

AMENDMENT NO.

CAL. NO.

[STAFF WORKING DRAFT]

March 9, 2004

Purpose: To apply the obscenity penalties to broadcast images as well as language, impose a per-utterance penalty, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**—108TH Cong., 2D Sess.

**S. 2056**, 108TH Congress, 2D Session

MARCH 9, 2004

INTENDED to be proposed by Mr. MCCAIN (for himself and Mr. BROWNBACK)

Viz:

1 On page 1, line 8, insert “(a) IN GENERAL.—” before  
2 “Section”.

3 On page 2, strike lines 12 through 20 and insert the  
4 following:

5 “(ii) determined by the commission under  
6 paragraph (1) to have broadcast obscene, inde-  
7 cent, or profane language or images,

8 the amount of any forfeiture penalty determined under  
9 this subsection shall not exceed \$275,000 for each viola-  
10 tion, with each utterance constituting a separate violation,  
11 except that the amount assessed a licensee or permittee for

1 any number of violations in a given 24-hour time period  
2 shall not exceed a total of \$3,000,000.”; and

3 On page 2, after line 23, insert the following:

4 (b) CONSIDERATION OF REVOCATION PRO-  
5 CEEDING.—Section 503(b) of the Communications Act of  
6 1934 (47 U.S.C. 503(b)) is amended by adding at the end  
7 the following:

8 “(7) Whenever the Commission issues a notice  
9 under paragraph (3) or (4) to a broadcast station li-  
10 censee or permittee looking toward the imposition of  
11 a forfeiture penalty under this Act based on an alle-  
12 gation that the licensee or permittee violated section  
13 1464 of title 18, United States Code, or related  
14 Commission regulations, then the Commission shall,  
15 in connection with issuing the notice, consider  
16 whether it is appropriate to initiate a proceeding  
17 under section 312(a)(6) to revoke the station license  
18 or construction permit of that licensee or permittee.  
19 If the Commission decides not to initiate such a pro-  
20 ceeding, it shall explain in the notice the reasons for  
21 not initiating such a proceeding with respect to the  
22 alleged violation.”.

1 **SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES;**  
2 **EXCEPTION.**

3 Section 503(b)(2) of the Communications Act of  
4 1934 (47 U.S.C. 503(b)(2)) is further amended by adding  
5 at the end (after subparagraph (E) as redesignated by sec-  
6 tion 2(1) of this Act) the following new subparagraphs:

7 “(F) In the case of a violation in which the violator  
8 is determined by the Commission under paragraph (1) to  
9 have uttered obscene, indecent, or profane material, the  
10 Commission shall take into account, in addition to the  
11 matters described in subparagraph (E), the following fac-  
12 tors with respect to the degree of culpability of the viola-  
13 tor:

14 “(i) Whether the material uttered by the viola-  
15 tor was live or recorded, scripted or unscripted.

16 “(ii) Whether the violator had a reasonable op-  
17 portunity to review recorded or scripted program-  
18 ming or had a reasonable basis to believe live or  
19 unscripted programming would contain obscene, in-  
20 decent, or profane material.

21 “(iii) If the violator originated live or  
22 unscripted programming, whether a time delay  
23 blocking mechanism was implemented for the pro-  
24 gramming.

25 “(iv) The size of the viewing or listening audi-  
26 ence of the programming.

1           “(v) The size of the market.

2           “(vi) Whether the violation occurred during a  
3 children’s television program (as such term is used  
4 in the Children’s Television Programming Policy ref-  
5 erenced in section 73.4050(c) of the Commission’s  
6 regulations (47 C.F.R. 73.4050(c)) or during a tele-  
7 vision program rated TVY, TVY7, TVY7FV, or  
8 TVG under the TV Parental Guidelines as such rat-  
9 ings were approved by the Commission in implemen-  
10 tation of section 551 of the Telecommunications Act  
11 of 1996, Video Programming Ratings, Report and  
12 Order, CS Docket No. 97-55, 13 F.C.C. Red. 8232  
13 (1998)), and, with respect to a radio broadcast sta-  
14 tion licensee, permittee, or applicant, whether the  
15 target audience was primarily comprised of, or  
16 should reasonably have been expected to be primarily  
17 comprised of, children.”.

18 **SEC. 4. DEADLINES FOR ACTION ON COMPLAINTS.**

19       Section 503(b) of the Communications Act of 1934  
20 (47 U.S.C. 503(b)), as amended by section 3, is further  
21 amended by adding at the end thereof the following new  
22 paragraph:

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

1           “(A) within 270 days after the date of the re-  
2 receipt 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  
10 person in writing, and any person submitting  
11 such allegation in writing or by general publica-  
12 tion, that the Commission has determined not  
13 to issue 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 Com-  
17 mission, within 270 days after the date on which the  
18 notice was issued, 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  
25 issue either such order.”.

1 **SEC. 5. REQUIRED CONTENTS OF ANNUAL REPORTS OF**  
2 **THE COMMISSION.**

3 Each annual report submitted by the Federal Com-  
4 munications Commission after the date of enactment of  
5 this Act under section 4(k)(2) of the Communications Act  
6 of 1934 (47 U.S.C. 154(k)(2)) shall include the following:

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

12 (2) The number of complaints alleging that a  
13 broadcast contained obscene, indecent, or profane  
14 material that have been dismissed or denied by the  
15 Commission during the year to which the report re-  
16 lates, regardless of when the complaints were re-  
17 ceived.

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

21 (4) The number of notices issued by the Com-  
22 mission under paragraph (3) or (4) of section 503(b)  
23 of the Communications Act of 1934 (47 U.S.C.  
24 503(b)) during the year covered by the report to en-  
25 force the statutes, rules, and policies prohibiting the

1           broadcasting of obscene, indecent, or profane mate-  
2           rial.

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

4                   (A) the amount of the proposed forfeiture;

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

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

10                   (D) the status of the proceeding.

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

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

18                   (A) the amount assessed by the final for-  
19           feiture order;

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

22                   (C) whether the licensee has paid the for-  
23           feiture order;

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

1                   (E) in instances where the licensee refused  
2                   to pay, whether the Department of Justice  
3                   brought an action in Federal court to collect  
4                   the penalty.

5 **SEC. 6. 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.

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 ob-  
scene, indecent, and profane material, and for other pur-  
poses”.

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