

Union Calendar No. 251

108TH CONGRESS
2D SESSION

H. R. 3717

[Report No. 108-434]

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2004

Mr. UPTON (for himself, Mr. MARKEY, Mr. TAUZIN, Mr. DINGELL, Mr. BILIRAKIS, Mr. BARTON of Texas, Mr. STEARNS, Mr. GILLMOR, Mr. BASS, Mr. GREENWOOD, Mr. BURR, Mr. BLUNT, Mr. SHIMKUS, Mr. TERRY, Mr. WELDON of Pennsylvania, Mr. WOLF, Mr. SMITH of Texas, Mr. GREEN of Texas, Mrs. WILSON of New Mexico, Mr. GORDON, Mr. WHITFIELD, Mrs. BONO, Ms. MCCARTHY of Missouri, Mr. WYNN, Mrs. CUBIN, and Mr. PITTS) introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH 9, 2004

Additional sponsors: Mr. EHLERS, Mr. MATHESON, Mr. JONES of North Carolina, Mr. EVERETT, Mr. ROGERS of Michigan, Mrs. NORTHROP, Mr. OSBORNE, Mr. LEWIS of Kentucky, Mr. BARRETT of South Carolina, Mr. ROSS, Mr. HINCHEY, Mr. BAKER, Mr. BEREUTER, Mr. FORBES, Mr. OXLEY, Mr. NETHERCUTT, Ms. KAPTUR, Mrs. MYRICK, Mr. DEAL of Georgia, Mr. SKELTON, Mr. SPRATT, Mr. COSTELLO, Mr. SMITH of Michigan, Mr. TIBERI, Mr. FERGUSON, Mr. GREEN of Wisconsin, Mr. HAYES, Ms. CARSON of Indiana, Ms. DELAURO, Mr. TIAHRT, Mrs. MILLER of Michigan, Mrs. JOHNSON of Connecticut, Mr. SCOTT of Georgia, Mr. SHADEGG, Mr. TURNER of Texas, Mr. LINDER, Mr. ROGERS of Alabama, Mr. BERRY, Mr. SIMMONS, Mr. KENNEDY of Minnesota, Mr. CALVERT, Mr. GARY G. MILLER of California, Mr. CAMP, Mr. MCINTYRE, Mr. HOEKSTRA, Mr. TAYLOR of North Carolina, Mr. BURGESS, Mr. OLVER, Mr. KNOLLENBERG, Mr. LATHAM, Ms. ESHOO, Mr. NEY, Mr. BOEHLERT, Mr. BUYER, Mr. TOOMEY, Mr. PETRI, Mr. TURNER of Ohio, Mr. TAYLOR of Mississippi, Mr. DOOLITTLE, Mr. CULBERSON, Mr. NEUGEBAUER, Mr. SOUDER, Mr. CARTER, Mr. HERGER, Mr. DAVIS of

Florida, Mr. BACHUS, Mr. GONZALEZ, Mr. AKIN, Mr. JOHNSON of Illinois, Mr. ETHERIDGE, Ms. HART, Mr. SANDLIN, Mr. SHUSTER, Mr. COLLINS, Mr. HUNTER, Mr. DEUTSCH, Mr. WALDEN of Oregon, Mr. SAM JOHNSON of Texas, Mr. BEAUPREZ, Mr. QUINN, Mr. FRELINGHUYSEN, Mr. RYUN of Kansas, Mrs. JO ANN DAVIS of Virginia, Mr. RUSH, Mr. GOODLATTE, Mr. GOODE, Mr. WICKER, Mr. COLE, Mr. CRAMER, Mr. WELDON of Florida, Mr. PRICE of North Carolina, Mr. BRADLEY of New Hampshire, Mr. HASTINGS of Washington, Mr. MILLER of Florida, Mr. BOOZMAN, Mr. HOLDEN, Mr. KIRK, Mr. HALL, Ms. MAJETTE, Mr. PUTNAM, Mr. LATOURETTE, Mr. WAMP, Mr. ADERHOLT, Mr. MURPHY, Mr. SESSIONS, Mr. WILSON of South Carolina, Mr. BONNER, Mr. SMITH of New Jersey, Ms. ROYBAL-ALLARD, Ms. GRANGER, Mr. OTTER, Mr. NORWOOD, Mr. PICKERING, Mr. SHAYS, Mr. SIMPSON, Mr. MANZULLO, Mr. BOYD, Mr. KLINE, Mr. STENHOLM, and Mr. KING of Iowa.

MARCH 9, 2004

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 21, 2004]

A BILL

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

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 En-*
 5 *forcement Act of 2004”.*

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

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

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

3 (2) by inserting after subparagraph (B) the fol-
4 lowing new subparagraph:

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

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

16 (A) by striking “subparagraph (A) or (B)”
17 and inserting “subparagraph (A), (B), or (C)”;
18 and

19 (B) by adding at the end the following:
20 “Notwithstanding the preceding sentence, if the
21 violator is determined by the Commission under
22 paragraph (1) to have uttered obscene, indecent,
23 or profane material (and the case is not covered
24 by subparagraph (A), (B), or (C)), the amount
25 of any forfeiture penalty determined under this

1 *section shall not exceed \$500,000 for each viola-*
2 *tion.”.*

3 **SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES;**

4 **EXCEPTION.**

5 *Section 503(b)(2) of the Communications Act of 1934*
6 *(47 U.S.C. 503(b)(2)) is further amended by adding at the*
7 *end (after subparagraph (E) as redesignated by section 2(1)*
8 *of this Act) the following new subparagraphs:*

9 *“(F) In the case of a violation in which the violator*
10 *is determined by the Commission under paragraph (1) to*
11 *have uttered obscene, indecent, or profane material, the*
12 *Commission shall take into account, in addition to the mat-*
13 *ters described in subparagraph (E), the following factors:*

14 *“(i) With respect to the degree of culpability of*
15 *the violator, the following:*

16 *“(I) whether the material uttered by the vio-*
17 *lator was live or recorded, scripted or unscripted;*

18 *“(II) whether the violator had a reasonable*
19 *opportunity to review recorded or scripted pro-*
20 *gramming or had a reasonable basis to believe*
21 *live or unscripted programming may contain ob-*
22 *scene, indecent, or profane material;*

23 *“(III) if the violator originated live or*
24 *unscripted programming, whether a time delay*

1 *blocking mechanism was implemented for the*
2 *programming;*

3 “(IV) *the size of the viewing or listening au-*
4 *dience of the programming; and*

5 “(V) *whether the programming was part of*
6 *a children’s television program as described in*
7 *the Commission’s children’s television program-*
8 *ming policy (47 CFR 73.4050(c)).*

9 “(ii) *With respect to the violator’s ability to pay,*
10 *the following:*

11 “(I) *whether the violator is a company or*
12 *individual; and*

13 “(II) *if the violator is a company, the size*
14 *of the company and the size of the market served.*

15 “(G) *A broadcast station licensee or permittee that re-*
16 *ceives programming from a network organization, but that*
17 *is not owned or controlled, or under common ownership or*
18 *control with, such network organization, shall not be subject*
19 *to a forfeiture penalty under this subsection for broad-*
20 *casting obscene, indecent, or profane material, if—*

21 “(i) *such material was within live or recorded*
22 *programming provided by the network organization*
23 *to the licensee or permittee; and*

24 “(ii)(I) *the programming was recorded or*
25 *scripted, and the licensee or permittee was not given*

1 *a reasonable opportunity to review the programming*
2 *in advance; or*

3 *“(II) the programming was live or unscripted,*
4 *and the licensee or permittee had no reasonable basis*
5 *to believe the programming would contain obscene, in-*
6 *decent, or profane material.*

7 *The Commission shall by rule define the term ‘network or-*
8 *ganization’ for purposes of this subparagraph.”.*

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

10 *Section 503(b)(5) of the Communications Act of 1934*
11 *(47 U.S.C. 503(b)(5) is amended—*

12 *(1) by redesignating subparagraphs (A), (B),*
13 *and (C) as clauses (i), (ii), and (iii), respectively;*

14 *(2) by inserting “(A)” after “(5)”;*

15 *(3) by redesignating the second sentence as sub-*
16 *paragraph (B);*

17 *(4) in such subparagraph (B) as redesignated—*

18 *(A) by striking “The provisions of this*
19 *paragraph shall not apply, however,” and insert-*
20 *ing “The provisions of subparagraph (A) shall*
21 *not apply (i)”;*

22 *(B) by striking “operator, if the person”*
23 *and inserting “operator, (ii) if the person”;*

24 *(C) by striking “or in the case of” and in-*
25 *serting “(iii) in the case of”; and*

1 (D) by inserting after “that tower” the fol-
2 lowing: “, or (iv) in the case of a determination
3 that a person uttered obscene, indecent, or pro-
4 fane material that was broadcast by a broadcast
5 station licensee or permittee, if the person is de-
6 termined to have willfully or intentionally made
7 the utterance”; and
8 (5) by redesignating the last sentence as sub-
9 paragraph (C).

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

11 Section 503(b) of the Communications Act of 1934 (47
12 U.S.C. 503(b)) is amended by adding at the end thereof the
13 following new paragraph:

14 “(7) In the case of an allegation concerning the utter-
15 ance of obscene, indecent, or profane material that is broad-
16 cast by a station licensee or permittee—

17 “(A) within 180 days after the date of the receipt
18 of such allegation, the Commission shall—

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

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

1 “(iii) notify such licensee, permittee, or per-
 2 son in writing, and any person submitting such
 3 allegation in writing or by general publication,
 4 that the Commission has determined not to issue
 5 either such notice; and

6 “(B) if the Commission issues such notice and
 7 such licensee, permittee, or person has not paid a
 8 penalty or entered into a settlement with the Commis-
 9 sion, within 270 days after the date of the receipt of
 10 such allegation, the Commission shall—

11 “(i) issue an order imposing a forfeiture
 12 penalty; or

13 “(ii) notify such licensee, permittee, or per-
 14 son in writing, and any person submitting such
 15 allegation in writing or by general publication,
 16 that the Commission has determined not to issue
 17 either such order.”.

18 **SEC. 6. ADDITIONAL REMEDIES FOR INDECENT BROAD-**
 19 **CAST.**

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

23 “(c) **ADDITIONAL REMEDIES FOR INDECENT BROAD-**
 24 **CASTING.**—In any proceeding under this section in which
 25 the Commission determines that any broadcast station li-

1 *licensee or permittee has broadcast obscene, indecent, or pro-*
 2 *pane material, the Commission may, in addition to impos-*
 3 *ing a penalty under this section, require the licensee or per-*
 4 *mittee to broadcast public service announcements that serve*
 5 *the educational and informational needs of children. Such*
 6 *announcements may be required to reach an audience that*
 7 *is up to 5 times the size of the audience that is estimated*
 8 *to have been reached by the obscene, indecent, or profane*
 9 *material, as determined in accordance with regulations pre-*
 10 *scribed by the Commission.”.*

11 **SEC. 7. LICENSE DISQUALIFICATION FOR VIOLATIONS OF**
 12 **INDECENCY PROHIBITIONS.**

13 *Section 503 of the Communications Act of 1934 (47*
 14 *U.S.C. 503) is further amended by adding at the end (after*
 15 *subsection (c) as added by section 6) the following new sub-*
 16 *section:*

17 *“(d) CONSIDERATION OF LICENSE DISQUALIFICATION*
 18 *FOR VIOLATIONS OF INDECENCY PROHIBITIONS.—If the*
 19 *Commission issues a notice under paragraph (3) or (4) of*
 20 *subsection (b) to a broadcast station licensee or permittee*
 21 *looking toward the imposition of a forfeiture penalty under*
 22 *this Act based on an allegation that the licensee or permittee*
 23 *broadcast obscene, indecent, or profane material, and ei-*
 24 *ther—*

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

1 “(2) a forfeiture penalty has been determined by
2 the Commission or an administrative law judge pur-
3 suant to paragraph (3) or (4) of subsection (b), and
4 such penalty is not under review, and has not been
5 reversed, by a court of competent jurisdiction,
6 then, notwithstanding section 504(c), the Commission shall,
7 in any subsequent proceeding under section 308(b) or
8 310(d), take into consideration whether the broadcast of
9 such material demonstrates a lack of character or other
10 qualifications required to operate a station.”.

11 **SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLA-**
12 **TIONS OF INDECENCY PROHIBITIONS.**

13 Section 309(k) of the Communications Act of 1934 (47
14 U.S.C. 309(k)) is amended by adding at the end the fol-
15 lowing new paragraph:

16 “(5) LICENSE RENEWAL CONSIDERATION OF VIO-
17 LATIONS OF INDECENCY PROHIBITIONS.—If the Com-
18 mission has issued a notice under paragraph (3) or
19 (4) of section 503(b) to a broadcast station licensee or
20 permittee with respect to a broadcast station looking
21 toward the imposition of a forfeiture penalty under
22 this Act based on an allegation that such broadcast
23 station broadcast obscene, indecent, or profane mate-
24 rial, and—

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

2 or

3 “(B) a forfeiture penalty has been deter-
4 mined by the Commission or an administrative
5 law judge pursuant to paragraph (3) or (4) of
6 section 503(b), and such penalty is not under re-
7 view, and has not been reversed, by a court of
8 competent jurisdiction,

9 then, notwithstanding section 504(c), such violation
10 shall be treated as a serious violation for purposes of
11 paragraph (1)(B) of this subsection with respect to
12 the renewal of the license or permit for such station.”.

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

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

18 “(h) **LICENSE REVOCATION FOR VIOLATIONS OF INDE-**
19 **CENCY PROHIBITIONS.—**

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

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

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

6 *or*

7 *“(B) a forfeiture penalty has been deter-*
8 *mined by the Commission or an administrative*
9 *law judge pursuant to paragraph (3) or (4) of*
10 *section 503(b), and such penalty is not under re-*
11 *view, and has not been reversed, by a court of*
12 *competent jurisdiction,*

13 *then, notwithstanding section 504(c), the Commission*
14 *shall commence a proceeding under subsection (a) of*
15 *this section to consider whether the Commission*
16 *should revoke the station license or construction per-*
17 *mit of that licensee or permittee for such station.*

18 *“(2) PRESERVATION OF AUTHORITY.—Nothing in*
19 *this subsection shall be construed to limit the author-*
20 *ity of the Commission to commence a proceeding*
21 *under subsection (a).”.*

22 **SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF**
23 **THE COMMISSION.**

24 *Each annual report submitted by the Federal Commu-*
25 *nications Commission after the date of enactment of this*

1 *Act shall, in accordance with section 4(k)(2) of the Commu-*
2 *nications Act of 1934 (47 U.S.C. 154(k)(2)), include the fol-*
3 *lowing:*

4 (1) *The number of complaints received by the*
5 *Commission during the year covered by the report al-*
6 *leging that a broadcast contained obscene, indecent, or*
7 *profane material, and the number of programs to*
8 *which such complaints relate.*

9 (2) *The number of those complaints that have*
10 *been dismissed or denied by the Commission.*

11 (3) *The number of complaints that have re-*
12 *mained pending at the end of the year covered by the*
13 *annual report.*

14 (4) *The number of notices issued by the Commis-*
15 *sion under paragraph (3) or (4) of section 503(b) of*
16 *the Communications Act of 1934 (47 U.S.C. 503(b))*
17 *during the year covered by the report to enforce the*
18 *statutes, rules, and policies prohibiting the broad-*
19 *casting of obscene, indecent, or profane material.*

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

21 (A) *the amount of the proposed forfeiture;*

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

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

4 (D) the status of the proceeding.

5 (6) The number of forfeiture orders issued pursu-
6 ant to section 503(b) of such Act during the year cov-
7 ered by the report to enforce the statutes, rules, and
8 policies prohibiting the broadcasting of obscene, inde-
9 cent, or profane material.

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

12 (A) the amount assessed by the final for-
13 feiture order;

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

16 (C) whether the licensee has paid the for-
17 feiture order;

18 (D) the amount paid by the licensee; and

19 (E) in instances where the licensee refused
20 to pay, whether the Department of Justice
21 brought an action in Federal court to collect the
22 penalty.

1 **SEC. 11. SENSE OF THE CONGRESS.**

2 (a) *REINSTATEMENT OF POLICY.*—*It is the sense of the*
3 *Congress that the broadcast television station licensees*
4 *should reinstitute a family viewing policy for broadcasters.*

5 (b) *DEFINITION.*—*For purposes of this section, a fam-*
6 *ily viewing policy is a policy similar to the policy that*
7 *existed in the United States from 1975 to 1983, as part*
8 *of the National Association of Broadcaster’s code of conduct*
9 *for television, and that included the concept of a family*
10 *viewing hour.*

11 **SEC. 12. IMPLEMENTATION.**

12 (a) *REGULATIONS.*—*The Commission shall prescribe*
13 *regulations to implement the amendments made by this Act*
14 *within 180 days after the date of enactment of this Act.*

15 (b) *PROSPECTIVE APPLICATION.*—*This Act and the*
16 *amendments made by this Act shall not apply with respect*
17 *to material broadcast before the date of enactment of this*
18 *Act.*

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

Amend the title so as to read: “A bill to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of ob-

scene, indecent, and profane material, and for other purposes.”.

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A BILL

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