

108TH CONGRESS
1ST SESSION

S. 221

To amend the Communications Act of 1934 to facilitate an increase in programming and content on radio that is locally and independently produced, to facilitate competition in radio programming, radio advertising, and concerts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2003

Mr. FEINGOLD (for himself and Mr. MILLER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to facilitate an increase in programming and content on radio that is locally and independently produced, to facilitate competition in radio programming, radio advertising, and concerts, and for other purposes.

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 “Competition in Radio
5 and Concert Industries Act of 2003”.

1 **SEC. 2. FINDINGS; PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) Pursuant to the Telecommunications Act of
5 1996 (Public Law 104–104), the Federal Commu-
6 nications Commission eliminated national ownership
7 rules, and revised local ownership rules, for radio
8 broadcast stations.

9 (2) This deregulation of ownership rules has
10 materially altered the radio broadcast industry and
11 resulted in a concentration of ownership of radio
12 stations and a corresponding reduction in localism.
13 The number of radio station owners decreased from
14 5,100 in 1996 to 3,800 in 2001, a decrease of 25
15 percent.

16 (3) Segments of the radio, concert, and concert
17 promotion industries have also become vertically in-
18 tegrated. In some cases, radio station owners, and
19 concert promoters have common ownership, as well
20 as exclusive agreements to manage concert venues.
21 As a result, these radio station owners have the in-
22 centive and ability to favor the musical artists and
23 groups they promote.

24 (4) This could make it more difficult for non-
25 affiliated concert promoters to secure air time, for
26 nonaffiliated musical artists or groups to secure air

1 time, and for nonaffiliated radio stations to secure
2 access to musical artists or groups.

3 (5) According to a number of recent studies, in
4 the rapid consolidation of the radio, concert pro-
5 motion, and concert venue industries in the 5-year
6 period following the enactment of the Telecommuni-
7 cations Act of 1996, concert ticket prices have in-
8 creased by more than 50 percent more than such
9 prices had increased in any previous 5 year-period.

10 (6) According to some estimates, from 1991 to
11 1996, the average concert ticket price increased by
12 approximately 21 percent, compared to an increase
13 in the Consumer Price Index of about 15 percent.
14 From 1996 to 2001, the average concert ticket price
15 increased by more than 61 percent, while the Con-
16 sumer Price Index increased by 13 percent.

17 (7) There is a substantial public interest in pro-
18 moting the values embraced by the first amendment
19 to the Constitution, and the public interest, conven-
20 ience, and necessity, by increasing the presence of
21 independently-owned and locally-produced content on
22 radio.

23 (8) There is a substantial public interest in pro-
24 moting the value embraced by the first amendment

1 to the Constitution by strengthening the diversity of
2 voices provided through media such as radio.

3 (9) Pursuant to its authority and responsibility
4 to protect the public interest under the Communica-
5 tions Act of 1934, the Commission has sought to
6 promote diversity and competition in radio broad-
7 casting.

8 (10) The promotion of independently-owned and
9 locally-produced content in radio not only addresses
10 the primary objective of the Commission to guar-
11 antee adherence to the first amendment to the Con-
12 stitution, it also increases competition of audio in
13 the provision of audio programming, in radio adver-
14 tising, and in concert venue and concert promotion.

15 (11) The concentration of ownership of radio
16 stations and a corresponding reduction in localism
17 following the enactment of the Telecommunications
18 Act of 1996 has exceeded that intended by Congress
19 in enacting that Act.

20 (12) In 1995, the top 50 radio groups owned
21 8.6 percent of the total number of radio stations. By
22 2000 they owned 27.5 percent of the total number
23 of radio stations.

24 (13) In 1995, the top 50 radio groups ac-
25 counted for 43.6 percent of the total revenues going

1 to all radio stations. By 2000 that percentage had
2 increased to 62.5 percent.

3 (14) The top 10 groups account for almost 50
4 percent of all radio station industry revenues, while
5 owning 17.6 percent of all commercial radio stations.

6 (15) This consolidation has also caused some
7 radio station groups to collect alternative sources of
8 income, including establishing exclusive agreements
9 with independent promoters, establishing fees for
10 play list monitoring, and limiting radio promotion of
11 concert tours to musical artists and groups playing
12 at venues owned by such groups.

13 (16) These practices, when coupled with the in-
14 creased concentration of the ownership of radio sta-
15 tions, have the potential to reduce the diversity of
16 music and other material made available to the
17 American public over radio as stations make pro-
18 gramming decisions for reasons other than the li-
19 censee's bona fide determination whether the mate-
20 rial serves the public interest.

21 (17) Current Commission rules prohibiting pay-
22 ola predate the enactment of the Telecommuni-
23 cations Act of 1996, and the evolution of new pro-
24 motional practices, and do not directly address the
25 applicability of sections 317 and 507 of the Commu-

1 nications Act of 1934 (47 U.S.C. 317, 508) to such
2 new promotional practices. As a result, radio sta-
3 tions engaging in such practices do not make any
4 sponsorship identification announcements in connec-
5 tion with the broadcast of material which are the
6 subject of such practices.

7 (18) These types of practices are inconsistent
8 with the public interest and with the policies enun-
9 ciated in sections 317 and 507 of the Communica-
10 tions Act of 1934. In order to assure compliance
11 with these sections, the Commission should revise its
12 rules implementing those sections to prohibit these
13 practices and to facilitate the broadcast of diverse
14 radio programs while assuring that legitimate pro-
15 motional activities can continue.

16 (19) Promotion of the values embraced by the
17 first amendment to the Constitution, and the
18 strengthening of a diversity of voices provided
19 through media, such as radio, is in the public inter-
20 est.

21 (20) A broader diversity of voices through
22 media sources such as radio promotes the right of
23 the people under the first amendment to the Con-
24 stitution to receive a wide range of information.

1 (b) PURPOSE.—The purpose of this Act is to promote
2 the values embraced by the first amendment to the Con-
3 stitution, and the public interest, convenience, and neces-
4 sity, by facilitating—

5 (1) better service by radio stations to the local
6 communities they are licensed to serve, including an
7 increase in the amount of radio programming and
8 content that is produced by local and independent
9 sources;

10 (2) an increase in competition in radio pro-
11 gramming and content, radio advertising, concert
12 venues, and concert promotion; and

13 (3) more diversity in radio programming.

14 **SEC. 3. PROHIBITION ON USE OF RADIO TO REDUCE PUB-**
15 **LIC ACCESS TO DIVERSE RADIO AND CON-**
16 **CERT PROGRAMMING AND CONTENT.**

17 (a) REVOCATION OF LICENSE FOR HINDERING
18 AVAILABILITY OF INDEPENDENT, LOCAL PROGRAMMING
19 AND CONTENT.—Section 312(a) of the Communications
20 Act of 1934 (47 U.S.C. 312(a)) is amended—

21 (1) in paragraph (6), by striking “or” at the
22 end;

23 (2) in paragraph (7), by striking the period at
24 the end and inserting a semicolon; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(8) for willful and repeated engagement in un-
4 fair methods of competition, unfair or deceptive acts
5 or practices, or tying the use of entities owned by
6 the licensee or permittee for the purpose of hin-
7 dering significantly, or preventing, the broadcast of
8 programming or content, including any sound re-
9 cording by a musical artist, if such programming or
10 content is produced or promoted by a person inde-
11 pendent of the licensee or permittee or the creator
12 thereof is independent of the licensee or permittee;
13 or”.

14 (b) REVOCATION OF LICENSE FOR HINDERING
15 AVAILABILITY OF CONCERTS.—That section is further
16 amended by adding at the end the following new para-
17 graph:

18 “(9) for conviction or final adjudication under
19 an antitrust law or unfair trade practice law of a
20 violation of such law regarding concert venues or
21 concert promotion.”.

22 (c) PROHIBITION.—That section is further amended
23 by adding at the end the following new subsection:

24 “(h) PROHIBITION ON HINDERING AVAILABILITY OF
25 RADIO PROGRAMMING AND CONTENT AND CONCERTS.—

1 “(1) PROHIBITION.—Under such regulations as
2 the Commission shall prescribe, it shall be unlawful
3 for any licensee or permittee to carry out an act for
4 which revocation of a license or permit is authorized
5 under paragraph (8) or (9) of subsection (a).

6 “(2) PENALTIES.—A licensee or permittee that
7 violates paragraph (1) shall be subject to such pen-
8 alties under title V as the Commission shall pre-
9 scribe in regulations.

10 “(3) CONSTRUCTION WITH LICENSE REVOCA-
11 TION AUTHORITY.—The penalties provided under
12 paragraph (2) for an act described in paragraph (1)
13 are in addition to any other action which the Com-
14 mission may take under subsection (a) with respect
15 to such act.”.

16 (d) DEFINITIONS.—Subsection (f) of that section is
17 amended by adding at the end the following new para-
18 graphs:

19 “(3) The term ‘antitrust law’ has the meaning
20 given that term in subsection (a) of the first section
21 of the Clayton Act (15 U.S.C. 12(a)).

22 “(4) The term ‘unfair trade practice law’ means
23 the Federal Trade Commission Act (15 U.S.C. 41 et
24 seq.) and include any State law similar to that
25 Act.”.

1 (e) REGULATIONS.—

2 (1) IN GENERAL.—Not later than 180 days
3 after the date of the enactment of this Act, the Fed-
4 eral Communications Commission shall prescribe
5 regulations and implement the amendments to sec-
6 tion 312 of the Communications Act of 1934 made
7 by this section.

8 (2) CONSULTATION.—The Federal Communica-
9 tions Commission shall prescribe regulations under
10 paragraph (1) in consultation with the Federal
11 Trade Commission.

12 (3) ELEMENTS.—The regulations under para-
13 graph (1) shall prohibit a licensee or permittee of a
14 radio station, or affiliate thereof, that has an attrib-
15 utable interest (as determined under section 73.3555
16 of title 47, Code of Federal Regulations) in a pro-
17 gramming entity or concert venue or concert pro-
18 motion service from—

19 (A) improperly influencing the decision of
20 the entity or service, or any musician or other
21 programming or content provider, to sell, or the
22 price, terms, or conditions of sale of, satellite
23 cable programming or content or satellite
24 broadcast programming or content to any other

1 radio station or unaffiliated concert venue or
2 concert promotion service;

3 (B) improperly influencing the decision of
4 any musician or other programming or content
5 provider to sell, or the price, terms, or condi-
6 tions of sale of, any song, work, or sound re-
7 cording, programming, concert performance, or
8 concert promotion service to any person or enti-
9 ty not affiliated with—

10 (i) the licensee or permittee;

11 (ii) an affiliate of the licensee or per-
12 mittee; or

13 (iii) an entity in which the licensee or
14 permittee has an attributable interest;

15 (C) discriminating against a musician or
16 other programming or content provider that
17 does not agree to enter into a contract or other
18 arrangement with an entity affiliated with the
19 licensee or permittee, or in which the licensee or
20 permittee has an attributable interest, that of-
21 fers concert venue or concert promotion service;

22 (D) requiring an exclusive contract or
23 other arrangement with a musician or other
24 programming or content provider that prevents
25 other radio licensees or permittees, concert pro-

1 motion entities, or concert venues from obtain-
 2 ing programming or content from the musician
 3 or other programming or content provider to
 4 the extent that such contract or other arrange-
 5 ment—

6 (i) impairs, impedes, or prevents com-
 7 petition in radio programming or content,
 8 concert venues, or concert promotion;

9 (ii) impairs, impedes, or prevents di-
 10 versity of programming or content in local
 11 radio markets;

12 (iii) is unduly long in duration; or

13 (iv) contains unreasonable renewal or
 14 extension provisions.

15 (4) EXCLUSION FROM REQUIRED BIENNIAL RE-
 16 VIEW.—Section 202(h) of the Telecommunications
 17 Act of 1996 (Public Law 104–104; 110 Stat. 111),
 18 relating to the biennial review by the Commission of
 19 its ownership rules, shall not apply with respect to
 20 the regulations prescribed under this section.

21 **SEC. 4. ENHANCED SCRUTINY OF FURTHER CONSOLIDA-**
 22 **TION IN RADIO.**

23 (a) ENHANCED SCRUTINY.—

1 (1) IN GENERAL.—Section 309 of the Commu-
2 nications Act of 1934 (47 U.S.C. 309) is amended
3 by adding at the end the following new subsection:

4 “(m) ADDITIONAL REQUIREMENTS REGARDING
5 RADIO.—

6 “(1) HEARING ON CERTAIN APPLICATIONS.—

7 The Commission shall designate for hearing any ap-
8 plication for the grant, transfer, assignment, or re-
9 newal of a license for a commercial radio station if
10 approval of the application would result in the appli-
11 cant, or any of its stockholders, partners, members,
12 officers, or directors, owning, operating, controlling,
13 or having an attributable interest, whether directly
14 or indirectly, in radio stations that have an aggre-
15 gate national audience reach, as determined in a
16 manner comparable to the manner provided for tele-
17 vision stations under section 73.3555(e)(1) of title
18 47, Code of Federal Regulations, exceeding 60 per-
19 cent.

20 “(2) SHOWING AT HEARING.—In addition to
21 any other matters required to be shown under this
22 section, an applicant referred to in paragraph (1)
23 shall be required to show at a hearing under that
24 paragraph that the applicant—

1 “(A) with respect to all radio stations in
2 which the applicant has an attributable interest
3 at the time of application, does not—

4 “(i) improperly influence the decision
5 of any musician or other programming or
6 content provider to sell, or the price,
7 terms, or conditions of sale of, any song,
8 work, or sound recording, programming,
9 concert performance, or concert promotion
10 service to any person or entity not affili-
11 ated with—

12 “(I) the applicant;

13 “(II) an affiliate of the applicant;

14 or

15 “(III) an entity in which the ap-
16 plicant has an attributable interest;

17 “(ii) discriminate against any musi-
18 cian or other programming or content pro-
19 vider that does not agree to enter into a
20 contract or other arrangement with an en-
21 tity affiliated with the applicant, or in
22 which the applicant has an attributable in-
23 terest, that offers concert venue or concert
24 promotion service; or

1 “(iii) require any exclusive contract or
2 other arrangement with a musician or
3 other programming or content provider
4 that prevents other radio licensees or per-
5 mittees from obtaining programming or
6 content from the musician or other pro-
7 gramming or content provider; and

8 “(B) with respect to the radio station cov-
9 ered by the application, has identified and will
10 respond through appropriate programming or
11 content to the problems, needs, and interests of
12 the local market for such radio station.”.

13 (2) EFFECTIVE DATE.—Subsection (m) of sec-
14 tion 309 of the Communications Act of 1934, as
15 added by paragraph (1), shall take effect on the date
16 of the enactment of this Act, and shall apply with
17 respect to applications described by such subsection
18 that are pending with the Federal Communications
19 Commission on or after that date, regardless of the
20 number of AM or FM radio stations owned, oper-
21 ated, or controlled by the applicant concerned on
22 that date.

23 (b) LOCAL MARKET SHARE AND LOCAL MARKETING
24 AGREEMENTS.—The Federal Communications Commis-
25 sion shall prescribe regulations to prohibit the transfer or

1 assignment to operate, or the use of, a local marketing
2 agreement with respect to a commercial radio station if
3 the transfer or assignment, or such agreement, will permit
4 the applicant, or the brokers of such agreement, to own,
5 operate, or have an attributable interest in commercial
6 radio stations that have in aggregate, as of the date of
7 application therefor—

8 (1) more than 35 percent of the audience share
9 of the local market of such radio stations; or

10 (2) more than 35 percent of the radio adver-
11 tising revenue in the local market of such radio sta-
12 tions.

13 (c) LOCAL OWNERSHIP LIMITS.—

14 (1) PROHIBITION ON UPWARD REVISION OF
15 LIMITS.—The Federal Communications Commission
16 may not revise upward the limitations on multiple
17 ownership of radio stations specified in section
18 73.3555(a) of title 47, Code of Federal Regulations,
19 as of the date of the enactment of this Act.

20 (2) EXCLUSION FROM REQUIRED BIENNIAL RE-
21 VIEW.—Section 202(h) of the Telecommunications
22 Act of 1996 (Public Law 104–104; 110 Stat. 111),
23 relating to the biennial review by the Commission of
24 its ownership rules, shall not apply with respect to

1 the limitations on multiple ownership of radio sta-
2 tions referred to in paragraph (1).

3 **SEC. 5. REVIEW OF USE OF PRIVATELY-CONTROLLED AUDI-**
4 **ENCE MEASUREMENT SYSTEMS FOR DETER-**
5 **MINATION OF LOCAL MARKETS OF RADIO**
6 **STATIONS.**

7 (a) REVIEW REQUIRED.—Not later than one year
8 after the date of the enactment of this Act, the Federal
9 Communications Commission shall conduct a review of the
10 advisability of its continuing to utilize privately-controlled
11 audience measurement systems in order to determine the
12 local markets of radio stations.

13 (b) ELEMENT OF REVIEW.—As part of the review
14 under subsection (a), the Commission shall determine
15 whether or not the commercial radio industry utilizes prac-
16 tices to manipulate privately-controlled audience measure-
17 ment systems.

18 (c) ACTION AFTER REVIEW.—If the Commission de-
19 termines as a result of the review under subsection (a)
20 to continue to utilize privately-controlled audience meas-
21 urement systems in order to determine the local markets
22 of radio stations, the Commission shall prescribe in regula-
23 tions measures to adapt to changes in audience measure-
24 ment under such systems in order to ensure that audience
25 measurement by the Commission utilizing such systems is

1 consistent over time and is not subject to influence by the
2 commercial radio industry or other private parties.

3 (d) MEASUREMENT OF RURAL AREAS AND SMALL
4 MARKETS.—The Commission shall prescribe in regula-
5 tions mechanisms to measure the audiences in rural mar-
6 kets, small markets, and other markets not covered by pri-
7 vately-controlled audience measurement systems.

8 **SEC. 6. MODIFICATION OF ATTRIBUTABLE INTEREST IN**
9 **RADIO STATIONS AND LIMITATIONS ON**
10 **LOCAL MARKETING AGREEMENTS.**

11 (a) MODIFICATION OF ATTRIBUTABLE INTEREST.—
12 The Federal Communications Commission shall modify its
13 rules under section 73.3555 of title 47, Code of Federal
14 Regulations, in order to provide the following:

15 (1) That a licensee or permittee of a commer-
16 cial AM or FM radio station shall be treated as hav-
17 ing an attributable interest in an entity that supplies
18 more than 15 percent of the total weekly broadcast
19 programming hours to another licensee or permittee
20 of a commercial AM or FM radio station if—

21 (A) the licensee or permittee holds equity
22 (including all stock, whether voting or non-
23 voting and whether common or preferred) and
24 debt in such entity in excess of 33 percent of
25 total asset value of such entity, as determined

1 by taking into account the aggregate value of
2 all equity and debt of such entity; or

3 (B) the licensee or permittee holds an op-
4 tion to purchase or acquire such entity.

5 (2) That a licensee or permittee of a commer-
6 cial AM or FM radio station shall be treated as hav-
7 ing an attributable interest in another licensee or
8 permittee of a commercial AM or FM radio station
9 if an individual or entity serving the licensee or per-
10 mittee serves such other licensee or permittee in an
11 identical or similar capacity with regard to the provi-
12 sion of program content, selection of program con-
13 tent, or supervision of selection of program content
14 for such other commercial AM or FM radio station.

15 (b) REPORTS ON SPECIAL RELATIONSHIP CON-
16 TRACTS.—

17 (1) IN GENERAL.—Not later than one year
18 after the date of the enactment of this Act, the
19 Commission shall prescribe in regulations require-
20 ments that each licensee or permittee of a radio sta-
21 tion submit to the Commission a report on each spe-
22 cial relationship contract between such licensee or
23 permittee and another licensee or permittee of a
24 radio station, or any person or entity having an
25 attributional interest in such other licensee or per-

1 mittee, in the market served by such licensee or per-
2 mittee.

3 (2) SPECIAL RELATIONSHIP CONTRACT DE-
4 FINED.—In this subsection, the term “special rela-
5 tionship contract” means a contract, option, or other
6 arrangement regarding management, programming,
7 or sales, an actual or contingent financial arrange-
8 ment, ownership interest, investment, or loan be-
9 tween the parties to such contract, option, or other
10 arrangement or their immediate families.

11 (c) LIMITATION ON DURATION OF CERTAIN LOCAL
12 MARKETING AGREEMENTS.—

13 (1) IN GENERAL.—No local marketing agree-
14 ment or other agreement entered into or renewed
15 after the date of the enactment of this Act under
16 which a licensee or permittee of a commercial radio
17 station, or any person or entity having an
18 attributorial interest in the commercial radio sta-
19 tion, provides more than 15 percent of the program-
20 ming or content to another commercial radio station
21 in the same market may have a term exceeding one
22 year, including any period of renewal of such agree-
23 ment.

24 (2) APPLICATION.—Paragraph (1) shall apply
25 with respect to any agreement described by that

1 paragraph that is in effect on or after the date of
2 the enactment of this Act.

3 (d) EXCLUSION FROM REQUIRED BIENNIAL RE-
4 VIEW.—Section 202(h) of the Telecommunications Act of
5 1996 (Public Law 104–104; 110 Stat. 111), relating to
6 the biennial review by the Commission of its ownership
7 rules, shall not apply with respect to any rules or require-
8 ments established by or under this section.

9 **SEC. 7. USE OF CONTROL OVER BROADCAST MATTER BY A**
10 **RADIO STATION TO EXTRACT OR RECEIVE**
11 **MONEY OR ANY OTHER VALUABLE CONSID-**
12 **ERATION.**

13 Not later than one year after the date of the enact-
14 ment of this Act, the Federal Communications Commis-
15 sion shall modify its regulations under sections 317 and
16 507 of the Communications Act of 1934 (47 U.S.C. 317
17 and 508), in order to prohibit the licensee of any radio
18 station, including any parent, subsidiary, or affiliated enti-
19 ty of such licensee, from using its control over any matter
20 broadcast by such licensee to extract or receive money or
21 any other consideration, whether directly or indirectly,
22 from a record company, artist, concert promoter, or other
23 entity or an agent or representative thereof.

1 **SEC. 8. LIMITATION ON SUSPENSION OR WAIVER OF**
2 **RULES.**

3 (a) **LIMITATION.**—The Federal Communications
4 Commission may suspend or waive a rule or regulation
5 prescribed under this Act, or implementing a provision of
6 this Act, only if the Commission determines that there is
7 a compelling justification to suspend or waive the rule or
8 regulation.

9 (b) **TREATMENT OF COURT DECISIONS.**—The deci-
10 sion of a court to stay, reverse, or negate a rule or regula-
11 tion of the Commission referred to in subsection (a), if
12 not final or if stayed on appeal, does not constitute good
13 cause for purposes of that subsection.

14 **SEC. 9. ANNUAL REPORTS.**

15 Not later than January 31 each year, the Federal
16 Communications Commission shall submit to Congress a
17 report on the compliance of the commercial radio industry
18 during the preceding year with prohibitions on sponsorship
19 identification, payola, plugola, national and local owner-
20 ship limitations, local marketing agreements, and
21 attributional interest rules, including practices of the in-
22 dustry that have the effect of circumventing such prohibi-
23 tions.

○