

109TH CONGRESS  
1ST SESSION

# H. R. 2359

To establish minimum public interest requirements for multi-cast digital television channels.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2005

Ms. WATSON (for herself, Mr. HINCHEY, Mr. SANDERS, and Ms. SLAUGHTER) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To establish minimum public interest requirements for multi-cast digital television channels.

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 “Digital Television Ac-  
5 countability and Governance Enhancement Act of 2005”  
6 or the “DTV–AGE Act”.

7 **SEC. 2. FINDINGS.**

8 The Congress finds the following:

9 (1) The broadcast airwaves are an extremely  
10 valuable public resource. If television broadcast li-

1 censees had to pay for their access to spectrum, it  
2 could generate in excess of \$750 billion for the pub-  
3 lic treasury. Research by the Federal Communica-  
4 tions Commission (FCC) has found that the typical  
5 profit margin for a local broadcast station is around  
6 40 percent—four to five times higher than the typ-  
7 ical Fortune 500 company.

8 (2) The Communications Act of 1934 requires  
9 the FCC and broadcast licensees to promote the  
10 public interest. As public trustees, over-the-air tele-  
11 vision broadcast licensees have been granted the  
12 unique privilege of using a scarce public asset—the  
13 airwaves—for free in exchange for their promise to  
14 serve the public interest, convenience and necessity.

15 (3) In 1969, the Supreme Court declared that  
16 “it is the purpose of the First Amendment to pre-  
17 serve an uninhibited marketplace of ideas in which  
18 truth will ultimately prevail, rather than to coun-  
19 tenance monopolization of the market,” and thus, it  
20 is “the right of the viewers and listeners, not the  
21 right of the broadcasters, which is paramount”.

22 (4) Over the past two decades, deregulation in  
23 the telecommunications sector has led to rapid con-  
24 solidation of media ownership. Five companies now  
25 own the broadcast networks, control 90 percent of

1 the top 50 cable networks, produce three-quarter of  
2 all prime time programming, and control 70 percent  
3 of the prime time television market share.

4 (5) The drastic media consolidation has greatly  
5 diminished the television broadcast licensee's per-  
6 formance of public interest obligation and its ability  
7 to foster diversity, competition, and localism in the  
8 media market.

9 (6) An October 2003 analysis of seven media  
10 markets shows that just 0.4 percent of television  
11 programming is devoted to local public affairs. By  
12 contrast, 14.4 percent is paid programming such as  
13 infomercials, 9.9 percent is reality or game shows  
14 and 7.9 percent is sporting events. In addition, most  
15 of the local public affairs programming airs on week-  
16 end mornings, at times with lower television  
17 viewership.

18 (7) The percentage of independently produced  
19 pilots and new series on the four national broadcast  
20 networks has declined from 87.5 percent in 1990 to  
21 22.5 percent in 2002.

22 (8) A survey of evening news broadcasts of 44  
23 local affiliates of broadcasters in 11 markets prior to  
24 the 2004 election showed that only eight percent of  
25 such broadcasts contained a story about a local can-

1 didate race. In contrast, eight times more coverage  
2 went to stories about accidental injuries, and 12  
3 times more coverage to sports and weather. Nineteen  
4 percent of the stories focused on voting issues such  
5 as the location of polling stations, absentee ballot in-  
6 formation and reports on early voting efforts. Just  
7 under five percent of the stories focused on local and  
8 statewide ballot initiatives.

9 (9) A study of the 2000 election found that 60  
10 percent of debates among gubernatorial, senatorial  
11 and congressional candidates were not televised. An-  
12 other 19 percent appeared only on public or inde-  
13 pendent stations.

14 (10) Local television broadcasters claim to have  
15 contributed \$9.6 billion worth of community service  
16 in 2003. However, \$5.6 billion of that came from  
17 public service announcements, and an additional  
18 \$2.3 billion came from fundraisers for charitable  
19 causes. Among the public service announcements,  
20 roughly one-quarter featured the stars of the net-  
21 works' own prime time shows, thereby advancing the  
22 networks' own commercial interests.

23 (11) Since the mid-1980s, Congress and the  
24 FCC have played major roles in the development of  
25 digital television, which provides sharper pictures, a

1 wider screen, CD-quality sound, better color ren-  
2 dition and simultaneous transmission of multiple  
3 video programming in standard definition television  
4 (SDTV) or a single program of high definition tele-  
5 vision (HDTV). It allows the same kind of digitally-  
6 based services offered by cable and satellite tele-  
7 vision providers and provides a more efficient use of  
8 the radio-frequency spectrum than traditional analog  
9 television, thereby conserving bandwidth.

10 (12) In 1997, the FCC decided to grant exist-  
11 ing, full-power television stations additional spec-  
12 trum to facilitate the transition from analog to dig-  
13 ital television. The Balanced Budget Act of 1997 set  
14 the deadline for such transition by stating that “a  
15 broadcast license that authorizes analog television  
16 service may not be renewed to authorize such service  
17 for a period that extends beyond December 31,  
18 2006”.

19 (13) In 2004, Congress passed the Intelligence  
20 Reform and Terrorism Prevention Act of 2004,  
21 which included the sense of Congress that “Congress  
22 must act to pass legislation in the first session of the  
23 109th Congress that establishes a comprehensive ap-  
24 proach to the timely return of analog broadcast  
25 spectrum as early as December 31, 2006” and that

1 any delay will “delay the ability of public safety enti-  
2 ties to begin planning to use this needed spectrum”.

3 (14) As of March 10, 2005, there were 1,373  
4 commercial and public stations broadcasting digital  
5 signals in 211 markets, representing about 86 per-  
6 cent of the nation’s approximately 1,600 television  
7 stations. The 211 markets currently receiving digital  
8 television transmissions cover over 99 percent of  
9 U.S. television households.

10 (15) In 1997, President Clinton established an  
11 Advisory Committee on Public Interest Obligations  
12 of DTV Broadcasters, to make recommendations on  
13 how DTV licensees should serve the public interest  
14 in exchange for free access to digital spectrum. The  
15 Committee submitted a set of ten recommendations  
16 to the FCC, Congress and the Administration and  
17 the broadcast industry in 1998.

18 (16) On December 15, 1999, the FCC opened  
19 a Notice of Inquiry proceeding to solicit public com-  
20 ment on public interest obligations of TV broad-  
21 casters as they transition to DTV (MM Docket No.  
22 99–360). In September 2000, the FCC issued the  
23 DTV Public Interest Form Notice of Proposed Rule-  
24 making (NPRM) which sought to require television  
25 broadcasters (both digital and analog) to disclose on

1 a quarterly standardized form how they are serving  
2 the public interest (MM Docket No. 00–168).

3 (17) After more than four years, the FCC has  
4 not taken final action in those proceedings.

5 (18) On September 9, 2004, the FCC adopted  
6 a Report and Order addressing children’s program-  
7 ming obligations for digital television broadcasters.  
8 The FCC required amount of core educational pro-  
9 gramming proportionally to the amount of increased  
10 free video programming offered by the broadcaster  
11 on digital multicast channels. The Order also con-  
12 cluded that commercial limits apply to all digital  
13 programming directed at children 12 years and  
14 under, whether the programming is provided on a  
15 free or pay multicast channel.

16 (19) Congress is currently considering legisla-  
17 tive efforts to address the December 31, 2006 dead-  
18 line for reclaiming the analog spectrum.

19 (20) The transition to digital television offers a  
20 profound opportunity to improve television broad-  
21 casters’ service to the public by enhancing the diver-  
22 sity of viewpoints, promoting civic participation, ex-  
23 panding local and community programming, and in-  
24 creasing children’s programming.

1 **SEC. 3. TERM OF LICENSE.**

2 (a) AMENDMENT.—Section 307(c)(1) of the Commu-  
 3 nications Act of 1934 (47 U.S.C. 307(c)(1)) is amended  
 4 by striking “8 years” each place it appears and inserting  
 5 “3 years”.

6 (b) EFFECTIVE DATE.—The amendment made by  
 7 subsection (a) shall be effective with respect to any license  
 8 granted by the Federal Communications Commission after  
 9 the date of enactment of this Act.

10 **SEC. 4. IMPLEMENTATION OF PUBLIC INTEREST STAND-**  
 11 **ARDS.**

12 Subsection (d) of section 336 of the Communications  
 13 Act of 1934 (47 U.S.C. 309) is amended to read as fol-  
 14 lows:

15 “(d) IMPLEMENTATION OF PUBLIC INTEREST  
 16 STANDARD.—

17 “(1) REQUIREMENTS NECESSARY TO LICENSE  
 18 RENEWAL.—Nothing in this section shall be con-  
 19 strued as relieving a television broadcasting station  
 20 from its obligation to serve the public interest, con-  
 21 venience, and necessity. In the Commission’s review  
 22 of any application for renewal of a broadcast license  
 23 for a television station that provides ancillary or  
 24 supplementary services, the television licensee shall  
 25 establish that all of its program services on the ex-  
 26 isting or advanced television spectrum are in the

1 public interest. Any violation of the Commission  
2 rules applicable to ancillary or supplementary serv-  
3 ices shall reflect upon the licensee’s qualifications for  
4 renewal of its license. Any station licensee that uses  
5 advanced television spectrum to broadcast multiple  
6 channels of programming in the digital television  
7 service shall establish that the program services on  
8 such spectrum are in the public interest by dem-  
9 onstrating compliance with the requirements of  
10 paragraphs (2) and (3).

11 “(2) PROGRAMMING OBLIGATIONS OF MULTI-  
12 CASTING STATIONS.—Each broadcast television sta-  
13 tion licensee providing multiple channels of program-  
14 ming in the digital television service shall, in accord-  
15 ance with regulations prescribed by the Commission  
16 under this subsection, provide the following:

17 “(A) PUBLIC AFFAIRS REQUIREMENT.—An  
18 amount of qualifying local civic affairs pro-  
19 gramming or qualifying local electoral affairs  
20 programming on its primary channel equal to a  
21 total of at least 3 hours per week, and, on the  
22 remainder of the multi-cast digital channels, a  
23 total of at least 3 hours per week of such pro-  
24 gramming multiplied by the number of such re-  
25 mainder channels, except that the licensee shall

1 have the discretion to determine how to allocate  
2 such amount of programming among such re-  
3 mainder non-primary channels.

4 “(B) INDEPENDENT OR LOCALLY PRO-  
5 DUCED PROGRAMMING.—An amount of pro-  
6 gramming on its primary channel that is inde-  
7 pendently produced or locally produced pro-  
8 gramming equal to not less than 25 percent of  
9 the programming aired during primetime hours  
10 on the primary channel.

11 “(C) CHILDREN’S EDUCATIONAL PRO-  
12 GRAMMING.—A minimum of 3 hours per week  
13 of children’s educational programming on each  
14 of the primary and remaining multi-cast digital  
15 channels, in accordance with section 102(a) of  
16 the Children’s Television Act of 1990, except  
17 that the licensee shall have the discretion to de-  
18 termine how to allocate such amount of pro-  
19 gramming among the remaining multi-cast dig-  
20 ital channels.

21 “(D) PUBLIC HEARINGS.—At least 2 pub-  
22 lic hearings per year to ascertain the needs and  
23 interest of the communities they serve, one of  
24 such hearings taking place at least 2 months

1 prior to the date of application for license  
2 issuance or renewal.

3 “(E) FCC REPORTS.—A report quarterly  
4 to the Commission on how the ascertainment of  
5 such needs and interests has led to public inter-  
6 est programming in accordance with this sub-  
7 section, and describing the number of hours  
8 and the programs or program segments devoted  
9 to local civic affairs programming, independent  
10 or locally produced programming, and chil-  
11 dren’s educational programming (as required by  
12 subparagraphs (A), (B), and (C)). The report  
13 shall be made available to the public and the  
14 Commission no later than 30 days after the end  
15 of the quarter, by placing a copy in the sta-  
16 tion’s public file, posting a copy in the station’s  
17 website (if it has one), with a prominent and  
18 clearly identified link on the home page of the  
19 website, and filling it with the Commission.

20 “(3) DEFINITIONS.—As used in this subsection:

21 “(A) PRIMARY CHANNEL.—The term ‘pri-  
22 mary channel’ means the over-the-air channel  
23 that the station licensee designates or deter-  
24 mines as the primary video signal of that sta-  
25 tion for purposes of section 614 (must-carry).

1           “(B) QUALIFYING LOCAL CIVIC AFFAIRS  
2 PROGRAMMING.—The term ‘qualifying local  
3 civic affairs programming’ means local civic  
4 programming that is designed to provide the  
5 public with information about local issues.  
6 Local civic programming includes broadcasts of  
7 interviews with, or statements by, elected or ap-  
8 pointed officials and relevant policy experts on  
9 issues of importance to the community, govern-  
10 ment meetings, legislative sessions, conferences  
11 featuring elected officials, and substantive dis-  
12 cussions of civic issues of interest to local com-  
13 munities or groups.

14           “(C) QUALIFYING LOCAL ELECTORAL AF-  
15 FAIRS PROGRAMMING.—The term ‘qualifying  
16 local electoral affairs programming’ means pro-  
17 gramming that consists of candidate-centered  
18 discourse focusing on the local, State, and Fed-  
19 eral races for public offices to be elected by a  
20 constituency within the licensee’s broadcast  
21 area. Local electoral affairs programming in-  
22 cludes broadcasts of candidate debates, inter-  
23 views, or statements, as well as substantive dis-  
24 cussions of ballot measures that will be put be-  
25 fore the voters in a forthcoming election. Pro-

1           programming that focuses on the ‘horserace’ as-  
2           pects of an election does not qualify as local  
3           electoral affairs programming. Programming  
4           that is primarily concerned with the political  
5           strength or viability of a candidate or ballot  
6           issue; that focuses on a candidate or ballot  
7           issue’s status in relation to polling data, en-  
8           dorsements or fundraising totals; or discusses  
9           an election in terms of who is winning or losing  
10          is considered to be focused on such ‘horserace’  
11          aspects.

12                   “(D) EXCLUSIONS FROM DEFINITIONS.—  
13           Public service announcements and paid political  
14           advertisements shall not be treated as quali-  
15           fying local civic affairs programming or quali-  
16           fying local electoral affairs programming.

17                   “(E) ADDITIONAL QUALIFICATION RE-  
18           QUIREMENTS.—Local civic and electoral affairs  
19           programming must meet the following qualifica-  
20           tion requirements in order to be counted to-  
21           wards the 3 hour minimums under paragraph  
22           (2)(A):

23                           “(i) The programming must be aired  
24                           between 7:00 a.m. and 11:35 p.m., with at  
25                           least 50 percent of that programming

1 being aired between 5:00 p.m. and 11:35  
2 p.m., Monday through Friday, and between  
3 7:00 a.m. and 12:00 p.m., Saturday and  
4 Sunday mornings.

5 “(ii) At least 75 percent of the re-  
6 quired minimum must be ‘first-run pro-  
7 gramming’ by the licensee. For purposes of  
8 this clause, ‘first-run programming’ means  
9 a program which has never before been  
10 distributed by a broadcast licensee and  
11 which will be distributed for the first time  
12 by the licensee.

13 “(iii) A licensee holding multiple li-  
14 censes within the same area (as defined by  
15 the Commission’s rules permitting multiple  
16 ownership) may not fulfill its requirements  
17 by duplicating original ‘first run’ program-  
18 ming on its stations.

19 “(iv) Programming that is aired dur-  
20 ing regularly scheduled newscasts on the  
21 primary channel that otherwise meets the  
22 definition of qualifying local civic affairs  
23 programming or qualifying local electoral  
24 affairs programming may be counted to-

1           wards the licensee’s weekly minimum, up  
2           to 30 minutes per week.

3           “(F) INDEPENDENTLY PRODUCED OR LO-  
4           CALLY PRODUCED PROGRAMMING.—

5                   “(i) The term ‘independently produced  
6                   or locally produced programming’ means  
7                   programming produced by an entity not  
8                   owned or controlled by an owner of a na-  
9                   tional television network.

10                   “(ii) If an owner of a national tele-  
11                   vision network owns or controls more than  
12                   a one-third financial interest in the pro-  
13                   gram, acts as the distributor of such pro-  
14                   gram in syndication, or owns the copyright  
15                   in such program, the owner of a national  
16                   television network shall be considered to be  
17                   the producer of that program for the pur-  
18                   poses of this section. A program cross-li-  
19                   censed by one network entity to another  
20                   network entity shall not be considered  
21                   independent or locally produced program-  
22                   ming.

23                   “(iii) Programming that meets the  
24                   definition of qualifying local civic or elec-  
25                   toral affairs programming shall not be in-

1           cluded as independently produced or locally  
2           produced programming under this sub-  
3           paragraph.”.

4 **SEC. 5. COMMISSION ACTION REQUIRED.**

5           The FCC shall, consistent with the amendment made  
6 by section 4, within 9 months after the date of enactment  
7 of this Act—

8           (1) issue a final decision in the Matter of Pub-  
9           lic Interest Obligations of TV Broadcast Licensees,  
10          MM Docket No. 99–360;

11          (2) issue a final decision in the Matter of  
12          Standardized and Enhanced Disclosure Require-  
13          ments for Television Broadcast Licensee Public In-  
14          terest Obligations, MM Docket No. 00–168; and

15          (3) complete a rulemaking proceeding to deter-  
16          mine how the broadcast licensees may utilize dis-  
17          tribution and promotion mechanisms, such as per-  
18          sonal video recorders, video-on-demand, and elec-  
19          tronic program guides, to make available and pro-  
20          mote local civic and electoral affairs programming.

○