

106TH CONGRESS
2D SESSION

S. 876

[Report No. 106-]

To amend the Communications Act of 1934 to require that the broadcast of violent video programming be limited to hours when children are not reasonably likely to comprise a substantial portion of the audience.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 1999

Mr. HOLLINGS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

SEPTEMBER —, 2000

Reported by Mr. MCCAIN, with an amendment in the nature of a substitute

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

A BILL

To amend the Communications Act of 1934 to require that the broadcast of violent video programming be limited to hours when children are not reasonably likely to comprise a substantial portion of the audience.

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 “Children’s Protection
5 from Violent Programming Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

3 (1) Television influences the perception children
4 have of the values and behavior that are common
5 and acceptable in society.

6 (2) Broadcast television, cable television, and
7 video programming are—

8 (A) pervasive presences in the lives of all
9 American children; and

10 (B) readily accessible to all American chil-
11 dren.

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

14 (4) There is empirical evidence that children ex-
15 posed to violent video programming at a young age
16 have a higher tendency to engage in violent and ag-
17 gressive behavior later in life than those children not
18 so exposed.

19 (5) Children exposed to violent video program-
20 ming are prone to assume that acts of violence are
21 acceptable behavior and therefore to imitate such be-
22 havior.

23 (6) Children exposed to violent video program-
24 ming have an increased fear of becoming a victim of
25 violence, resulting in increased self-protective behav-
26 iors and increased mistrust of others.

1 (7) There is a compelling governmental interest
2 in limiting the negative influences of violent video
3 programming on children.

4 (8) There is a compelling governmental interest
5 in channeling programming with violent content to
6 periods of the day when children are not likely to
7 comprise a substantial portion of the television audi-
8 ence.

9 (9) Because some programming that is readily
10 accessible to minors remains unrated and therefore
11 cannot be blocked solely on the basis of its violent
12 content, restricting the hours when violent video pro-
13 gramming is shown is the least restrictive and most
14 narrowly tailored means to achieve a compelling gov-
15 ernmental interest.

16 (10) Warning labels about the violent content of
17 video programming will not in themselves prevent
18 children from watching violent video programming.

19 (11) Although many programs are now subject
20 to both age-based and content-based ratings, some
21 broadcast and non-premium cable programs remain
22 unrated with respect to the content of their pro-
23 gramming.

24 (12) Technology-based solutions may be helpful
25 in protecting some children, but may not be effective

1 in achieving the compelling governmental interest in
2 protecting all children from violent programming
3 when parents are only able to block programming
4 that has in fact been rated for violence.

5 (13) Technology-based solutions will not be in-
6 stalled in all newly manufactured televisions until
7 January 1, 2000.

8 (14) Even though technology-based solutions
9 will be readily available, many consumers of video
10 programming will not actually own such technology
11 for several years and therefore will be unable to take
12 advantage of content based ratings to prevent their
13 children from watching violent programming.

14 (15) In light of the fact that some program-
15 ming remains unrated for content, and given that
16 many consumers will not have blocking technology in
17 the near future, the channeling of violent program-
18 ming is the least restrictive means to limit the expo-
19 sure of children to the harmful influences of violent
20 programming.

21 (16) Restricting the hours when violent pro-
22 gramming can be shown protects the interests of
23 children whose parents are unavailable, are unable
24 to supervise their children's viewing behavior, do not
25 have the benefit of technology-based solutions, are

1 unable to afford the costs of technology-based solu-
2 tion, or are unable to determine the content of those
3 shows that are only subject to age-based ratings.

4 **SEC. 3. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PRO-**
5 **GRAMMING.**

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

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

12 “(a) **UNLAWFUL DISTRIBUTION.**—It shall be unlaw-
13 ful for any person to distribute to the public any violent
14 video programming during hours when children are rea-
15 sonably likely to comprise a substantial portion of the au-
16 dience.

17 “(b) **RULEMAKING PROCEEDING.**—The Commission
18 shall conduct a rulemaking proceeding to implement the
19 provisions of this section and shall promulgate final regu-
20 lations pursuant to that proceeding not later than 9
21 months after the date of enactment of the Children’s Pro-
22 tection from Violent Programming Act. As part of that
23 proceeding, the Commission—

24 “(1) may exempt from the prohibition under
25 subsection (a) programming (including news pro-

1 grams and sporting events) whose distribution does
2 not conflict with the objective of protecting children
3 from the negative influences of violent video pro-
4 gramming, as that objective is reflected in the find-
5 ings in section 551(a) of the Telecommunications
6 Act of 1996;

7 “(2) shall exempt premium and pay-per-view
8 cable programming; and

9 “(3) shall define the term ‘hours when children
10 are reasonably likely to comprise a substantial por-
11 tion of the audience’ and the term ‘violent video pro-
12 gramming’.

13 “(c) REPEAT VIOLATIONS.—If a person repeatedly
14 violates this section or any regulation promulgated under
15 this section, the Commission shall, after notice and oppor-
16 tunity for hearing, revoke any license issued to that person
17 under this Act.

18 “(d) CONSIDERATION OF VIOLATIONS IN LICENSE
19 RENEWALS.—The Commission shall consider, among the
20 elements in its review of an application for renewal of a
21 license under this Act, whether the licensee has complied
22 with this section and the regulations promulgated under
23 this section.

24 “(e) DISTRIBUTE DEFINED.—In this section, the
25 term ‘distribute’ means to send, transmit, retransmit, tele-

1 east, broadcast, or cablecast, including by wire, micro-
2 wave, or satellite.”.

3 **SEC. 4. SEPARABILITY.**

4 If any provision of this Act, or any provision of an
5 amendment made by this Act, or the application thereof
6 to particular persons or circumstances, is found to be un-
7 constitutional, the remainder of this Act or that amend-
8 ment, or the application thereof to other persons or cir-
9 cumstances shall not be affected.

10 **SEC. 5. EFFECTIVE DATE.**

11 The prohibition contained in section 715 of the Com-
12 munications Act of 1934 (as added by section 3 of this
13 Act) and the regulations promulgated thereunder shall
14 take effect 1 year after the regulations are adopted by the
15 Commission.

16 **SECTION 1. SHORT TITLE.**

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

19 **SEC. 2. FINDINGS.**

20 *The Congress makes the following findings:*

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

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

1 (A) uniquely pervasive presences in the lives
2 of all American children; and

3 (B) readily accessible to all American chil-
4 dren.

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

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

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

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

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

24 (8) There is a compelling governmental interest
25 in channeling programming with violent content to

1 *periods of the day when children are not likely to*
2 *comprise a substantial portion of the television audi-*
3 *ence.*

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

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

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

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

24 (13) *Restricting the hours when violent program-*
25 *ming can be shown protects the interests of children*

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

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

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

18 **SEC. 3. ASSESSMENT OF EFFECTIVENESS OF CURRENT RAT-**
19 **ING SYSTEM FOR VIOLENCE AND EFFECTIVE-**
20 **NESS OF V-CHIP IN BLOCKING VIOLENT PRO-**
21 **GRAMMING.**

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

24 *(1) assess the effectiveness of measures to require*
25 *television broadcasters and multichannel video pro-*

1 *gramming distributors (as defined in section 602(13)*
2 *of the Communications Act of 1934 (47 U.S.C.*
3 *522(13)) to rate and encode programming that could*
4 *be blocked by parents using the V-chip undertaken*
5 *under section 715 of the Communications Act of 1934*
6 *(47 U.S.C. 715) and under subsections (w) and (x) of*
7 *section 303 of that Act (47 U.S.C. 303(w) and (x))*
8 *in accomplishing the purposes for which they were en-*
9 *acted; and*

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

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

1 (c) *DEFINITIONS.*—Any term used in this section that
2 is defined in section 715 of the Communications Act of 1934
3 (47 U.S.C. 715), or in regulations under that section, has
4 the same meaning as when used in that section or in those
5 regulations.

6 **SEC. 4. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PRO-**
7 **GRAMMING THAT IS NOT SPECIFICALLY**
8 **RATED FOR VIOLENCE AND THEREFORE IS**
9 **NOT BLOCKABLE.**

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

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

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

22 “(b) *RULEMAKING PROCEEDING.*—The Commission
23 shall conduct a rulemaking proceeding to implement the
24 provisions of this section and shall promulgate final regula-
25 tions pursuant to that proceeding not later than 9 months

1 *after the date of enactment of the Children’s Protection from*
2 *Violent Programming Act. As part of that proceeding, the*
3 *Commission—*

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

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

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

18 “(c) *ENFORCEMENT.—*

19 “(1) *FORFEITURE PENALTY.—The Commission*
20 *shall impose a forfeiture penalty of not more than*
21 *\$25,000 on any person who violates this section or*
22 *any regulation promulgated under it for each such*
23 *violation. For purposes of this paragraph, each day*
24 *on which such a violation occurs is a separate viola-*
25 *tion.*

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. 5. FTC STUDY OF MARKETING STRATEGY IMPROVE-**
10 **MENTS.**

11 *The Federal Trade Commission shall study the mar-*
12 *keting of violent content by the motion picture, music re-*
13 *coding, and computer and video game industries to chil-*
14 *dren, including the marketing practices improvements de-*
15 *scribed by industry representatives at the hearing held by*
16 *the Senate Committee on Commerce, Science, and Trans-*
17 *portation on September 13, 2000. The Commission shall as-*
18 *sess the extent to which these marketing practices have im-*
19 *proved under the model of self-regulation as recommended*
20 *by the Commission in its September, 2000, report, Making*
21 *Violent Entertainment to Children: A Review of Self Regu-*
22 *lation and Industry Practices in the Motion Picture, Music*
23 *Recording and Electronic Game Industries. The Commis-*
24 *sion shall report the results of the study, including findings,*
25 *and recommendations, if any, to the Senate Committee on*

1 *Commerce, Science, and Transportation and the House of*
2 *Representatives Committee on Commerce within 18 months*
3 *after the date of enactment of this Act.*

4 **SEC. 6. SEPARABILITY.**

5 *If any provision of this Act, or any provision of an*
6 *amendment made by this Act, or the application thereof to*
7 *particular persons or circumstances, is found to be uncon-*
8 *stitutional, the remainder of this Act or that amendment,*
9 *or the application thereof to other persons or circumstances*
10 *shall not be affected.*

11 **SEC. 7. EFFECTIVE DATE.**

12 *The prohibition contained in section 715 of the Com-*
13 *munications Act of 1934 (as added by section 2 of this Act)*
14 *and the regulations promulgated thereunder shall take effect*
15 *1 year after the regulations are adopted by the Commission.*

Amend the title so as to read: A Bill To amend the Communications Act of 1934 to require that violent video programming is limited to broadcast after the hours when children are reasonably likely to comprise a substantial portion of the audience, unless it is specifically rated on the basis of its violent content so that it is blockable by electronic means specifically on the basis of that content.

○