

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 5564
OFFERED BY MR. WALDEN OF OREGON**

Page 4, after line 20, insert the following:

1 SEC. 4. BROADCAST INCUBATOR PROGRAM.

2 (a) ESTABLISHMENT.—Not later than 270 days after
3 the date of the enactment of this Act, the Commission
4 shall promulgate regulations establishing a program, to be
5 known as the “Broadcast Incubator Program”, to support
6 the entry of new and diverse voices in the broadcasting
7 industry by providing for an established broadcaster and
8 an emerging broadcaster to enter into a qualifying incuba-
9 tion relationship with respect to one or more incubated
10 stations of the emerging broadcaster.

11 (b) QUALIFYING INCUBATION RELATIONSHIP.—

12 (1) REQUIREMENTS.—The Commission shall
13 establish in the regulations promulgated under sub-
14 section (a) requirements for a qualifying incubation
15 relationship under the Program that include the fol-
16 lowing:

17 (A) Eligibility criteria that an established
18 broadcaster and an emerging broadcaster shall

1 meet in order to enter into such relationship,
2 including—

3 (i) a limit, expressed in terms of a
4 number of broadcast stations, on how
5 many broadcast stations of which an
6 emerging broadcaster may have effective
7 control on the day before the date on
8 which the established broadcaster and the
9 emerging broadcaster submit the applica-
10 tion for the Program under subsection (c);

11 (ii) a cap, expressed in terms of a dol-
12 lar amount, on the gross revenue that the
13 emerging broadcaster may earn during the
14 calendar year ending most recently before
15 the date on which the established broad-
16 caster and the emerging broadcaster sub-
17 mit the application for the Program under
18 subsection (c); and

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

21 (I) if any incubated station under
22 such relationship will be a radio
23 broadcast station, any class of AM or
24 FM radio broadcast station (except

1 for a low power radio station or a
2 radio translator station); and

3 (II) if any incubated station
4 under such relationship will be a tele-
5 vision broadcast station, any class or
6 assignment of television broadcast sta-
7 tion (except for a low power television
8 station or a television translator sta-
9 tion).

10 (B) Criteria for the incubation activities
11 that the established broadcaster shall perform
12 as part of such relationship. Such activities
13 shall include the provision by the established
14 broadcaster to the emerging broadcaster of
15 training, financing, or access to resources.

16 (C) A requirement that the established
17 broadcaster and the emerging broadcaster es-
18 tablish mutually agreed-upon goals for such re-
19 lationship.

20 (D) A requirement that the established
21 broadcaster and the emerging broadcaster es-
22 tablish a mutually agreed-upon limitation on
23 the amount of equity (if any) that the estab-
24 lished broadcaster may hold in the emerging
25 broadcaster.

1 (E) A requirement that no officer, director,
2 managing partner, or managing member (or
3 any individual holding a similar position) of the
4 emerging broadcaster may hold a cognizable in-
5 terest in or be an employee of the established
6 broadcaster.

7 (F) A requirement that the established
8 broadcaster may participate in the Program
9 (whether as part of the same qualifying incuba-
10 tion relationship or different qualifying incuba-
11 tion relationships with the same emerging
12 broadcaster or different emerging broadcasters)
13 with respect to—

14 (i) not more than one incubated sta-
15 tion that is a television broadcast station
16 per DMA at the same time; and

17 (ii) not more than one incubated sta-
18 tion that is an AM or FM radio broadcast
19 station per radio market at the same time.

20 (G) A minimum duration of 2 years for the
21 qualifying incubation relationship.

22 (H) An option, which may be exercised
23 upon the agreement of the established broad-
24 caster and the emerging broadcaster, for such
25 relationship to continue on an ongoing basis.

1 (I) A requirement that, upon successful
2 completion of such relationship in accordance
3 with the application approved by the Commis-
4 sion under subsection (c) and in compliance
5 with the other requirements for the Program
6 established by the Commission, the emerging
7 broadcaster shall have effective control of each
8 incubated station under such relationship.

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

18 (c) APPLICATION PROCESS.—

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

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

5 (3) APPLICATION REVIEW PROCESS.—

6 (A) DEADLINE.—

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

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

22 (B) OPPORTUNITY FOR APPLICANT TO
23 CURE DEFICIENCY.—If the Commission deter-
24 mines that an application is materially defi-
25 cient, the Commission shall provide the appli-

1 cants a 15-day period to cure the defect before
2 denying the application. If such period would
3 extend beyond the deadline under subparagraph
4 (A) for approving or denying the application,
5 such deadline shall be extended through the end
6 of such period.

7 (C) EFFECT OF DENIAL.—Denial of an ap-
8 plication for participation in the Program shall
9 not preclude the applicants from resubmitting
10 the application or any applicant from submit-
11 ting a new application for participation in the
12 Program at a later date.

13 (4) CERTIFICATIONS.—The Commission shall
14 require each applicant submitting an application for
15 participation in the Program to certify to the Com-
16 mission in the application that, as of the date of the
17 submission of the application—

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

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

24 (i) in the case of any incubated sta-
25 tion of which the applicant has effective

1 control as of such date, to continue to suc-
2 cessfully operate such station; and

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

7 (C) the applicants have established the
8 mutually agreed-upon goals required by sub-
9 section (b)(1)(C); and

10 (D) the applicants have established the
11 mutually agreed-upon limitation required by
12 subsection (b)(1)(D).

13 (5) DISCLOSURES.—In the case of an applicant
14 that is an emerging broadcaster, the Commission
15 shall require the applicant to disclose to the Com-
16 mission in the application for participation in the
17 Program any cognizable interest in a broadcast sta-
18 tion held by a family member of any of the incu-
19 bated station licensee's principals.

20 (6) LIMITATION ON REAPPLICATION BY ESTAB-
21 LISHED BROADCASTER AFTER FAILED RELATION-
22 SHIP.—If, in 3 or more instances, the Commission
23 has terminated the participation of an established
24 broadcaster in the Program under subsection (e)
25 and determined that such established broadcaster

1 was primarily at fault in causing the circumstances
2 on which the termination was based, such estab-
3 lished broadcaster may not submit another applica-
4 tion for participation in the Program.

5 (d) WAIVER OF LOCAL OWNERSHIP RULES.—

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

16 (A) to hold a cognizable interest in any in-
17 cubated station under the qualifying incubation
18 relationship; and

19 (B) to hold a cognizable interest in—

20 (i) if the established broadcaster had
21 effective control of an AM or FM radio
22 broadcast station (except for a low power
23 radio station or a radio translator station)
24 on the day before the date on which the es-
25 tablished broadcaster and the emerging

1 broadcaster submitted the application for
2 the Program under subsection (c), 1 radio
3 broadcast station in excess of the number
4 of radio broadcast stations in which the es-
5 tablished broadcaster is permitted to hold
6 a cognizable interest under section
7 73.3555(a) of such title in a radio market
8 that is—

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

13 (ii) if the established broadcaster had
14 effective control of a television broadcast
15 station (except for a low power television
16 station or a television translator station)
17 on the day before the date on which the es-
18 tablished broadcaster and the emerging
19 broadcaster submitted the application for
20 the Program under subsection (c), 1 tele-
21 vision broadcast station in excess of the
22 number of television broadcast stations in
23 which the established broadcaster is per-
24 mitted to hold a cognizable interest under

1 section 73.3555(b) of such title in a DMA
2 that is—

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

4 and

5 (II) selected by the established
6 broadcaster; or

7 (iii) 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 and a television broadcast station (except
12 for a low power television station or a tele-
13 vision translator station) on the day before
14 the date on which the established broad-
15 caster and the emerging broadcaster sub-
16 mitted the application for the Program
17 under subsection (c), either (at the option
18 of the established broadcaster)—

19 (I) 1 radio broadcast station in
20 excess of the number of radio broad-
21 cast stations in which the established
22 broadcaster is permitted to hold a
23 cognizable interest under section
24 73.3555(a) of such title in a radio

1 market determined in the same man-
2 ner as under clause (i); or

3 (II) 1 television broadcast station
4 in excess of the number of television
5 broadcast stations in which the estab-
6 lished broadcaster is permitted to hold
7 a cognizable interest under section
8 73.3555(b) of such title in a DMA de-
9 termined in the same manner as
10 under clause (ii).

11 (2) DETERMINATION OF COMMISSION DE-
12 SCRIBED.—The determination described in this
13 paragraph is a determination that an established
14 broadcaster and an emerging broadcaster have en-
15 tered into and are successfully carrying out a quali-
16 fying incubation relationship under the Program in
17 accordance with an application approved by the
18 Commission under subsection (c) and are in compli-
19 ance (with respect to such relationship) with the
20 other requirements for the Program established by
21 the Commission.

22 (3) SPECIFICATION OF RADIO MARKETS AND
23 DMAS.—

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

4 (i) if the highest-ranked radio market
5 or DMA in which an incubated station
6 under the qualifying incubation relation-
7 ship is located is ranked not lower than 25,
8 all radio markets or DMAs;

9 (ii) if the highest-ranked radio market
10 or DMA in which an incubated station
11 under the qualifying incubation relation-
12 ship is located is ranked lower than 25 but
13 not lower than 75, the radio markets or
14 DMAs ranked lower than 25;

15 (iii) if the highest-ranked radio mar-
16 ket or DMA in which an incubated station
17 under the qualifying incubation relation-
18 ship is located is ranked lower than 75 but
19 not lower than 100, the radio markets or
20 DMAs ranked lower than 75;

21 (iv) if the highest-ranked radio mar-
22 ket or DMA in which an incubated station
23 under the qualifying incubation relation-
24 ship is located is ranked lower than 100

1 but not lower than 150, the radio markets
2 or DMAs ranked lower than 100; and

3 (v) if the highest-ranked radio market
4 or DMA in which an incubated station
5 under the qualifying incubation relation-
6 ship is located is ranked lower than 150,
7 the radio markets or DMAs ranked lower
8 than 150.

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

11 (i) a DMA ranking refers to the
12 rankings of DMAs based on the number of
13 television households, as determined by
14 Nielsen Media Research and published
15 most recently before the granting of the
16 waiver in the Nielsen Station Index Direc-
17 tory and Nielsen Station Index United
18 States Television Household Estimates (or
19 any successor publication); and

20 (ii) a radio market ranking refers to
21 the rankings of radio markets based on
22 population, as determined by Nielsen
23 Media Research and published most re-
24 cently before the granting of the waiver in
25 Radio Market Survey Population,

1 Rankings & Information (or any successor
2 publication).

3 (4) TERMINATION OF WAIVER.—The Commis-
4 sion shall specify in the regulations promulgated
5 under subsection (a) when a waiver granted under
6 paragraph (1) shall terminate.

7 (e) TERMINATION OF PARTICIPATION IN PRO-
8 GRAM.—

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

22 (2) EXCEPTION FOR TRANSFER OF INCUBATED
23 STATION.—

24 (A) IN GENERAL.—The transfer by an
25 emerging broadcaster of effective control of an

1 incubated station to another entity shall not
2 terminate the qualifying incubation relationship
3 under the Program, and such other entity shall
4 be substituted as a party to such relationship,
5 if—

6 (i) such other entity meets the re-
7 quirements for an emerging broadcaster
8 under the Program;

9 (ii) such other entity and the estab-
10 lished broadcaster continue, with respect to
11 such station, to successfully carry out the
12 qualifying incubation relationship in ac-
13 cordance with the application approved by
14 the Commission under subsection (c) and
15 to comply with the other requirements of
16 the Program established by the Commis-
17 sion; and

18 (iii) in a case in which the original
19 emerging broadcaster retains effective con-
20 trol of any incubated station under the
21 qualifying incubation relationship, such
22 emerging broadcaster and the established
23 broadcaster continue, with respect to any
24 such station, to successfully carry out the
25 qualifying incubation relationship in ac-

1 cordance with the application approved by
2 the Commission under subsection (c) and
3 to comply with the other requirements of
4 the Program established by the Commis-
5 sion.

6 (B) TREATMENT AS SINGLE QUALIFYING
7 INCUBATION RELATIONSHIP.—If, after a trans-
8 fer described in subparagraph (A), the original
9 emerging broadcaster retains effective control of
10 any incubated station under the qualifying incu-
11 bation relationship, any such station and any
12 station of which effective control has been so
13 transferred shall be treated as being part of a
14 single qualifying incubation relationship.

15 (3) REVOCATION OF WAIVER PROHIBITED.—

16 (A) IN GENERAL.—Except as provided in
17 subparagraph (B), the Commission may not, as
18 a penalty for or consequence of the termination
19 under paragraph (1) of a qualifying incubation
20 relationship between an established broadcaster
21 and an emerging broadcaster, revoke any waiver
22 granted to the established broadcaster under
23 subsection (d)(1) as a result of such relation-
24 ship.

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

13 (f) EXCLUSION FROM QUADRENNIAL REVIEW.—The
14 Program, the regulations promulgated by the Commission
15 under this section, and any waiver granted under sub-
16 section (d)(1) shall not be subject to review under section
17 202(h) of the Telecommunications Act of 1996 or section
18 11 of the Communications Act of 1934 (47 U.S.C. 161).

19 (g) IMPLEMENTATION AND ENFORCEMENT.—The
20 Commission shall implement and enforce this section as
21 if this section is a part of the Communications Act of 1934
22 (47 U.S.C. 151 et seq.). A violation of this section, or a
23 regulation promulgated under this section, shall be consid-
24 ered to be a violation of the Communications Act of 1934,
25 or a regulation promulgated under such Act, respectively.

1 (h) CONSIDERATION IN COMMUNICATIONS MARKET-
2 PLACE REPORT.—Section 13(d) of the Communications
3 Act of 1934 (47 U.S.C. 163(d)) is amended by adding at
4 the end the following:

5 “(4) CONSIDERING EFFECTIVENESS OF BROAD-
6 CAST INCUBATOR PROGRAM.—In assessing the state
7 of competition under subsection (b)(1) and regu-
8 latory barriers under subsection (b)(3), the Commis-
9 sion, with the input of the Office of Communications
10 Business Opportunities of the Commission, shall
11 consider the efficacy of the Broadcast Incubator
12 Program established under section 4 of the Enhanc-
13 ing DIVERSITY Data Act in promoting competi-
14 tion.”.

15 (i) RULE OF CONSTRUCTION.—Nothing in this sec-
16 tion shall be construed to limit the development by the
17 Commission of additional programs or policies to promote
18 the entry of new and diverse voices in the broadcasting
19 industry.

20 (j) DEFINITIONS.—In this section:

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

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

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

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

14 (5) EMERGING BROADCASTER.—The term
15 “emerging broadcaster” means an entity—

16 (A) that is owned and controlled by so-
17 cially disadvantaged individuals; and

18 (B) that—

19 (i) has effective control of a broadcast
20 station (including any class or assignment
21 of television broadcast station and any
22 class of AM or FM radio broadcast sta-
23 tion) that such entity would be unable to
24 continue to operate successfully without a

1 qualifying incubation relationship under
2 the Program; or

3 (ii) plans to acquire effective control
4 of a broadcast station (including any class
5 or assignment of television broadcast sta-
6 tion and any class of AM or FM radio
7 broadcast station) that such entity would
8 be unable to acquire without a qualifying
9 incubation relationship under the Program.

10 (6) ESTABLISHED BROADCASTER.—The term
11 “established broadcaster” means an entity that—

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

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

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

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

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

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

11 (9) OWNED AND CONTROLLED BY SOCIALLY
12 DISADVANTAGED INDIVIDUALS.—The term “owned
13 and controlled by socially disadvantaged individuals”
14 means, with respect to an entity, that—

15 (A) such entity is at least 51 percent
16 owned by one or more socially disadvantaged in-
17 dividuals, or, in the case of any publicly owned
18 entity, at least 51 percent of the voting stock
19 of such entity is owned by one or more socially
20 disadvantaged individuals, and such individual
21 or individuals have not conferred the right to
22 vote such stock to another; and

23 (B) the management and daily business
24 operations of such entity are controlled by one
25 or more of such individuals.

1 (10) PROGRAM.—The term “Program” means
2 the Broadcast Incubator Program established by the
3 regulations promulgated under subsection (a).

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

9 (12) SOCIALLY DISADVANTAGED INDIVIDUAL.—
10 The term “socially disadvantaged individual” means
11 a woman or an individual who has been subjected to
12 racial or ethnic prejudice or cultural bias because of
13 the identity of the individual as a member of a
14 group without regard to the individual qualities of
15 the individual.

