employ their own editorial staff; and the financial condition of the newspaper or broadcast station in the proposed combination, or if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

INDUSTRY CONSOLIDATION

The decade leading up to the *2002 Biennial Review* decision was a period of significant change in the media marketplace. In the broadcast television industry, the number of television station owners decreased by approximately 40 percent between 1995 and 2003. According to studies recently conducted by the FCC, these trends have continued albeit at slower pace. Between 2002 and 2005, the number of commercial television station owners decreased about four percent and the number of commercial radio station owners decreased by eight percent.[3] During the same period the number of television/radio combinations increased by more than 20 percent.[4] As a result of this increase in concentration, there are fewer local owners of radio and television broadcast stations. Studies suggest that local owners of broadcast media provide more local news programming.[5]

Consolidation in the media marketplace has left women and minorities with only a limited ownership interest. According to a recent Government Accountability Office (GAO) investigation "[w]hile there are no reliable government data on ownership by women and minorities, ownership of broadcast outlets by these groups appears limited. According to the industry stakeholders and experts we interviewed, the level is limited, and recent studies generally support this conclusion."[6] In testimony before the Committee on November 8, 2007, Alex Nogales, President of the National Hispanic Media Coalition, stated "[m]ore than a third of Americans are people of color. Yet they own less than 3% of television stations and less than 8% of radio stations—and these numbers are going down, not up."

LEGISLATIVE HISTORY

On November 8, 2007, the Committee held a hearing to examine the effects of media ownership consolidation on localism and diversity in news and entertainment. Senator Dorgan introduced S. 2332 on the same day with Senators Lott, Kerry, Bill Nelson, Cantwell, Snowe, Biden, Clinton, Feinstein, and Obama as original cosponsors.

On December 4, 2007, the Committee held an executive session at which S. 2332 was considered. The bill was approved by voice vote, as modified by a managers' amendment offered by Senator Dorgan.

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[4] *Media Ownership Study Two: Ownership Structure and Robustness of Media* by Kiran Duwadi, Scott Roberts, and Andrew Wise revised September 5, 2007 at 5-6.

[5] Id. at 5.

[6] See, e.g., Alexander, Peter J. and Brown, Keith. "Do Local Owners Deliver More Localism? Some Evidence from Local Broadcast News." FCC Working Paper (2004).

[7] Letter from JayEtta Z. Hecker, GAO, to the Honorable Edward J. Markey, dated December 14, 2007, at 9.

On December 13, 2007, the Committee held a hearing on FCC oversight during which several members spoke at length about Chairman Martin's proposed role changes, as described in his editorial in The New York Times. On December 14, 2007, twenty-six Senators signed a letter to Chairman Martin urging a further period of comment on the Chairman's proposed rule changes. On December 18, 2007, the FCC approved a revised set of ownership rules under which newspaper/broadcast cross-ownership is permissible in the top 20 markets.

Staff assigned to this legislation are Jessica Rosenworcel, Democratic Senior Communications Counsel, Alex Hoehn-Saric, Democratic Communications Counsel, Paul Nagle, Republican Chief Counsel, and Michael Engel, Detailee.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

JANUARY 16, 2008.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2332, the Media Ownership Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 2332—Media Ownership Act of 2007

S. 2332 would require the Federal Communications Commission (FCC) to follow certain schedules for notice and public comment periods when changing any of its regulations related to the ownership of broadcast organizations. The bill would require the FCC to provide a 90-day period when notice of such change is offered and a 60-day period for public comment on the proposed regulations. The bill also would require the FCC to respond within 30 days to public comments received during the period set aside for such comments.

Before voting on any changes in rules governing the ownership of broadcast and newspaper organizations, the bill would require the FCC to study the effect of such cross-ownership (broadcast and newspaper organizations owned by one entity) on the availability and quality of local programming by radio and television stations and newspapers. The bill also would establish an independent panel that would make recommendations to increase the number of broadcast organizations that are owned by women and minorities.

Based on information from the FCC, CBO estimates that implementing S. 2332 would cost less than $500,000, subject to the availability of appropriated funds, to provide a report on media con-

centration to the independent panel. Enacting the bill would not affect direct spending or revenues.

S. 2332 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The number of persons covered by this legislation would be consistent with current levels of individuals affected.

ECONOMIC IMPACT

S. 2332 would have a positive impact on the nation's economy by encouraging female and minority ownership of media outlets.

PRIVACY

S. 2332 is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

PAPERWORK

S. 2332 would have minimal impact on current paperwork levels.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1 would establish the Act as the Media Ownership Act of 2007.

Section 2 would amend section 202 of the Telecommunications Act of 1996 to require the FCC to: (1) publish any proposed modifications to its broadcast ownership regulations at least 90 days prior to a vote and provide at least 60 days for public comment; (2) complete a separate rulemaking on localism before voting on changes to broadcast ownership regulations, including a study to determine the impact of station duopolies and newspaper/broadcast cross-ownership on the quantity and quality of local news, public affairs, local news media jobs, and local cultural programming; and (3) convene an independent panel to make recommendations to the FCC regarding specific rules to increase women and minority ownership of broadcast media, conduct an accurate census of the state of women and minority ownership of broadcast media, and have the FCC act on the panel's recommendations before voting on changes to broadcast ownership regulations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TELECOMMUNICATIONS ACT OF 1996

SEC. 202. BROADCAST OWNERSHIP.

(a) NATIONAL RADIO STATION OWNERSHIP RULE CHANGES REQUIRED.—The Commission shall modify section 73.3555 of its regulations (47 C.F.R. 73.3555) by eliminating any provisions limiting the number of AM or FM broadcast stations which may be owned or controlled by one entity nationally.

(b) LOCAL RADIO DIVERSITY.—

(1) APPLICABLE CAPS.—The Commission shall revise section 73.3555(a) of its regulations (47 C.F.R. 73.3555) to provide that—

(A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

(2) EXCEPTION.—Notwithstanding any limitation authorized by this subsection, the Commission may permit a person or entity to own, operate, or control, or have a cognizable interest in, radio broadcast stations if the Commission determines that such ownership, operation, control, or interest will] result in an increase in the number of radio broadcast stations in operation.

(c) TELEVISION OWNERSHIP LIMITATIONS.—

(1) NATIONAL OWNERSHIP LIMITATIONS.—The Commission shall modify its rules for multiple ownership set forth in section 73.3555 of its regulations (47 C.F.R. 73.3555)—

(A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and

(B) by increasing the national audience reach limitation for television stations to 35 percent.

(2) LOCAL OWNERSHIP LIMITATIONS.—The Commission shall conduct a rulemaking proceeding to determine whether to retain, modify, or eliminate its limitations on the number of television stations that a person or entity may own, operate, or control, or have a cognizable interest in, within the same television market.

(d) RELAXATION OF ONE-TO-A-MARKET.—With respect to its enforcement of its one-to-a-market ownership rules under section 73.3555 of its regulations, the Commission shall extend its waiver policy to any of the top 50 markets, consistent with the public interest, convenience, and necessity.

(e) DUAL NETWORK CHANGES.—The Commission shall revise section 73.658(g) of its regulations (47 C.F.R. 658(g)) to permit a television broadcast station to affiliate with a person or entity that maintains 2 or more networks of television broadcast stations unless such dual or multiple networks are composed of—

(1) two or more persons or entities that, on the date of enactment of the Telecommunications Act of 1996, are "networks" as defined in section 73.3613(a)(1) of the Commission's regulations (47 C.F.R. 73.3613(a)(1)); or

(2) any network described in paragraph (1) and an English-language program distribution service that, on such date, provides 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes (as measured by a national ratings service).

(f) CABLE CROSS OWNERSHIP.—

(1) ELIMINATION OF RESTRICTIONS.—The Commission shall revise section 76.501 of its regulations (47 C.F.R. 76.501) to permit a person or entity to own or control a network of broadcast stations and a cable system.

(2) SAFEGUARDS AGAINST DISCRIMINATION.—The Commission shall revise such regulations if necessary to ensure carriage, channel positioning, and nondiscriminatory treatment of nonaffiliated broadcast stations by a cable system described in paragraph (1).

(g) LOCAL MARKETING AGREEMENTS.—Nothing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.

(h) FURTHER COMMISSION REVIEW.—The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall] determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest. This subsection does not apply to any rules relating to the 39 percent national audience reach limitation in subsection (c)(1)(B).

(i) NOTICE AND PUBLIC COMMENT REQUIREMENT.—

(1) IN GENERAL.—In modifying, revising, or amending any of its regulations related to broadcast ownership, including any ownership rule or limitation set forth under sections 73.3555,

73.658(g), or 76.501 of its regulations (47 C.F.R. 73.3555, 73.658(g), 76.501), the Commission shall—

(A) not later than 90 days prior to any vote by the Commission on the adoption of such modification, revision, or amendment publish such prospective modification, revision, or amendment in the Federal Register;

(B) after such publication provide the public at least 60 days on which to comment on the prospective modification, revision, or amendment; and

(C) upon the expiration of the 60-day comment period described under paragraph (2), have not less than 30 days in which to reply to any such comments.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The notice and public comment requirements under paragraph (1) shall apply to any attempt by the Commission to modify, revise, or amend its regulations related to broadcast and newspaper ownership made after October 1, 2007.

(B) FAILURE TO COMPLY.—If the Commission fails to comply with the notice and public requirements under paragraph (1) with respect to any modification, revision, or amendment to which such requirements apply, then such modification, revision, or amendment shall be vitiated and shall be of no force and effect.

(j) PROMOTION OF LOCAL CONTENT IN MEDIA.—Before voting on any change in the broadcast and newspaper ownership rules in a proceeding made necessary by the decision of the U.S. Court of Appeals in Prometheus v. Federal Communications Commission, United States of America, (No. 03–3388) 2003 U.S. App. LEXIS 18390), the Commission shall initiate, conduct, and complete a separate rulemaking proceeding to promote the broadcast of local programming and content by broadcasters, including radio and television broadcast stations, and newspapers. Before publishing a modification, revision, or amendment of its broadcast ownership rules under subsection (i), the Commission shall—

(1) complete a study to determine the overall impact of television station duopolies and newspaper-broadcast cross-ownership on the quantity and quality of local news, public affairs, local news media jobs, and local cultural programming at the market level;

(2) publish a proposed final rule in the Federal Register not later than 90 days prior to any vote by the Commission on the adoption of the rule;

(3) after such publication provide the public at least 60 days on which to comment on the prospective rule; and

(4) upon the expiration of the 60-day comment period described in paragraph (3), have not less than 30 days in which to reply to any such comments.

(k) INDEPENDENT PANEL ON WOMEN AND MINORITY OWNERSHIP OF BROADCAST MEDIA.—

(1) ESTABLISHMENT.—The Commission shall establish and convene an independent panel on women and minority ownership of broadcast media to make recommendations to the Commission for specific Commission rules to increase the represen-

tation of women and minorities in the ownership of broadcast media.

(2) CENSUS.—The Commission shall—

(A) conduct a full and accurate census of the race and gender of individuals holding a controlling interest in broadcast station licensee;

(B) provide the results of the census to the panel for its consideration before it makes any recommendation to the Commission; and

(C) study the impact of media market concentration on the representation of women and minorities in the ownership of broadcast media that takes into account the data in the census and report the results of that study to the panel for its consideration before it makes any recommendation to the Commission.

(3) CONSIDERATION OF PANEL'S RECOMMENDATIONS.—The Commission shall act on the panel's recommendations before voting on any changes to its broadcast and newspaper ownership rules.

[(i)**]** *(l)* ELIMINATION OF STATUTORY RESTRICTION.—Section 613(a) (47 U.S.C. 533(a)) is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraph (2) as subsection (a);

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(4) by striking "and" at the end of paragraph (1) (as so redesignated);

(5) by striking the period at the end of paragraph (2) (as so redesignated) and inserting "; and"; and

(6) by adding at the end the following new paragraph:

"(3) shall not apply the requirements of this subsection to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l).".

○