

Calendar No. 471

108TH CONGRESS
2D SESSION**S. 2056****[Report No. 108-253]**

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2004

Mr. BROWNBACK (for himself, Mr. GRAHAM of South Carolina, Mr. ALLEN, Mr. SANTORUM, Mr. STEVENS, Mr. LOTT, Mr. FITZGERALD, Mr. INHOFE, Mr. ENSIGN, Mr. ROBERTS, Mr. KYL, Mr. SESSIONS, Mr. HAGEL, Mr. MILLER, Ms. MURKOWSKI, Mrs. DOLE, Mr. ENZI, Mr. CHAMBLISS, Mr. CARPER, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

APRIL 5, 2004

Reported by Mr. MCCAIN with amendments and an amendment to the title

[Omit the part struck through and insert the part printed in *italic*]

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,*

1 **SECTION 1. TABLE OF CONTENTS.**

2 *The table of contents for this Act is as follows:*

TITLE I—BROADCAST DECENCY

- Sec. 101. Short title; table of contents.*
- Sec. 102. Increase in penalties for obscene, indecent, and profane broadcasts.*
- Sec. 103. Additional factors in indecency penalties; exception.*
- Sec. 104. Indecency penalties for non-licensees.*
- Sec. 105. Voluntary industry code of conduct governing family television viewing.*
- Sec. 106. Deadlines for action on complaints.*
- Sec. 107. Required contents of annual reports of the Commission.*
- Sec. 108. Media ownership and indecent broadcast.*
- Sec. 109. Implementation.*

TITLE II—CHILDREN’S PROTECTION FROM VIOLENT PROGRAMMING

- Sec. 201. Short title; table of contents.*
- Sec. 202. Findings.*
- Sec. 203. Assessment of effectiveness of current rating system for violence and effectiveness of v-chip in blocking violent programming.*
- Sec. 204. Unlawful distribution of violent video programming that is not specifically rated for violence and therefore is not blockable.*
- Sec. 205. FTC study of marketing strategy improvements.*
- Sec. 206. Separability.*
- Sec. 207. Effective date.*

3 **TITLE I—BROADCAST DECENCY**

4 **SECTION 1. SHORT TITLE.**

5 **SEC. 101. SHORT TITLE.**

6 This ~~Act~~ *title* may be cited as the “Broadcast De-
7 cency Enforcement Act of 2004”.

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

10 **SEC. 102. INCREASE IN PENALTIES FOR OBSCENE, INDE-**
11 **CENT, AND PROFANE BROADCASTS.**

12 (a) *IN GENERAL.*—Section 503(b)(2) of the Commu-
13 nications Act of 1934 (47 U.S.C. 503(b)(2)) is amended—

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

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

3 “(C) Notwithstanding subparagraph (A), if the viola-
 4 tor is—

5 “(i)(I) a broadcast station licensee or permittee;
 6 or

7 “(II) an applicant for any broadcast license,
 8 permit, certificate, or other instrument or authoriza-
 9 tion issued by the Commission; and

10 ~~“(ii) determined by the Commission under~~
 11 ~~paragraph (1) to have broadcast obscene, indecent,~~
 12 ~~or profane language;~~

13 ~~the amount of any forfeiture penalty determined under~~
 14 ~~this subsection shall not exceed \$275,000 for each viola-~~
 15 ~~tion or each day of a continuing violation, except that the~~
 16 ~~amount assessed for any continuing violation shall not ex-~~
 17 ~~ceed a total of \$3,000,000 for any single act or failure~~
 18 ~~to act.”; and~~

19 *“(ii) determined by the Commission under*
 20 *paragraph (1) to have broadcast obscene, inde-*
 21 *cent, or profane language or images,*

22 *the amount of any forfeiture penalty determined under this*
 23 *subsection shall not exceed \$275,000 for the first violation,*
 24 *\$375,000 for the second violation, and \$500,000 for the*
 25 *third and any subsequent violations, with each utterance*

1 *constituting a separate violation, except that the amount*
 2 *assessed a licensee or permittee for any number of violations*
 3 *in a given 24-hour time period shall not exceed a total of*
 4 *\$3,000,000. In determining the amount of any forfeiture*
 5 *penalty under this subparagraph, the Commission, in addi-*
 6 *tion to the elements identified in subparagraph (E), shall*
 7 *take into account the violator's ability to pay, including*
 8 *such factors as the revenue and profits of the broadcast sta-*
 9 *tions that aired the obscene, indecent, or profane language*
 10 *and the size of the markets in which these stations are lo-*
 11 *cated.”; and*

12 (3) in subparagraph (D), as redesignated by
 13 paragraph (1), by striking “subparagraph (A) or
 14 (B)” and inserting “subparagraph (A), (B), or (C)”.

15 (b) *REVOCATION PROCEEDINGS FOR MULTIPLE VIOLA-*
 16 *TIONS OF INDECENCY PROHIBITIONS.—Section 312 of the*
 17 *Communications Act of 1934 (47 U.S.C. 503) is amended*
 18 *by adding at the end the following new subsection:*

19 “(h) *LICENCE REVOCATION FOR MULTIPLE VIOLA-*
 20 *TIONS OF INDECENCY PROHIBITIONS.—If, in each of 3 or*
 21 *more proceedings during the term of a broadcast license for*
 22 *a broadcast station, a licensee is ordered to pay forfeitures*
 23 *for the broadcast of obscene, indecent, or profane material*
 24 *by either—*

1 “(1) the Commission and such forfeitures have
2 been paid, or

3 “(2) a court of competent jurisdiction and such
4 orders have become final,

5 then the Commission shall commence a proceeding under
6 subsection (a) with respect to that broadcast station to re-
7 voke the station license or construction permit of that li-
8 censee or permittee.”.

9 **SEC. 103. ADDITIONAL FACTORS IN INDECENCY PENALTIES;**

10 **EXCEPTION.**

11 Section 503(b)(2) of the Communications Act of 1934
12 (47 U.S.C. 503(b)(2)), as amended by section 102 of this
13 Act, is further amended by adding at the end the following:

14 “(F) In the case of a violation in which the violator
15 is determined by the Commission under paragraph (1) to
16 have uttered obscene, indecent, or profane material, the
17 Commission shall take into account, in addition to the mat-
18 ters described in subparagraph (E), the following factors
19 with respect to the degree of culpability of the violator:

20 “(i) Whether the material uttered by the violator
21 was live or recorded, scripted or unscripted.

22 “(ii) Whether the violator had a reasonable op-
23 portunity to review recorded or scripted programming
24 or had a reasonable basis to believe live or unscripted

1 *programming would contain obscene, indecent, or*
 2 *profane material.*

3 *“(iii) If the violator originated live or unscripted*
 4 *programming, whether a time delay blocking mecha-*
 5 *nism was implemented for the programming.*

6 *“(iv) The size of the viewing or listening audi-*
 7 *ence of the programming.*

8 *“(v) The size of the market.*

9 *“(vi) Whether the violation occurred during a*
 10 *children’s television program (as such term is used in*
 11 *the Children’s Television Programming Policy ref-*
 12 *erenced in section 73.4050(c) of the Commission’s reg-*
 13 *ulations (47 C.F.R. 73.4050(c)) or during a television*
 14 *program rated TVY, TVY7, TVY7FV, or TVG under*
 15 *the TV Parental Guidelines as such ratings were ap-*
 16 *proved by the Commission in implementation of sec-*
 17 *tion 551 of the Telecommunications Act of 1996,*
 18 *Video Programming Ratings, Report and Order, CS*
 19 *Docket No. 97–55, 13 F.C.C. Rcd. 8232 (1998)), and,*
 20 *with respect to a radio broadcast station licensee, per-*
 21 *mittee, or applicant, whether the target audience was*
 22 *primarily comprised of, or should reasonably have*
 23 *been expected to be primarily comprised of, children.*
 24 *“(G) The Commission may double the amount of any*
 25 *forfeiture penalty (not to exceed \$550,000 for the first viola-*

1 tion, \$750,000 for the second violation, and \$1,000,000 for
 2 the third or any subsequent violation not to exceed up to
 3 \$3,000,000 for all violations in a 24-hour time period not-
 4 withstanding section 503(b)(2)(C)) if the Commission deter-
 5 mines additional factors are present which are aggravating
 6 in nature, including—

7 “(i) whether the material uttered by the violator
 8 was recorded or scripted;

9 “(ii) whether the violator had a reasonable op-
 10 portunity to review recorded or scripted programming
 11 or had a reasonable basis to believe live or unscripted
 12 programming would contain obscene, indecent, or
 13 profane material;

14 “(iii) whether the violator failed to block live or
 15 unscripted programming;

16 “(iv) whether the size of the viewing or listening
 17 audience of the programming was substantially larger
 18 than usual, such as a national or international cham-
 19 pionship sporting event or awards program; and

20 “(v) whether the violation occurred during a
 21 children’s television program (as defined in subpara-
 22 graph (F)(vi)).”.

23 **SEC. 104. INDECENCY PENALTIES FOR NON-LICENSEES.**

24 Section 503(b)(5) of the Communications Act of 1934
 25 (47 U.S.C. 503(b)(5) is amended—

1 (1) by inserting “(A)” after “(5)”.

2 (2) by striking “person” the fourth place it ap-
3 pears in the first sentence and inserting “person—”;

4 (3) by resetting the matter in the first sentence
5 beginning with “(A)”, “(B)”, and “(C)” as separate
6 paragraphs indented 2 ems from the left margin and
7 redesignating them as clauses (i), (ii), and (iii), re-
8 spectively;

9 (4) by resetting the third sentence as an indented
10 paragraph flush with the left margin and inserting
11 “(C)” before “Whenever”; and

12 (5) by amending the second sentence to read as
13 follows:

14 “(B) The provisions of subparagraph (A) shall not
15 apply—

16 “(i) if the person involved is engaging in activi-
17 ties for which a license, permit, certificate, or other
18 authorization is required or is a cable television sys-
19 tem operator;

20 “(ii) if the person involved is transmitting on
21 frequencies assigned for use in a service in which in-
22 dividual station operation is authorized by rule pur-
23 suant to section 307(e);

24 “(iii) in the case of violations of section 303(q),
25 if the person involved is a nonlicensee tower owner

1 *who has previously received notice of the obligations*
 2 *imposed by section 303(q) from the Commission or*
 3 *the permittee or licensee who uses that tower; or*

4 *“(iv) in the case of a determination that a per-*
 5 *son uttered obscene, indecent, or profane material that*
 6 *was broadcast by a broadcast station licensee or per-*
 7 *mittee, if the person is determined to have willfully*
 8 *or intentionally made the utterance and knew or*
 9 *should have known that the material would be broad-*
 10 *cast, but, notwithstanding any other provision of this*
 11 *section, any person determined by the Commission to*
 12 *have engaged in such activity shall be subject to a for-*
 13 *feiture penalty not to exceed \$500,000 for each viola-*
 14 *tion.”.*

15 **SEC. 105. VOLUNTARY INDUSTRY CODE OF CONDUCT GOV-**
 16 **ERNING FAMILY TELEVISION VIEWING.**

17 *Notwithstanding any other provision of law, any*
 18 *State, regional, or national association of broadcasters or*
 19 *networks (including the National Association of Broad-*
 20 *casters), or any group of network affiliates may enter into*
 21 *a voluntary code of conduct providing a family viewing pol-*
 22 *icy. The policy may include a requirement that entertain-*
 23 *ment programming inappropriate for viewing by a general*
 24 *family audience (including violent, indecent, or sexually ex-*
 25 *plicit content) should not be broadcast during the first hour*

1 *of network entertainment programming in prime time and*
 2 *in the immediately preceding hour.*

3 **SEC. 106. DEADLINES FOR ACTION ON COMPLAINTS.**

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

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

10 *“(A) within 270 days after the date of the receipt*
 11 *of such allegation, the Commission shall—*

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

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

18 *“(iii) notify such licensee, permittee, or per-*
 19 *son in writing, and any person submitting such*
 20 *allegation in writing or by general publication,*
 21 *that the Commission has determined not to issue*
 22 *either such notice; and*

23 *“(B) if the Commission issues such notice and*
 24 *such licensee, permittee, or person has not paid a*
 25 *penalty or entered into a settlement with the Commis-*

1 *sion, within 270 days after the date on which the no-*
 2 *tice was issued, the Commission shall—*

3 *“(i) issue an order imposing a forfeiture*
 4 *penalty; or*

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

10 **SEC. 107. REQUIRED CONTENTS OF ANNUAL REPORTS OF**
 11 **THE COMMISSION.**

12 *The Federal Communications Commission shall sub-*
 13 *mit a report each year to the Senate Committee on Com-*
 14 *merce, Science, and Transportation and the House of Rep-*
 15 *resentatives Committee on Energy and Commerce that in-*
 16 *cludes the following information:*

17 *(1) The number of complaints received by the*
 18 *Commission during the year covered by the report al-*
 19 *leging that a broadcast contained obscene, indecent, or*
 20 *profane material, and the number of programs to*
 21 *which such complaints relate.*

22 *(2) The number of complaints alleging that a*
 23 *broadcast contained obscene, indecent, or profane ma-*
 24 *terial that have been dismissed or denied by the Com-*

1 mission during the year to which the report relates,
2 regardless of when the complaints were received.

3 (3) The number of complaints on which action
4 was pending at the end of the period covered by the
5 annual report.

6 (4) The number of notices issued by the Commis-
7 sion under paragraph (3) or (4) of section 503(b) of
8 the Communications Act of 1934 (47 U.S.C. 503(b))
9 during the year covered by the report to enforce the
10 statutes, rules, and policies prohibiting the broad-
11 casting of obscene, indecent, or profane material.

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

13 (A) the amount of the proposed forfeiture;

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

16 (C) the length of time between the date on
17 which the complaint was filed and the date on
18 which the notice was issued; and

19 (D) the status of the proceeding.

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

1 (7) *For each such forfeiture order, a statement*
 2 *of—*

3 (A) *the amount assessed by the final for-*
 4 *feiture order;*

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

7 (C) *whether the licensee has paid the for-*
 8 *feiture order;*

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

10 (E) *in instances where the licensee refused*
 11 *to pay, whether the Department of Justice*
 12 *brought an action in Federal court to collect the*
 13 *penalty.*

14 **SEC. 108. MEDIA OWNERSHIP AND INDECENT BROADCAST.**

15 (a) *INQUIRY AND REPORT REQUIRED.—The Comp-*
 16 *troller General shall conduct a study examining the rela-*
 17 *tionship between the horizontal and vertical consolidation*
 18 *of media companies and the number of complaints and vio-*
 19 *lations of the indecency prohibitions contained in the stat-*
 20 *utes, regulations, and policies enforced by the Federal Com-*
 21 *munications Commission. The Comptroller General shall*
 22 *submit a report on the results of such study within 1 year*
 23 *after the date of enactment of this Act to the Senate Com-*
 24 *mittee on Commerce, Science, and Transportation and the*

1 *House of Representatives Committee on Energy and Com-*
2 *merce.*

3 *(b) NEW BROADCAST MEDIA OWNERSHIP RULES SUS-*
4 *PENDED.—*

5 *(1) SUSPENSION.—The broadcast media owner-*
6 *ship rules adopted by the Federal Communications*
7 *Commission on June 2, 2003, pursuant to its pro-*
8 *ceeding on broadcast media ownership rules, Report*
9 *and Order FCC–03–127, published at 68 FR 46286,*
10 *August 5, 2003, shall be invalid and without legal ef-*
11 *fect until the completion and submission of the report*
12 *of the inquiry required by subsection (a).*

13 *(2) REINSTATEMENT OF PREVIOUS BROADCAST*
14 *MEDIA OWNERSHIP RULES.—Until the completion*
15 *and submission of the report of the inquiry required*
16 *by subsection (a), the broadcast media ownership*
17 *rules of the Federal Communications Commission*
18 *that were in effect on June 1, 2003, are reinstated as*
19 *they were in effect on June 1, 2003. Such rules shall*
20 *be applied and enforced both prospectively after the*
21 *date of enactment of this Act and retroactively to*
22 *June 2, 2003, as if the media ownership proceeding*
23 *had not occurred.*

1 **SEC. 109. IMPLEMENTATION.**

2 (a) *REGULATIONS.*—*The Commission shall prescribe*
 3 *regulations to implement the amendments made by this title*
 4 *within 180 days after the date of enactment of this Act.*

5 (b) *PROSPECTIVE APPLICATION.*—*This title and the*
 6 *amendments made by this title shall not apply with respect*
 7 *to material broadcast before the date of enactment of this*
 8 *Act.*

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

12 **TITLE II—CHILDREN’S PROTEC-**
 13 **TION FROM VIOLENT PRO-**
 14 **GRAMMING**

15 **SEC. 201. SHORT TITLE.**

16 *This title may be cited as the “Children’s Protection*
 17 *from Violent Programming Act”.*

18 **SEC. 202. FINDINGS.**

19 *The Congress makes the following findings:*

20 (1) *Television influences children’s perception of*
 21 *the values and behavior that are common and accept-*
 22 *able in society.*

23 (2) *Broadcast television, cable television, and*
 24 *video programming are—*

25 (A) *uniquely pervasive presences in the lives*
 26 *of all American children; and*

1 (B) readily accessible to all American chil-
2 dren.

3 (3) Violent video programming influences chil-
4 dren, as does indecent programming.

5 (4) There is empirical evidence that children ex-
6 posed to violent video programming at a young age
7 have a higher tendency to engage in violent and ag-
8 gressive behavior later in life than those children not
9 so exposed.

10 (5) There is empirical evidence that children ex-
11 posed to violent video programming have a greater
12 tendency to assume that acts of violence are accept-
13 able behavior and therefore to imitate such behavior.

14 (6) There is empirical evidence that children ex-
15 posed to violent video programming have an in-
16 creased fear of becoming a victim of violence, result-
17 ing in increased self-protective behaviors and in-
18 creased mistrust of others.

19 (7) There is a compelling governmental interest
20 in limiting the negative influences of violent video
21 programming on children.

22 (8) There is a compelling governmental interest
23 in channeling programming with violent content to
24 periods of the day when children are not likely to

1 comprise a substantial portion of the television audi-
2 ence.

3 (9) *A significant amount of violent program-*
4 *ming that is readily accessible to minors remains*
5 *unrated specifically for violence and therefore cannot*
6 *be blocked solely on the basis of its violent content.*

7 (10) *Age-based ratings that do not include con-*
8 *tent rating for violence do not allow parents to block*
9 *programming based solely on violent content thereby*
10 *rendering ineffective any technology-based blocking*
11 *mechanism designed to limit violent video program-*
12 *ming.*

13 (11) *The most recent study of the television rat-*
14 *ings system by the Kaiser Family Foundation con-*
15 *cludes that 79 percent of violent programming is not*
16 *specifically rated for violence.*

17 (12) *Technology-based solutions, such as the V-*
18 *chip, may be helpful in protecting some children, but*
19 *cannot achieve the compelling governmental interest*
20 *in protecting all children from violent programming*
21 *when parents are only able to block programming*
22 *that has, in fact, been rated for violence.*

23 (13) *Restricting the hours when violent program-*
24 *ming can be shown protects the interests of children*
25 *whose parents are unavailable, unable to supervise*

1 *their children's viewing behavior, do not have the ben-*
 2 *efit of technology-based solutions, are unable to afford*
 3 *the costs of technology-based solutions, or are unable*
 4 *to determine the content of those shows that are only*
 5 *subject to age-based ratings.*

6 *(14) After further study, pursuant to a rule-*
 7 *making, the Federal Communications Commission*
 8 *may conclude that content-based ratings and blocking*
 9 *technology do not effectively protect children from the*
 10 *harm of violent video programming.*

11 *(15) If the Federal Communications Commission*
 12 *reaches the conclusion described in paragraph (14),*
 13 *the channeling of violent video programming will be*
 14 *the least restrictive means of limiting the exposure of*
 15 *children to the harmful influences of violent video*
 16 *programming.*

17 **SEC. 203. ASSESSMENT OF EFFECTIVENESS OF CURRENT**
 18 **RATING SYSTEM FOR VIOLENCE AND EFFEC-**
 19 **TIVENESS OF V-CHIP IN BLOCKING VIOLENT**
 20 **PROGRAMMING.**

21 *(a) REPORT.—The Federal Communications Commis-*
 22 *sion shall—*

23 *(1) assess the effectiveness of measures to require*
 24 *television broadcasters and multichannel video pro-*
 25 *gramming distributors (as defined in section 602(13))*

1 *of the Communications Act of 1934 (47 U.S.C.*
2 *522(13)) to rate and encode programming that could*
3 *be blocked by parents using the V-chip undertaken*
4 *under section 715 of the Communications Act of 1934*
5 *(47 U.S.C. 715) and under subsections (w) and (x) of*
6 *section 303 of that Act (47 U.S.C. 303(w) and (x))*
7 *in accomplishing the purposes for which they were en-*
8 *acted; and*

9 *(2) report its findings to the Committee on Com-*
10 *merce, Science, and Transportation of the United*
11 *States Senate and the Committee on Energy and*
12 *Commerce of the United States House of Representa-*
13 *tives, within 12 months after the date of enactment of*
14 *this Act and annually thereafter.*

15 *(b) ACTION.—If the Commission finds at any time, as*
16 *a result of its ongoing assessment under subsection (a), that*
17 *the measures referred to in subsection (a)(1) are insuffi-*
18 *ciently effective, then the Commission shall complete a rule-*
19 *making within 270 days after the date on which the Com-*
20 *mission makes that finding to prohibit the distribution of*
21 *violent video programming during the hours when children*
22 *are reasonably likely to comprise a substantial portion of*
23 *the audience.*

24 *(c) DEFINITIONS.—Any term used in this section that*
25 *is defined in section 715 of the Communications Act of 1934*

1 (47 U.S.C. 715), or in regulations under that section, has
 2 the same meaning as when used in that section or in those
 3 regulations.

4 **SEC. 204. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO**
 5 **PROGRAMMING THAT IS NOT SPECIFICALLY**
 6 **RATED FOR VIOLENCE AND THEREFORE IS**
 7 **NOT BLOCKABLE.**

8 *Title VII of the Communications Act of 1934 (47*
 9 *U.S.C. 701 et seq.) is amended by adding at the end the*
 10 *following:*

11 **“SEC. 715. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO**
 12 **PROGRAMMING NOT SPECIFICALLY**
 13 **BLOCKABLE BY ELECTRONIC MEANS.**

14 *“(a) UNLAWFUL DISTRIBUTION.—It shall be unlawful*
 15 *for any person to distribute to the public any violent video*
 16 *programming not blockable by electronic means specifically*
 17 *on the basis of its violent content during hours when chil-*
 18 *dren are reasonably likely to comprise a substantial portion*
 19 *of the audience.*

20 *“(b) RULEMAKING PROCEEDING.—The Commission*
 21 *shall conduct a rulemaking proceeding to implement the*
 22 *provisions of this section and shall promulgate final regula-*
 23 *tions pursuant to that proceeding not later than 9 months*
 24 *after the date of enactment of the Children’s Protection from*

1 *Violent Programming Act. As part of that proceeding, the*
 2 *Commission—*

3 “(1) *may exempt from the prohibition under*
 4 *subsection (a) programming (including news pro-*
 5 *grams and sporting events) whose distribution does*
 6 *not conflict with the objective of protecting children*
 7 *from the negative influences of violent video program-*
 8 *ming, as that objective is reflected in the findings in*
 9 *section 551(a) of the Telecommunications Act of 1996;*

10 “(2) *shall exempt premium and pay-per-view*
 11 *cable programming and premium and pay-per-view*
 12 *direct-to-home satellite programming; and*

13 “(3) *shall define the term ‘hours when children*
 14 *are reasonably likely to comprise a substantial por-*
 15 *tion of the audience’ and the term ‘violent video pro-*
 16 *gramming’.*

17 “(c) *ENFORCEMENT.—*

18 “(1) *FORFEITURE PENALTY.—The forfeiture pen-*
 19 *alties established by section 503(b) for violations of*
 20 *section 1464 of title 18, United States Code, shall*
 21 *apply to a violation of this section, or any regulation*
 22 *promulgated under it in the same manner as if a vio-*
 23 *lation of this section, or such a regulation, were a vio-*
 24 *lation of law subject to a forfeiture penalty under that*
 25 *section.*

1 “(2) *LICENSE REVOCATION.*—If a person repeat-
 2 *edly violates this section or any regulation promul-*
 3 *gated under this section, the Commission shall, after*
 4 *notice and opportunity for hearing, revoke any license*
 5 *issued to that person under this Act.*

6 “(3) *LICENSE RENEWALS.*—The Commission
 7 *shall consider, among the elements in its review of an*
 8 *application for renewal of a license under this Act,*
 9 *whether the licensee has complied with this section*
 10 *and the regulations promulgated under this section.*

11 “(d) *DEFINITIONS.*—For purposes of this section—

12 “(1) *BLOCKABLE BY ELECTRONIC MEANS.*—The
 13 *term ‘blockable by electronic means’ means blockable*
 14 *by the feature described in section 303(x).*

15 “(2) *DISTRIBUTE.*—The term ‘distribute’ means
 16 *to send, transmit, retransmit, telecast, broadcast, or*
 17 *cablecast, including by wire, microwave, or satellite,*
 18 *but it does not include the transmission, retrans-*
 19 *mission, or receipt of any voice, data, graphics, or*
 20 *video telecommunications accessed through an inter-*
 21 *active computer service as defined in section 230(f)(2)*
 22 *of the Communications Act of 1934 (47 U.S.C.*
 23 *230(f)(2)), which is not originated or transmitted in*
 24 *the ordinary course of business by a television broad-*
 25 *cast station or multichannel video programming dis-*

1 *tributor as defined in section 602(13) of that Act (47*
 2 *U.S.C. 522(13)).*

3 “(3) *VIOLENT VIDEO PROGRAMMING.*—*The term*
 4 *‘violent video programming’ as defined by the Com-*
 5 *mission may include matter that is excessive or gra-*
 6 *tuitous violence within the meaning of the 1992*
 7 *Broadcast Standards for the Depiction of Violence in*
 8 *Television Programs, December 1992.”.*

9 **SEC. 205. FTC STUDY OF MARKETING STRATEGY IMPROVE-**
 10 **MENTS.**

11 *The Federal Trade Commission shall continue to study*
 12 *the marketing of violent content by the motion picture,*
 13 *music recording, and computer and video game industries*
 14 *to children, including the improvements to marketing prac-*
 15 *tices developed and implemented by those industries. The*
 16 *Commission shall update its study and report annually, in-*
 17 *cluding findings and recommendations, to the Senate Com-*
 18 *mittee on Commerce, Science, and Transportation and the*
 19 *House of Representatives Committee on Energy and Com-*
 20 *merce.*

21 **SEC. 206. SEPARABILITY.**

22 *If any provision of this title, or any provision of an*
 23 *amendment made by this title, or the application thereof*
 24 *to particular persons or circumstances, is found to be un-*
 25 *constitutional, the remainder of this title or that amend-*

1 *ment, or the application thereof to other persons or cir-*
2 *cumstances shall not be affected.*

3 **SEC. 207. EFFECTIVE DATE.**

4 *The prohibition contained in section 715 of the Com-*
5 *munications Act of 1934 (as added by section 204 of this*
6 *title) and the regulations promulgated thereunder shall take*
7 *effect 1 year after the regulations are adopted by the Com-*
8 *mission.*

9 Amend the title so as to read: “A bill to increase the
10 penalties for violations by television and radio broad-
11 casters of the prohibitions against transmission of ob-
12 scene, indecent, and profane material, and for other pur-
13 poses”.

Calendar No. 471

108TH CONGRESS
2D Session

S. 2056

[Report No. 108-253]

A BILL

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

APRIL 5, 2004

Reported with amendments and an amendment to the title