

Calendar No. 17

109TH CONGRESS
1ST SESSION**H. R. 310**

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2005

Received

FEBRUARY 17, 2005

Read the first time

FEBRUARY 18, 2005

Read the second time and placed on the calendar

AN ACT

To increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, 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 “Broadcast Decency
5 Enforcement Act of 2005”.

1 **SEC. 2. INCREASE IN PENALTIES FOR OBSCENE, INDECENT,**
2 **AND PROFANE BROADCASTS.**

3 Section 503(b)(2) of the Communications Act of
4 1934 (47 U.S.C. 503(b)(2)) is amended—

5 (1) by redesignating subparagraphs (C) and
6 (D) as subparagraphs (D) and (E), respectively;

7 (2) by inserting after subparagraph (B) the fol-
8 lowing new subparagraph:

9 “(C) Notwithstanding subparagraph (A), if the viola-
10 tor is (i) a broadcast station licensee or permittee, or (ii)
11 an applicant for any broadcast license, permit, certificate,
12 or other instrument or authorization issued by the Com-
13 mission, and the violator is determined by the Commission
14 under paragraph (1) to have broadcast obscene, indecent,
15 or profane material, the amount of any forfeiture penalty
16 determined under this section shall not exceed \$500,000
17 for each violation.”; and

18 (3) in subparagraph (D), as redesignated by
19 paragraph (1) of this subsection—

20 (A) by striking “subparagraph (A) or (B)”
21 and inserting “subparagraph (A), (B), or (C)”;
22 and

23 (B) by adding at the end the following:
24 “Notwithstanding the preceding sentence, if the
25 violator is determined by the Commission under
26 paragraph (1) to have uttered obscene, inde-

1 cent, or profane material (and the case is not
2 covered by subparagraph (A), (B), or (C)), the
3 amount of any forfeiture penalty determined
4 under this section shall not exceed \$500,000 for
5 each violation.”.

6 **SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES;**
7 **EXCEPTION.**

8 Section 503(b)(2) of the Communications Act of
9 1934 (47 U.S.C. 503(b)(2)) is further amended by adding
10 at the end (after subparagraph (E) as redesignated by sec-
11 tion 2(1) of this Act) the following new subparagraphs:

12 “(F) In the case of a violation in which the violator
13 is determined by the Commission under paragraph (1) to
14 have uttered obscene, indecent, or profane material, the
15 Commission shall take into account, in addition to the
16 matters described in subparagraph (E), the following fac-
17 tors:

18 “(i) With respect to the degree of culpability of
19 the violator, the following:

20 “(I) whether the material uttered by the
21 violator was live or recorded, scripted or
22 unscripted;

23 “(II) whether the violator had a reasonable
24 opportunity to review recorded or scripted pro-
25 gramming or had a reasonable basis to believe

1 live or unscripted programming may contain ob-
2 scene, indecent, or profane material;

3 “(III) if the violator originated live or
4 unscripted programming, whether a time delay
5 blocking mechanism was implemented for the
6 programming;

7 “(IV) the size of the viewing or listening
8 audience of the programming; and

9 “(V) whether the programming was part of
10 a children’s television program as described in
11 the Commission’s children’s television program-
12 ming policy (47 CFR 73.4050(c)).

13 “(ii) With respect to the violator’s ability to
14 pay, the following:

15 “(I) whether the violator is a company or
16 individual;

17 “(II) if the violator is a company, the size
18 of the company and the size of the market
19 served; and

20 “(III) if the violator is an individual, the
21 financial impact of a forfeiture penalty on that
22 individual.

23 “(G) A broadcast station licensee or permittee that
24 receives programming from a network organization, but
25 that is not owned or controlled, or under common owner-

1 ship or control with, such network organization, shall not
2 be subject to a forfeiture penalty under this subsection for
3 broadcasting obscene, indecent, or profane material, if—

4 “(i) such material was within live or recorded
5 programming provided by the network organization
6 to the licensee or permittee; and

7 “(ii)(I) the programming was recorded or
8 scripted, and the licensee or permittee was not given
9 a reasonable opportunity to review the programming
10 in advance; or

11 “(II) the programming was live or unscripted,
12 and the licensee or permittee had no reasonable
13 basis to believe the programming would contain ob-
14 scene, indecent, or profane material.

15 The Commission shall by rule define the term ‘network
16 organization’ for purposes of this subparagraph.”.

17 **SEC. 4. INDECENCY PENALTIES FOR NONLICENSEES.**

18 Section 503(b)(5) of the Communications Act of
19 1934 (47 U.S.C. 503(b)(5)) is amended—

20 (1) by redesignating subparagraphs (A), (B),
21 and (C) as clauses (i), (ii), and (iii), respectively;

22 (2) by inserting “(A)” after “(5)”;

23 (3) by redesignating the second sentence as
24 subparagraph (B);

25 (4) in such subparagraph (B) as redesignated—

1 (A) by striking “The provisions of this
2 paragraph shall not apply, however,” and in-
3 serting “The provisions of subparagraph (A)
4 shall not apply (i)”;

5 (B) by striking “operator, if the person”
6 and inserting “operator, (ii) if the person”;

7 (C) by striking “or in the case of” and in-
8 serting “(iii) in the case of”; and

9 (D) by inserting after “that tower” the fol-
10 lowing: “, or (iv) in the case of a determination
11 that a person uttered obscene, indecent, or pro-
12 fane material that was broadcast by a broadcast
13 station licensee or permittee, if the person is
14 determined to have willfully and intentionally
15 made the utterance, knowing or having reason
16 to know that the utterance would be broad-
17 cast”; and

18 (5) by redesignating the last sentence as sub-
19 paragraph (C).

20 **SEC. 5. DEADLINES FOR ACTION ON COMPLAINTS.**

21 Section 503(b) of the Communications Act of 1934
22 (47 U.S.C. 503(b)) is amended by adding at the end there-
23 of the following new paragraph:

1 “(7) In the case of an allegation concerning the utter-
2 ance of obscene, indecent, or profane material that is
3 broadcast by a station licensee or permittee—

4 “(A) within 180 days after the date of the re-
5 ceipt of such allegation, the Commission shall—

6 “(i) issue the required notice under para-
7 graph (3) to such licensee or permittee or the
8 person making such utterance;

9 “(ii) issue a notice of apparent liability to
10 such licensee or permittee or person in accord-
11 ance with paragraph (4); or

12 “(iii) notify such licensee, permittee, or
13 person in writing, and any person submitting
14 such allegation in writing or by general publica-
15 tion, that the Commission has determined not
16 to issue either such notice; and

17 “(B) if the Commission issues such notice and
18 such licensee, permittee, or person has not paid a
19 penalty or entered into a settlement with the Com-
20 mission, within 270 days after the date of the re-
21 ceipt of such allegation, the Commission shall—

22 “(i) issue an order imposing a forfeiture
23 penalty; or

24 “(ii) notify such licensee, permittee, or per-
25 son in writing, and any person submitting such

1 allegation in writing or by general publication,
2 that the Commission has determined not to
3 issue either such order.”.

4 **SEC. 6. ADDITIONAL REMEDIES FOR INDECENT BROAD-**
5 **CAST.**

6 Section 503 of the Communications Act of 1934 (47
7 U.S.C. 503) is further amended by adding at the end the
8 following new subsection:

9 “(c) **ADDITIONAL REMEDIES FOR INDECENT BROAD-**
10 **CASTING.**—In any proceeding under this section in which
11 the Commission determines that any broadcast station li-
12 censee or permittee has broadcast obscene, indecent, or
13 profane material, the Commission may, in addition to im-
14 posing a penalty under this section, require the licensee
15 or permittee to broadcast public service announcements
16 that serve the educational and informational needs of chil-
17 dren. Such announcements may be required to reach an
18 audience that is up to 5 times the size of the audience
19 that is estimated to have been reached by the obscene, in-
20 decent, or profane material, as determined in accordance
21 with regulations prescribed by the Commission.”.

22 **SEC. 7. LICENSE DISQUALIFICATION FOR VIOLATIONS OF**
23 **INDECENCY PROHIBITIONS.**

24 Section 503 of the Communications Act of 1934 (47
25 U.S.C. 503) is further amended by adding at the end

1 (after subsection (c) as added by section 6) the following
2 new subsection:

3 “(d) CONSIDERATION OF LICENSE DISQUALIFICA-
4 TION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.—
5 If the Commission issues a notice under paragraph (3)
6 or (4) of subsection (b) to a broadcast station licensee or
7 permittee looking toward the imposition of a forfeiture
8 penalty under this Act based on an allegation that the li-
9 censee or permittee broadcast obscene, indecent, or pro-
10 fane material, and either—

11 “(1) such forfeiture penalty has been paid, or

12 “(2) a court of competent jurisdiction has or-
13 dered payment of such forfeiture penalty, and such
14 order has become final,

15 then the Commission shall, in any subsequent proceeding
16 under section 308(b) or 310(d), take into consideration
17 whether the broadcast of such material demonstrates a
18 lack of character or other qualifications required to oper-
19 ate a station.”.

20 **SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLA-**
21 **TIONS OF INDECENCY PROHIBITIONS.**

22 Section 309(k) of the Communications Act of 1934
23 (47 U.S.C. 309(k)) is amended by adding at the end the
24 following new paragraph:

1 “(5) LICENSE RENEWAL CONSIDERATION OF
2 VIOLATIONS OF INDECENCY PROHIBITIONS.—If the
3 Commission has issued a notice under paragraph (3)
4 or (4) of section 503(b) to a broadcast station li-
5 censee or permittee with respect to a broadcast sta-
6 tion looking toward the imposition of a forfeiture
7 penalty under this Act based on an allegation that
8 such broadcast station broadcast obscene, indecent,
9 or profane material, and—

10 “(A) such forfeiture penalty has been paid,

11 or

12 “(B) a court of competent jurisdiction has
13 ordered payment of such forfeiture penalty, and
14 such order has become final,

15 then such violation shall be treated as a serious vio-
16 lation for purposes of paragraph (1)(B) of this sub-
17 section with respect to the renewal of the license or
18 permit for such station.”.

19 **SEC. 9. LICENSE REVOCATION FOR VIOLATIONS OF INDE-**
20 **CENCY PROHIBITIONS.**

21 Section 312 of the Communications Act of 1934 (47
22 U.S.C. 312) is amended by adding at the end the following
23 new subsection:

24 “(h) LICENSE REVOCATION FOR VIOLATIONS OF IN-
25 DECENCY PROHIBITIONS.—

1 “(1) CONSEQUENCES OF MULTIPLE VIOLA-
2 TIONS.—If, in each of 3 or more proceedings during
3 the term of any broadcast license, the Commission
4 issues a notice under paragraph (3) or (4) of section
5 503(b) to a broadcast station licensee or permittee
6 with respect to a broadcast station looking toward
7 the imposition of a forfeiture penalty under this Act
8 based on an allegation that such broadcast station
9 broadcast obscene, indecent, or profane material,
10 and in each such proceeding either—

11 “(A) such forfeiture penalty has been paid,

12 or

13 “(B) a court of competent jurisdiction has
14 ordered payment of such forfeiture penalty, and
15 such order has become final,

16 then the Commission shall commence a proceeding
17 under subsection (a) of this section to consider
18 whether the Commission should revoke the station li-
19 cense or construction permit of that licensee or per-
20 mittee for such station.

21 “(2) PRESERVATION OF AUTHORITY.—Nothing
22 in this subsection shall be construed to limit the au-
23 thority of the Commission to commence a proceeding
24 under subsection (a).”.

1 **SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF**
2 **THE COMMISSION.**

3 (a) **REQUIRED CONTENTS.**—Each calendar year be-
4 ginning after the date of enactment of this Act, the Fed-
5 eral Communications Commission shall submit to the Con-
6 gress an annual report that includes the following:

7 (1) The number of complaints received by the
8 Commission during the years covered by the report
9 alleging that a broadcast contained obscene, inde-
10 cent, or profane material, and the number of pro-
11 grams to which such complaints relate.

12 (2) The number of those complaints that have
13 been dismissed or denied by the Commission.

14 (3) The number of complaints that have re-
15 mained pending at the end of the years covered by
16 the annual report.

17 (4) The number of notices issued by the Com-
18 mission under paragraph (3) or (4) of section 503(b)
19 of the Communications Act of 1934 (47 U.S.C.
20 503(b)) during the years covered by the report to
21 enforce the statutes, rules, and policies prohibiting
22 the broadcasting of obscene, indecent, or profane
23 material.

24 (5) For each such notice, a statement of—

25 (A) the amount of the proposed forfeiture;

1 (B) the program, station, and corporate
2 parent to which the notice was issued;

3 (C) the length of time between the date on
4 which the complaint was filed and the date on
5 which the notice was issued; and

6 (D) the status of the proceeding.

7 (6) The number of forfeiture orders issued pur-
8 suant to section 503(b) of such Act during the years
9 covered by the report to enforce the statutes, rules,
10 and policies prohibiting the broadcasting of obscene,
11 indecent, or profane material.

12 (7) For each such forfeiture order, a statement
13 of—

14 (A) the amount assessed by the final for-
15 feiture order;

16 (B) the program, station, and corporate
17 parent to which it was issued;

18 (C) whether the licensee has paid the for-
19 feiture order; and

20 (D) the amount paid by the licensee.

21 (8) In instances where the licensee has refused
22 to pay, whether the Commission referred such order
23 to the Department of Justice to collect the penalty.

24 (9) In cases where the Commission referred
25 such order to the Department of Justice—

1 (A) the number of days from the date the
2 Commission issued such order to the date the
3 Commission referred such order to the Depart-
4 ment;

5 (B) whether the Department has com-
6 menced an action to collect the penalty, and if
7 such action was commenced, the number of
8 days from the date the Commission referred
9 such order to the Department to the date the
10 action by the Department commenced; and

11 (C) whether the collection action resulted
12 in a payment, and if such action resulted in a
13 payment, the amount of such payment.

14 (b) YEARS COVERED.—For purposes of this section,
15 the “years covered” by the report required under this sec-
16 tion shall be the years beginning with calendar year 2000
17 through the calendar year preceding the year in which the
18 report is submitted.

19 **SEC. 11. UPDATING GUIDANCE TO THE BROADCAST INDUS-**
20 **TRY REGARDING INDECENCY.**

21 Within 9 months after the date of enactment of this
22 Act, and at least once every 3 years thereafter, the Federal
23 Communications Commission shall revise, on the basis of
24 recent developments in the Commission indecency case
25 law, the Commission’s policy statement to provide indus-

1 try guidance on the Commission's interpretation of, and
2 enforcement policies regarding, the laws and regulations
3 concerning broadcast indecency, as contained in the policy
4 statement adopted March 14, 2001, and released April 6,
5 2001 (FCC 01-90).

6 **SEC. 12. GAO STUDY OF INDECENT BROADCASTING COM-**
7 **PLAINTS.**

8 (a) INQUIRY AND REPORT REQUIRED.—The Govern-
9 ment Accountability Office shall conduct a study exam-
10 ining, with respect to calendar year 2000 through the cal-
11 endar year preceding the year in which the report is sub-
12 mitted—

13 (1) the number of complaints concerning the
14 broadcasting of obscene, indecent, and profane mate-
15 rial to the Federal Communications Commission;

16 (2) the number of such complaints that result
17 in final agency actions by the Commission;

18 (3) the length of time taken by the Commission
19 in responding to such complaints;

20 (4) what mechanisms the Commission has es-
21 tablished to receive, investigate, and respond to such
22 complaints; and

23 (5) whether complainants to the Commission
24 are adequately informed by the Commission of the
25 responses to their complaints.

1 (b) SUBMISSION OF REPORT.—The Government Ac-
2 countability Office shall submit a report on the results of
3 such study within one year after the date of enactment
4 of this Act to the Committee on Commerce, Science, and
5 Transportation of the Senate and the Committee on En-
6 ergy and Commerce of the House of Representatives.

7 **SEC. 13. SENSE OF THE CONGRESS.**

8 (a) REINSTATEMENT OF POLICY.—It is the sense of
9 the Congress that the broadcast television station licensees
10 should reinstitute a family viewing policy for broadcasters.

11 (b) DEFINITION.—For purposes of this section, a
12 family viewing policy is a policy similar to the policy that
13 existed in the United States from 1975 to 1983, as part
14 of the National Association of Broadcaster’s code of con-
15 duct for television, and that included the concept of a fam-
16 ily viewing hour.

17 **SEC. 14. IMPLEMENTATION.**

18 (a) REGULATIONS.—The Commission shall prescribe
19 regulations to implement the amendments made by this
20 Act within 180 days after the date of enactment of this
21 Act.

22 (b) PROSPECTIVE APPLICATION.—This Act and the
23 amendments made by this Act shall not apply with respect
24 to material broadcast before the date of enactment of this
25 Act.

1 (c) SEPARABILITY.—Section 708 of the Communica-
2 tions Act of 1934 (47 U.S.C. 608) shall apply to this Act
3 and the amendments made by this Act.

Passed the House of Representatives February 16,
2005.

Attest:

JEFF TRANDAHL,

Clerk.

Calendar No. 17

109TH CONGRESS
1ST Session

H. R. 310

AN ACT

To increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes.

FEBRUARY 18, 2005

Read the second time and placed on the calendar