

PROVIDING FOR CONSIDERATION OF H.R. 310,
BROADCAST DECENCY ENFORCEMENT ACT OF 2005

FEBRUARY 15, 2005.—Referred to the House Calendar and ordered to be printed

Mrs. CAPITO, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 95]

The Committee on Rules, having had under consideration House Resolution 95, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 310, the Broadcast Decency Enforcement Act of 2005, under a structured rule. The rule provides one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce.

The rule waives all points of order against consideration of the bill. The rule makes in order the amendment printed in this report, if offered by Representative Upton of Michigan or his designee, which shall be considered as read, and which shall be debatable for 20 minutes equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 3

Date: February 15, 2005.

Measure: H.R. 310, Broadcast Decency Enforcement Act of 2005.

Motion by: Ms. Slaughter.

Summary of motion: To make in order and provide appropriate waivers for the amendment offered by Mr. Hinchey to require the Government Accountability Office (GAO) to study the connection between media consolidation and broadcast indecency. It also reinstates the FCC's media ownership rules as they were on June 1, 2003.

Results: Defeated 3 to 8.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Bishop—Nay; Gingrey—Nay; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea.

Rules Committee record vote No. 4

Date: February 15, 2005.

Measure: H.R. 310, Broadcast Decency Enforcement Act of 2005.

Motion by: Mr. Hastings of Florida.

Summary of motion: To make in order and provide appropriate waivers for the amendment offered by Ms. Slaughter to require broadcast licensees to air programming that offers diverse views on issues important to the local communities in which the licensees broadcast.

Results: Defeated 3 to 8.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Bishop—Nay; Gingrey—Nay; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea.

SUMMARY OF AMENDMENT MADE IN ORDER

(Summary derived from information provided by the amendment sponsor.)

Upton/Markey: Manager's Amendment. Makes seven changes: (1) clarifies that the liability standard for non-licensees (performers, networks) is "willful and intentional"; (2) clarifies that for non-licensees to be found liable, the indecent statement must have been made "knowing or having a reason to know" that the statement would be broadcast; (3) changes the reference to the "General Accounting Office" to its new name of "Government Accountability Office"; (4) provides that if a violator of the provisions of the Act is an individual, the financial impact of a penalty can be taken into account; (5) requires the FCC's annual indecency enforcement report to include data going back to 2000; (6) requires the GAO's indecency enforcement report to include data going back to 2000; and (7) requires the FCC to promptly, and regularly thereafter, update its Policy Statement that provides guidance on the Indecency Standard. With an increase in penalties on those who are bound to this standard, it is important that they have a clear understanding of the precedents affecting them. (20 minutes.)

TEXT OF AMENDMENT MADE IN ORDER

In section 503(b)(2)(F)(ii) of the Communications Act of 1934 as amended by section 3 of the bill, strike "and" at the end of subclause (I), strike the period at the end of subclause (II) and insert "; and", and after subclause (II) insert the following new subclause:

(III) if the violator is an individual, the financial impact of a forfeiture penalty on that individual.

In section 503(b)(5)(B)(iv) of the Communications Act of 1934 as amended by section 4(4)(D) of the bill, strike “willfully or intentionally made the utterance” and insert “willfully and intentionally made the utterance, knowing or having reason to know that the utterance would be broadcast”.

In paragraphs (1), (3), (4), and (6) of section 10, strike “year covered” and insert “years covered”.

In section 10, by strike “Each calendar” and insert the following:

(a) **REQUIRED CONTENTS.**—Each calendar

Add at the end of section 10 the following new subsection:

(b) **YEARS COVERED.**—For purposes of this section, the “years covered” by the report required under this section shall be the years beginning with calendar year 2000 through the calendar year preceding the year in which the report is submitted.

In section 11 of the bill, strike “General Accounting Office” each place it appears and insert “Government Accountability Office”.

In section 11(a) of the bill, after “study examining” insert the following: “, with respect to calendar year 2000 through the calendar year preceding the year in which the report is submitted”.

After section 10, insert the following new section (and redesignate the succeeding sections accordingly):

SEC. 11. UPDATING GUIDANCE TO THE BROADCAST INDUSTRY REGARDING INDECENCY.

Within 9 months after the date of enactment of this Act, and at least once every 3 years thereafter, the Federal Communications Commission shall revise, on the basis of recent developments in the Commission indecency case law, the Commission’s policy statement to provide industry guidance on the Commission’s interpretation of, and enforcement policies regarding, the laws and regulations concerning broadcast indecency, as contained in the policy statement adopted March 14, 2001, and released April 6, 2001 (FCC 01–90).