

## Union Calendar No.

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3717

[Report No. 108-    ]

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

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### 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       , 2004

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

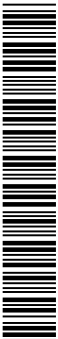
[Strike out all after the enacting clause and insert the part printed in *italic*]

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

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## 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—*

10 *(1) by redesignating subparagraphs (C) and (D)*  
11 *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 Commis-*  
18 *sion, 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*  
21 *determined under this section shall not exceed \$500,000 for*  
22 *each violation.”; and*

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



1                   (A) by striking “subparagraph (A) or (B)”  
2                   and inserting “subparagraph (A), (B), or (C)”;  
3                   and

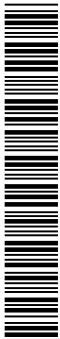
4                   (B) by adding at the end the following:  
5                   “Notwithstanding the preceding sentence, if the  
6                   violator is determined by the Commission under  
7                   paragraph (1) to have uttered obscene, indecent,  
8                   or profane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

13 **SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES;**  
14 **EXCEPTION.**

15                  Section 503(b)(2) of the Communications Act of 1934  
16                  (47 U.S.C. 503(b)(2)) is further amended by adding at the  
17                  end (after subparagraph (E) as redesignated by section 2(1)  
18                  of this Act) the following new subparagraphs:

19                  “(F) In the case of a violation in which the violator  
20                  is determined by the Commission under paragraph (1) to  
21                  have uttered obscene, indecent, or profane material, the  
22                  Commission shall take into account, in addition to the mat-  
23                  ters described in subparagraph (E), the following factors:

24                         “(i) With respect to the degree of culpability of  
25                  the violator, the following:



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

3           “(II) whether the violator had a reasonable  
4           opportunity to review recorded or scripted pro-  
5           gramming or had a reasonable basis to believe  
6           live or unscripted programming may contain ob-  
7           scene, indecent, or profane material;

8           “(III) if the violator originated live or  
9           unscripted programming, whether a time delay  
10          blocking mechanism was implemented for the  
11          programming;

12          “(IV) the size of the viewing or listening au-  
13          dience of the programming; and

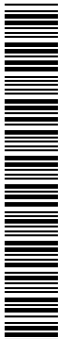
14          “(V) whether the programming was part of  
15          a children’s television program as described in  
16          the Commission’s children’s television program-  
17          ming policy (47 CFR 73.4050(c)).

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

20               “(I) whether the violator is a company or  
21               individual; and

22               “(II) if the violator is a company, the size  
23               of the company and the size of the market served.

24          “(G) A broadcast station licensee or permittee that re-  
25          ceives programming from a network organization, but that



1 *is not owned or controlled, or under common ownership or*  
2 *control with, such network organization, shall not be subject*  
3 *to a forfeiture penalty under this subsection for broad-*  
4 *casting obscene, indecent, or profane material, if—*

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

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

12       “(II) *the programming was live or unscripted,*  
13 *and the licensee or permittee had no reasonable basis*  
14 *to believe the programming would contain obscene, in-*  
15 *decent, or profane material.*

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

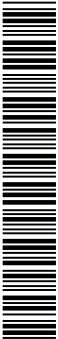
18 **SEC. 4. INDECENCY PENALTIES FOR NONLICENSEES.**

19       *Section 503(b)(5) of the Communications Act of 1934*  
20 *(47 U.S.C. 503(b)(5) is amended—*

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

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

24           (3) *by redesignating the second sentence as sub-*  
25 *paragraph (B);*



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

2                 (A) *by striking “The provisions of this*  
3                 *paragraph shall not apply, however,” and insert-*  
4                 *ing “The provisions of subparagraph (A) shall*  
5                 *not apply (i)”;*

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

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

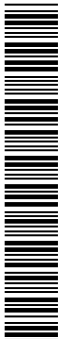
10                (D) *by inserting after “that tower” the fol-*  
11                *lowing: “, or (iv) in the case of a determination*  
12                *that a person uttered obscene, indecent, or pro-*  
13                *pane material that was broadcast by a broadcast*  
14                *station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

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

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

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

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



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

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

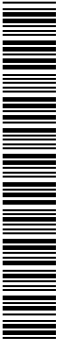
6           “(ii) issue a notice of apparent liability to  
7 such licensee or permittee or person in accord-  
8 ance with paragraph (4); or

9           “(iii) notify such licensee, permittee, or per-  
10 son in writing, and any person submitting such  
11 allegation in writing or by general publication,  
12 that the Commission has determined not to issue  
13 either such notice; and

14           “(B) if the Commission issues such notice and  
15 such licensee, permittee, or person has not paid a  
16 penalty or entered into a settlement with the Commis-  
17 sion, within 270 days after the date of the receipt of  
18 such allegation, the Commission shall—

19           “(i) issue an order imposing a forfeiture  
20 penalty; or

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



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

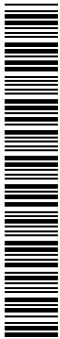
3 *Section 503 of the Communications Act of 1934 (47*  
4 *U.S.C. 503) is further amended by adding at the end the*  
5 *following new subsection:*

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 pro-*  
10 *fane material, the Commission may, in addition to impos-*  
11 *ing a penalty under this section, require the licensee or per-*  
12 *mittee to broadcast public service announcements that serve*  
13 *the educational and informational needs of children. Such*  
14 *announcements may be required to reach an audience that*  
15 *is up to 5 times the size of the audience that is estimated*  
16 *to have been reached by the obscene, indecent, or profane*  
17 *material, as determined in accordance with regulations pre-*  
18 *scribed 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 (after*  
23 *subsection (c) as added by section 6) the following new sub-*  
24 *section:*

25 “(d) *CONSIDERATION OF LICENSE DISQUALIFICATION*  
26 *FOR VIOLATIONS OF INDECENCY PROHIBITIONS.—If the*



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

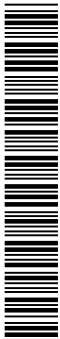
7           “(1) *such forfeiture penalty has been paid, or*

8           “(2) *a forfeiture penalty has been determined by*  
9       *the Commission or an administrative law judge pur-*  
10       *suant to paragraph (3) or (4) of subsection (b), and*  
11       *such penalty is not under review, and has not been*  
12       *reversed, by a court of competent jurisdiction,*  
13 *then, notwithstanding section 504(c), the Commission shall,*  
14 *in any subsequent proceeding under section 308(b) or*  
15 *310(d), take into consideration whether the broadcast of*  
16 *such material demonstrates a lack of character or other*  
17 *qualifications required to operate a station.”.*

18 **SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLA-**  
19 **TIONS OF INDECENCY PROHIBITIONS.**

20       *Section 309(k) of the Communications Act of 1934 (47*  
21 *U.S.C. 309(k)) is amended by adding at the end the fol-*  
22 *lowing new paragraph:*

23           “(5) *LICENSE RENEWAL CONSIDERATION OF VIO-*  
24       *LATIONS OF INDECENCY PROHIBITIONS.—If the Com-*  
25       *mission has issued a notice under paragraph (3) or*



1       (4) of section 503(b) to a broadcast station licensee or  
2       permittee with respect to a broadcast station looking  
3       toward the imposition of a forfeiture penalty under  
4       this Act based on an allegation that such broadcast  
5       station broadcast obscene, indecent, or profane mate-  
6       rial, and—

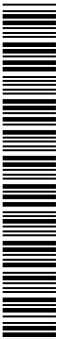
7               “(A) such forfeiture penalty has been paid,  
8       or

9               “(B) a forfeiture penalty has been deter-  
10       mined by the Commission or an administrative  
11       law judge pursuant to paragraph (3) or (4) of  
12       section 503(b), and such penalty is not under re-  
13       view, and has not been reversed, by a court of  
14       competent jurisdiction,  
15       then, notwithstanding section 504(c), such violation  
16       shall be treated as a serious violation for purposes of  
17       paragraph (1)(B) of this subsection with respect to  
18       the renewal of the license or 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 INDE-**  
25   **CENCY PROHIBITIONS.**—



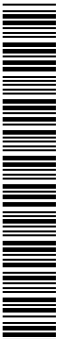
1           “(1) CONSEQUENCES OF MULTIPLE VIOLA-  
2           TIONS.—If, in each of 3 or more proceedings during  
3           the term of any broadcast license, the Commission  
4           issues a notice under paragraph (3) or (4) of section  
5           503(b) to a broadcast station licensee or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

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

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

19          then, notwithstanding section 504(c), the Commission  
20          shall commence a proceeding under subsection (a) of  
21          this section to consider whether the Commission  
22          should revoke the station license or construction per-  
23          mit of that licensee or permittee for such station.

24           “(2) PRESERVATION OF AUTHORITY.—Nothing in  
25          this subsection shall be construed to limit the author-



1        *ity of the Commission to commence a proceeding*  
2        *under subsection (a).”.*

3        **SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF**  
4        **THE COMMISSION.**

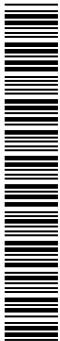
5        *Each annual report submitted by the Federal Commu-*  
6        *nications Commission after the date of enactment of this*  
7        *Act shall, in accordance with section 4(k)(2) of the Commu-*  
8        *nications Act of 1934 (47 U.S.C. 154(k)(2)), include the fol-*  
9        *lowing:*

10            (1) *The number of complaints received by the*  
11            *Commission during the year covered by the report al-*  
12            *leging that a broadcast contained obscene, indecent, or*  
13            *profane material, and the number of programs to*  
14            *which such complaints relate.*

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

17            (3) *The number of complaints that have re-*  
18            *mained pending at the end of the year covered by the*  
19            *annual report.*

20            (4) *The number of notices issued by the Commis-*  
21            *sion under paragraph (3) or (4) of section 503(b) of*  
22            *the Communications Act of 1934 (47 U.S.C. 503(b))*  
23            *during the year covered by the report to enforce the*  
24            *statutes, rules, and policies prohibiting the broad-*  
25            *casting of obscene, indecent, or profane material.*



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

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

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

5                   (C) *the length of time between the date on*  
6                   *which the complaint was filed and the date on*  
7                   *which the notice was issued; and*

8                   (D) *the status of the proceeding.*

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

14           (7) *For each such forfeiture order, a statement*  
15           *of—*

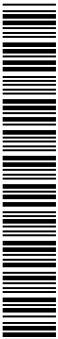
16                   (A) *the amount assessed by the final for-*  
17                   *feiture order;*

18                   (B) *the program, station, and corporate*  
19                   *parent to which it was issued;*

20                   (C) *whether the licensee has paid the for-*  
21                   *feiture order;*

22                   (D) *the amount paid by the licensee; and*

23                   (E) *in instances where the licensee refused*  
24                   *to pay, whether the Department of Justice*



1           *brought an action in Federal court to collect the*  
2           *penalty.*

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

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

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

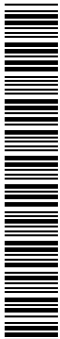
13   **SEC. 12. IMPLEMENTATION.**

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

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

21           *(c) SEPARABILITY.—Section 708 of the Communica-*  
22   *tions Act of 1934 (47 U.S.C. 608) shall apply to this Act*  
23   *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 broad-



casters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes.”.

