



**CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE**

April 2, 2004

**S. 2056**

**Broadcast Decency Enforcement Act of 2004**

*As ordered reported by the Senate Committee on Commerce, Science, and Transportation  
on March 9, 2004*

**SUMMARY**

S. 2056 would increase the maximum civil penalty for broadcasting obscene, indecent, or profane material. (Such penalties are recorded in the federal budget as revenues.) The bill also would change current law and existing regulations concerning violent programming and ownership of multiple media outlets. Under the bill, CBO estimates that revenues resulting from those penalties would increase by less than \$250,000 in 2004 and by about \$2 million over the 2005-2009 period. CBO estimates that implementing S. 2056 would increase spending subject to appropriation by less than \$500,000 in 2004 and about \$1 million over the 2005-2009 period. The bill would not affect direct spending.

S. 2056 contains an intergovernmental mandate as defined by the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs would not be significant and would not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

S. 2056 would impose private-sector mandates as defined in UMRA on the owners of television networks, broadcast stations, cable operators, and providers of satellite broadcast service. CBO cannot determine whether the total cost to the private sector would exceed the threshold for private-sector mandates established by UMRA (\$120 million in 2004, adjusted annually for inflation). We do not have any basis for predicting what regulations the FCC would issue regarding violent video programming, the distributors' response to those regulations, or the viewers' and advertisers' response to those changes.

## **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

S. 2056 would increase the monetary penalties assessed by the Federal Communications Commission (FCC) for broadcasting obscene, indecent, or profane material. For broadcast licensees, the maximum penalty for each violation would increase from about \$25,000 to \$275,000 for the first violation, \$375,000 for the second violation, and \$500,000 for the third violation. If the FCC determines that a violation is aggravating in nature, those fines would double. The maximum fine would be \$3 million for violations occurring within a 24-hour period. The maximum penalty for individuals would increase from about \$10,000 to \$500,000. According to the FCC, prior assessments for each violation have been around \$50,000 per year recently—however, annual collections have varied widely. For example, the FCC did not collect any penalties for indecency violations in 2003 but has collected \$800,000 during the first five months of fiscal year 2004.

CBO estimates that under S. 2056, collections of penalties for broadcasting obscene, indecent, or profane material would increase by less than \$250,000 in 2004 and on average less than \$500,000 per year over the 2005-2009 period. The increase in collections could be much higher or lower considering that the number of penalties varies widely from year to year.

S. 2056 also would void regulations issued by the FCC on June 2, 2003, pertaining to the ownership of television stations, radio stations, and newspapers. That provision would reinstate the regulations concerning ownership of multiple media outlets that were in effect before that date. Finally, S. 2056 would require the FCC to issue regulations regarding a ban on violent programming during times when children are likely to be in the audience and conduct an annual report on the effectiveness of the current ratings system and the “V-Chip” technology that electronically blocks violent programming. Based on information provided by the FCC, CBO estimates that those tasks would increase spending subject to appropriation by less than \$500,000 in 2004 and by about \$1 million over the 2005-2009 period.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

Section 715 contains an intergovernmental mandate as defined by UMRA because it would prohibit the transmission to the public of certain violent programs unless those programs can be blocked by electronic means during hours when children are likely to comprise a substantial portion of the audience. To comply with this mandate, distributors, including public broadcasters, would be required either to reschedule or to not transmit certain violent programs that do not include a code allowing them to be blocked electronically. According to the Corporation for Public Broadcasting, all Public Broadcasting Station programs are so

encoded; therefore, CBO estimates that the associated costs of the mandate would be minimal and would not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

Although the provisions in title I of the bill do not constitute a mandate as defined by UMRA, to the extent that public broadcasters would be affected by the increased penalties for indecency, they would incur additional costs. However, CBO estimates that those additional costs, if any, would be minimal because complaints regarding indecency against publicly owned broadcasting outlets are rare.

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

S. 2056 would impose private-sector mandates as defined in UMRA on the owners of television networks, broadcast stations, cable operators, and providers of satellite broadcast service. CBO cannot determine whether the total cost to the private sector would exceed the threshold for private-sector mandates established by UMRA (\$120 million in 2004, adjusted annually for inflation). We do not have any basis for predicting what regulations the FCC would issue regarding violent video programming, the distributors' response to those regulations, or the viewers' and advertisers' response to those changes.

### **Broadcast Media Ownership Rules**

Under the Consolidated Appropriations Act of 2004 enacted January 23, 2004, a broadcast network can own and operate local broadcast stations that reach up to 39 percent of households nationwide. S. 2056 would reinstate the FCC's ownership rules that were in effect on June 1, 2003. This reinstatement would require owners of commercial television broadcast stations that have a national audience reach exceeding 35 percent to divest itself of such licenses as may be necessary to come into compliance with that limitation

According to the FCC, two companies would exceed the cap—Viacom Inc. (the owner of CBS) and News Corps. (the owner of Fox). Based on information from government and industry sources, CBO estimates that Viacom Inc. and News Corps. would likely be able to sell their stations at a fair market value. Therefore, the cost of this mandate would be only the transaction costs involved in the sale.

## **Children's Protection from Violent Programing**

The bill would impose a private-sector mandate by prohibiting the distribution to the public of certain violent programs unless they can be blocked by electronic means during hours when children are reasonably likely to comprise a substantial portion of the audience. The mandate would affect television networks, broadcast stations, cable operators, and providers of satellite broadcast services. Certain satellite and cable premium and pay-per-view programs would be exempt, and the FCC could exempt other programs, such as news and sports.

To comply with the mandate, the distributors would be required to either code programs or reschedule or not transmit certain violent programs that do not include a code, allowing them to be blocked electronically. Information from the FCC and industry representatives indicates that most programs currently include coding that allows them to be blocked electronically. Thus, the mandate would effectively require changes to only a small number of programs.

The cost to encode a program is not high, therefore, the greatest potential cost to the private sector would be any loss of net revenues associated with changes in the scheduling or nontransmission of those violent programs that are not encoded.

The bill also would require that the FCC assess the effectiveness of electronic blocking and rating system on the protection of children from violent programming. If the FCC determines that those measures are not effective, the FCC would be required to complete a rulemaking that would prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience. Such a ruling by the FCC would impose a private-sector mandate on the distributors of violent programs.

CBO cannot estimate the cost of those mandates. We do not have any basis for predicting the FCC's decision regarding the effectiveness of electronic blocking and ratings on the protection of children from violent programing, the details of the regulations the FCC would issue, the distributors' response to those regulations, or the viewers' and advertisers' response to those changes.

## **PREVIOUS CBO ESTIMATE**

On March 8, 2004, CBO transmitted a cost estimate for H.R. 3717, the Broadcast Decency Enforcement Act of 2004, as ordered reported by the House Committee on Energy and

Commerce on March 3, 2004. Both bills would impose a similar increase on monetary penalties assessed by the FCC for broadcasting obscene, indecent, or profane material, and therefore, would have the same effect on revenues.

S. 2056 differs from H.R. 3717 because the Senate bill contains a provision that would prohibit the transmission to the public of certain programs unless blocked by electronic coding. That provision is a mandate as defined by UMRA, while H.R. 3717 contains no new mandates.

**ESTIMATE PREPARED BY:**

Federal Costs: Melissa E. Zimmerman  
Impact on State, Local, and Tribal Governments: Sarah Puro  
Impact on the Private Sector: Jean Talarico

**ESTIMATE APPROVED BY:**

Peter H. Fontaine  
Deputy Assistant Director for Budget Analysis