

Union Calendar No. 2

109TH CONGRESS
1ST SESSION

H. R. 310

[Report No. 109-5]

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 2005

Mr. UPTON (for himself, Mr. MARKEY, Mr. BARTON of Texas, and Mr. DINGELL) introduced the following bill; which was referred to the Committee on Energy and Commerce

FEBRUARY 14, 2005

Additional sponsors: Mr. BLUNT, Mr. GILLMOR, Mr. SHIMKUS, Mr. WHITFIELD, Mr. FERGUSON, Mrs. WILSON of New Mexico, Mr. EHLERS, Mrs. JO ANN DAVIS of Virginia, Mr. SMITH of Texas, Mr. KNOLLENBERG, Mr. CAMP, Mr. HOEKSTRA, Mr. ROGERS of Michigan, Mr. GARY G. MILLER of California, Mr. NEUGEBAUER, Mr. BONNER, Mr. AKIN, Mr. FORBES, Mr. PICKERING, Mr. STEARNS, Mr. BUYER, Ms. GINNY BROWN-WAITE of Florida, Mr. WALSH, Mr. HOLDEN, Mr. WICKER, Mr. MILLER of Florida, Mr. BACHUS, Mr. COSTELLO, Mr. CHANDLER, Mr. HAYES, Mr. DEAL of Georgia, Mr. OSBORNE, Mr. GORDON, Mr. ETHERIDGE, Mr. DAVIS of Florida, Mr. MATHESON, Mr. BOOZMAN, Ms. ESHOO, Mr. SOUDER, Mr. BARRETT of South Carolina, Mr. BILIRAKIS, Mr. HAYWORTH, Mr. WILSON of South Carolina, Mr. NORWOOD, Mrs. CUBIN, Mr. GREEN of Wisconsin, Mr. KENNEDY of Minnesota, Mr. DENT, Mr. GENE GREEN of Texas, Mr. SCHWARZ of Michigan, Mr. MCINTYRE, Mr. CULBERSON, Mr. JOHNSON of Illinois, Mrs. JOHNSON of Connecticut, Mr. EVERETT, Mr. DAVIS of Tennessee, Mr. TURNER, Mr. RYUN of Kansas, Mr. PENCE, Mr. KLINE, Mr. BACA, Mr. MCCAUL of Texas, Mr. GOODLATTE, and Mr. WELDON of Florida

FEBRUARY 14, 2005

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

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”.

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

8 Section 503(b)(2) of the Communications Act of
9 1934 (47 U.S.C. 503(b)(2)) is amended—

10 (1) by redesignating subparagraphs (C) and
11 (D) as subparagraphs (D) and (E), respectively;

12 (2) by inserting after subparagraph (B) the fol-
13 lowing new subparagraph:

14 “(C) Notwithstanding subparagraph (A), if the viola-
15 tor is (i) a broadcast station licensee or permittee, or (ii)
16 an applicant for any broadcast license, permit, certificate,
17 or other instrument or authorization issued by the Com-
18 mission, and the violator is determined by the Commission
19 under paragraph (1) to have broadcast obscene, indecent,
20 or profane material, the amount of any forfeiture penalty

1 determined under this section shall not exceed \$500,000
2 for each violation.”; and

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

5 (A) by striking “subparagraph (A) or (B)”
6 and inserting “subparagraph (A), (B), or (C)”;
7 and

8 (B) by adding at the end the following:
9 “Notwithstanding the preceding sentence, if the
10 violator is determined by the Commission under
11 paragraph (1) to have uttered obscene, inde-
12 cent, or profane material (and the case is not
13 covered by subparagraph (A), (B), or (C)), the
14 amount of any forfeiture penalty determined
15 under this section shall not exceed \$500,000 for
16 each violation.”.

17 **SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES;**
18 **EXCEPTION.**

19 Section 503(b)(2) of the Communications Act of
20 1934 (47 U.S.C. 503(b)(2)) is further amended by adding
21 at the end (after subparagraph (E) as redesignated by sec-
22 tion 2(1) of this Act) the following new subparagraphs:

23 “(F) In the case of a violation in which the violator
24 is determined by the Commission under paragraph (1) to
25 have uttered obscene, indecent, or profane material, the

1 Commission shall take into account, in addition to the
2 matters described in subparagraph (E), the following fac-
3 tors:

4 “(i) With respect to the degree of culpability of
5 the violator, the following:

6 “(I) whether the material uttered by the
7 violator was live or recorded, scripted or
8 unscripted;

9 “(II) whether the violator had a reasonable
10 opportunity to review recorded or scripted pro-
11 gramming or had a reasonable basis to believe
12 live or unscripted programming may contain ob-
13 scene, indecent, or profane material;

14 “(III) if the violator originated live or
15 unscripted programming, whether a time delay
16 blocking mechanism was implemented for the
17 programming;

18 “(IV) the size of the viewing or listening
19 audience of the programming; and

20 “(V) whether the programming was part of
21 a children’s television program as described in
22 the Commission’s children’s television program-
23 ming policy (47 CFR 73.4050(c)).

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

1 “(I) whether the violator is a company or
2 individual; and

3 “(II) if the violator is a company, the size
4 of the company and the size of the market
5 served.

6 “(G) A broadcast station licensee or permittee that
7 receives programming from a network organization, but
8 that is not owned or controlled, or under common owner-
9 ship or control with, such network organization, shall not
10 be subject to a forfeiture penalty under this subsection for
11 broadcasting obscene, indecent, or profane material, if—

12 “(i) such material was within live or recorded
13 programming provided by the network organization
14 to the licensee or permittee; and

15 “(ii)(I) the programming was recorded or
16 scripted, and the licensee or permittee was not given
17 a reasonable opportunity to review the programming
18 in advance; or—

19 “(II) the programming was live or unscripted,
20 and the licensee or permittee had no reasonable
21 basis to believe the programming would contain ob-
22 scene, indecent, or profane material.

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

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

2 Section 503(b)(5) of the Communications Act of
3 1934 (47 U.S.C. 503(b)(5)) is amended—

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

6 (2) by inserting “(A)” after “(5)”;

7 (3) by redesignating the second sentence as
8 subparagraph (B);

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

10 (A) by striking “The provisions of this
11 paragraph shall not apply, however,” and in-
12 serting “The provisions of subparagraph (A)
13 shall not apply (i)”;

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

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

18 (D) by inserting after “that tower” the fol-
19 lowing: “, or (iv) in the case of a determination
20 that a person uttered obscene, indecent, or pro-
21 fane material that was broadcast by a broadcast
22 station licensee or permittee, if the person is
23 determined to have willfully or intentionally
24 made the utterance”; and

25 (5) by redesignating the last sentence as sub-
26 paragraph (C).

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

2 Section 503(b) of the Communications Act of 1934
3 (47 U.S.C. 503(b)) is amended by adding at the end there-
4 of the following new paragraph:

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

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

10 “(i) issue the required notice under para-
11 graph (3) to such licensee or permittee or the
12 person making such utterance;

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

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

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

1 “(i) issue an order imposing a forfeiture
2 penalty; or

3 “(ii) notify such licensee, permittee, or per-
4 son in writing, and any person submitting such
5 allegation in writing or by general publication,
6 that the Commission has determined not to
7 issue either such order.”.

8 **SEC. 6. ADDITIONAL REMEDIES FOR INDECENT BROAD-**
9 **CAST.**

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

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

1 **SEC. 7. LICENSE DISQUALIFICATION FOR VIOLATIONS OF**
2 **INDECENCY PROHIBITIONS.**

3 Section 503 of the Communications Act of 1934 (47
4 U.S.C. 503) is further amended by adding at the end
5 (after subsection (c) as added by section 6) the following
6 new subsection:

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

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

16 “(2) a court of competent jurisdiction has or-
17 dered payment of such forfeiture penalty, and such
18 order has become final,

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

1 **SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLA-**
2 **TIONS OF INDECENCY PROHIBITIONS.**

3 Section 309(k) of the Communications Act of 1934
4 (47 U.S.C. 309(k)) is amended by adding at the end the
5 following new paragraph:

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

15 “(A) such forfeiture penalty has been paid,
16 or

17 “(B) a court of competent jurisdiction has
18 ordered payment of such forfeiture penalty, and
19 such order has become final,

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

1 **SEC. 9. LICENSE REVOCATION FOR VIOLATIONS OF INDE-**
2 **CENCY PROHIBITIONS.**

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

6 “(h) LICENSE REVOCATION FOR VIOLATIONS OF IN-
7 DECENCY PROHIBITIONS.—

8 “(1) CONSEQUENCES OF MULTIPLE VIOLA-
9 TIONS.—If, in each of 3 or more proceedings during
10 the term of any broadcast license, the Commission
11 issues a notice under paragraph (3) or (4) of section
12 503(b) to a broadcast station licensee or permittee
13 with respect to a broadcast station looking toward
14 the imposition of a forfeiture penalty under this Act
15 based on an allegation that such broadcast station
16 broadcast obscene, indecent, or profane material,
17 and in each such proceeding either—

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

19 or

20 “(B) a court of competent jurisdiction has
21 ordered payment of such forfeiture penalty, and
22 such order has become final,

23 then the Commission shall commence a proceeding
24 under subsection (a) of this section to consider
25 whether the Commission should revoke the station li-

1 cense or construction permit of that licensee or per-
2 mittee for such station.

3 “(2) PRESERVATION OF AUTHORITY.—Nothing
4 in this subsection shall be construed to limit the au-
5 thority of the Commission to commence a proceeding
6 under subsection (a).”.

7 **SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF**
8 **THE COMMISSION.**

9 Each calendar year beginning after the date of enact-
10 ment of this Act, the Federal Communications Commis-
11 sion shall submit to the Congress an annual report that
12 includes the following:

13 (1) The number of complaints received by the
14 Commission during the year covered by the report
15 alleging that a broadcast contained obscene, inde-
16 cent, or profane material, and the number of pro-
17 grams to which such complaints relate.

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

20 (3) The number of complaints that have re-
21 mained pending at the end of the year covered by
22 the annual report.

23 (4) The number of notices issued by the Com-
24 mission under paragraph (3) or (4) of section 503(b)
25 of the Communications Act of 1934 (47 U.S.C.

1 503(b)) during the year covered by the report to en-
2 force the statutes, rules, and policies prohibiting the
3 broadcasting of obscene, indecent, or profane mate-
4 rial.

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

6 (A) the amount of the proposed forfeiture;

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

9 (C) the length of time between the date on
10 which the complaint was filed and the date on
11 which the notice was issued; and

12 (D) the status of the proceeding.

13 (6) The number of forfeiture orders issued pur-
14 suant to section 503(b) of such Act during the year
15 covered by the report to enforce the statutes, rules,
16 and policies prohibiting the broadcasting of obscene,
17 indecent, or profane material.

18 (7) For each such forfeiture order, a statement
19 of—

20 (A) the amount assessed by the final for-
21 feiture order;

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

24 (C) whether the licensee has paid the for-
25 feiture order; and

1 (D) the amount paid by the licensee.

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

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

7 (A) the number of days from the date the
8 Commission issued such order to the date the
9 Commission referred such order to the Depart-
10 ment;

11 (B) whether the Department has com-
12 menced an action to collect the penalty, and if
13 such action was commenced, the number of
14 days from the date the Commission referred
15 such order to the Department to the date the
16 action by the Department commenced; and

17 (C) whether the collection action resulted
18 in a payment, and if such action resulted in a
19 payment, the amount of such payment.

20 **SEC. 11. GAO STUDY OF INDECENT BROADCASTING COM-**
21 **PLAINTS.**

22 (a) INQUIRY AND REPORT REQUIRED.—The General
23 Accounting Office shall conduct a study examining—

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

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

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

8 (4) what mechanisms the Commission has es-
9 tablished to receive, investigate, and respond to such
10 complaints; and

11 (5) whether complainants to the Commission
12 are adequately informed by the Commission of the
13 responses to their complaints.

14 (b) SUBMISSION OF REPORT.—The General Account-
15 ing Office shall submit a report on the results of such
16 study within one year after the date of enactment of this
17 Act to the Committee on Commerce, Science, and Trans-
18 portation of the Senate and the Committee on Energy and
19 Commerce of the House of Representatives.

20 **SEC. 12. SENSE OF THE CONGRESS.**

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

24 (b) DEFINITION.—For purposes of this section, a
25 family viewing policy is a policy similar to the policy that

1 existed in the United States from 1975 to 1983, as part
2 of the National Association of Broadcaster's code of con-
3 duct for television, and that included the concept of a fam-
4 ily viewing hour.

5 **SEC. 13. IMPLEMENTATION.**

6 (a) REGULATIONS.—The Commission shall prescribe
7 regulations to implement the amendments made by this
8 Act within 180 days after the date of enactment of this
9 Act.

10 (b) PROSPECTIVE APPLICATION.—This Act and the
11 amendments made by this Act shall not apply with respect
12 to material broadcast before the date of enactment of this
13 Act.

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

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