

109TH CONGRESS
1ST SESSION

H. R. 310

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

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”.

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; and

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

20 “(G) A broadcast station licensee or permittee that
21 receives programming from a network organization, but
22 that is not owned or controlled, or under common owner-
23 ship or control with, such network organization, shall not
24 be subject to a forfeiture penalty under this subsection for
25 broadcasting obscene, indecent, or profane material, if—

1 “(i) such material was within live or recorded
2 programming provided by the network organization
3 to the licensee or permittee; and

4 “(ii)(I) the programming was recorded or
5 scripted, and the licensee or permittee was not given
6 a reasonable opportunity to review the programming
7 in advance; or—

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

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

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

15 Section 503(b)(5) of the Communications Act of
16 1934 (47 U.S.C. 503(b)(5)) is amended—

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

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

20 (3) by redesignating the second sentence as
21 subparagraph (B);

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

23 (A) by striking “The provisions of this
24 paragraph shall not apply, however,” and in-

1 serting “The provisions of subparagraph (A)
2 shall not apply (i)”;

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

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

7 (D) by inserting after “that tower” the fol-
8 lowing: “, or (iv) in the case of a determination
9 that a person uttered obscene, indecent, or pro-
10 fane material that was broadcast by a broadcast
11 station licensee or permittee, if the person is
12 determined to have willfully or intentionally
13 made the utterance”; and

14 (5) by redesignating the last sentence as sub-
15 paragraph (C).

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

17 Section 503(b) of the Communications Act of 1934
18 (47 U.S.C. 503(b)) is amended by adding at the end there-
19 of the following new paragraph:

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

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

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

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

7 “(iii) notify such licensee, permittee, or
8 person in writing, and any person submitting
9 such allegation in writing or by general publica-
10 tion, that the Commission has determined not
11 to issue either such notice; and

12 “(B) if the Commission issues such notice and
13 such licensee, permittee, or person has not paid a
14 penalty or entered into a settlement with the Com-
15 mission, within 270 days after the date of the re-
16 ceipt of such allegation, the Commission shall—

17 “(i) issue an order imposing a forfeiture
18 penalty; or

19 “(ii) notify such licensee, permittee, or per-
20 son in writing, and any person submitting such
21 allegation in writing or by general publication,
22 that the Commission has determined not to
23 issue either such order.”.

1 **SEC. 6. ADDITIONAL REMEDIES FOR INDECENT BROAD-**
2 **CAST.**

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

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

19 **SEC. 7. LICENSE DISQUALIFICATION FOR VIOLATIONS OF**
20 **INDECENCY PROHIBITIONS.**

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

25 “(d) CONSIDERATION OF LICENSE DISQUALIFICA-
26 TION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.—

1 If the Commission issues a notice under paragraph (3)
2 or (4) of subsection (b) to a broadcast station licensee or
3 permittee looking toward the imposition of a forfeiture
4 penalty under this Act based on an allegation that the li-
5 censee or permittee broadcast obscene, indecent, or pro-
6 fane material, and either—

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

8 “(2) a court of competent jurisdiction has or-
9 dered payment of such forfeiture penalty, and such
10 order has become final,

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

16 **SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLA-**
17 **TIONS OF INDECENCY PROHIBITIONS.**

18 Section 309(k) of the Communications Act of 1934
19 (47 U.S.C. 309(k)) is amended by adding at the end the
20 following new paragraph:

21 “(5) LICENSE RENEWAL CONSIDERATION OF
22 VIOLATIONS OF INDECENCY PROHIBITIONS.—If the
23 Commission has issued a notice under paragraph (3)
24 or (4) of section 503(b) to a broadcast station li-
25 censee or permittee with respect to a broadcast sta-

1 tion looking toward the imposition of a forfeiture
 2 penalty under this Act based on an allegation that
 3 such broadcast station broadcast obscene, indecent,
 4 or profane material, and—

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

6 or

7 “(B) a court of competent jurisdiction has

8 ordered payment of such forfeiture penalty, and

9 such order has become final,

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

14 **SEC. 9. LICENSE REVOCATION FOR VIOLATIONS OF INDE-**
 15 **CENCY PROHIBITIONS.**

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

19 “(h) **LICENSE REVOCATION FOR VIOLATIONS OF IN-**
 20 **DECENCY PROHIBITIONS.**—

21 “(1) **CONSEQUENCES OF MULTIPLE VIOLA-**
 22 **TIONS.**—If, in each of 3 or more proceedings during
 23 the term of any broadcast license, the Commission
 24 issues a notice under paragraph (3) or (4) of section
 25 503(b) to a broadcast station licensee or permittee

1 with respect to a broadcast station looking toward
2 the imposition of a forfeiture penalty under this Act
3 based on an allegation that such broadcast station
4 broadcast obscene, indecent, or profane material,
5 and in each such proceeding either—

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

7 or

8 “(B) a court of competent jurisdiction has
9 ordered payment of such forfeiture penalty, and
10 such order has become final,

11 then the Commission shall commence a proceeding
12 under subsection (a) of this section to consider
13 whether the Commission should revoke the station li-
14 cense or construction permit of that licensee or per-
15 mittee for such station.

16 “(2) PRESERVATION OF AUTHORITY.—Nothing
17 in this subsection shall be construed to limit the au-
18 thority of the Commission to commence a proceeding
19 under subsection (a).”.

20 **SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF**
21 **THE COMMISSION.**

22 Each calendar year beginning after the date of enact-
23 ment of this Act, the Federal Communications Commis-
24 sion shall submit to the Congress an annual report that
25 includes the following:

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

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

8 (3) The number of complaints that have re-
9 mained pending at the end of the year covered by
10 the annual report.

11 (4) The number of notices issued by the Com-
12 mission under paragraph (3) or (4) of section 503(b)
13 of the Communications Act of 1934 (47 U.S.C.
14 503(b)) during the year covered by the report to en-
15 force the statutes, rules, and policies prohibiting the
16 broadcasting of obscene, indecent, or profane mate-
17 rial.

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

19 (A) the amount of the proposed forfeiture;

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

22 (C) the length of time between the date on
23 which the complaint was filed and the date on
24 which the notice was issued; and

25 (D) the status of the proceeding.

1 (6) The number of forfeiture orders issued pur-
2 suant to section 503(b) of such Act during the year
3 covered by the report to enforce the statutes, rules,
4 and policies prohibiting the broadcasting of obscene,
5 indecent, or profane material.

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

8 (A) the amount assessed by the final for-
9 feiture order;

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

12 (C) whether the licensee has paid the for-
13 feiture order; and

14 (D) the amount paid by the licensee.

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

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

20 (A) the number of days from the date the
21 Commission issued such order to the date the
22 Commission referred such order to the Depart-
23 ment;

24 (B) whether the Department has com-
25 menced an action to collect the penalty, and if

1 such action was commenced, the number of
2 days from the date the Commission referred
3 such order to the Department to the date the
4 action by the Department commenced; and

5 (C) whether the collection action resulted
6 in a payment, and if such action resulted in a
7 payment, the amount of such payment.

8 **SEC. 11. GAO STUDY OF INDECENT BROADCASTING COM-**
9 **PLAINTS.**

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

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

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

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

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

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

1 (b) SUBMISSION OF REPORT.—The General Account-
2 ing Office shall submit a report on the results of such
3 study within one year after the date of enactment of this
4 Act to the Committee on Commerce, Science, and Trans-
5 portation of the Senate and the Committee on Energy and
6 Commerce of the House of Representatives.

7 **SEC. 12. 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. 13. 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.

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