

ABUSIVE AND HARASSING TELEPHONE CALLS

APRIL 19, 1967.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce,
submitted the following

REPORT

[To accompany S. 375]

The Committee on Commerce, to which was referred the bill (S. 375) to amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

S. 375 is identical to S. 2825, 89th Congress, as passed by the Senate on June 29, 1966, which this committee reported out favorably in its present form on June 27, 1966, in Senate Calendar No. 1303, Report No. 1334. S. 2825 was referred to the House Interstate and Foreign Commerce Committee where, because of the press of business and the lateness of the session, action was not taken.

PURPOSE AND SUMMARY OF LEGISLATION

The purpose of this bill is to make it a Federal offense to make certain obscene or harassing telephone calls in interstate or foreign commerce or within the District of Columbia.

S. 375 provides for a fine of not more than \$500 nor imprisonment for more than 6 months, or both, for anyone who, by means of telephone communications in the District of Columbia or in interstate or foreign commerce—

(a) Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent; or

(b) Makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number; or

(c) Makes or causes the telephone of another repeatedly or continuously to ring with intent to harass any person at the called number; or

(d) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number.

The same penalty is applicable to whomever knowingly permits any telephone under his control to be used for any purpose prohibited by this section.

NEED FOR LEGISLATION

Obscene and harassing telephone calls have become a matter of serious concern. The telephone, despite its many benefits in our daily business and personal lives, unfortunately provides a ready cloak of anonymity to the sort of person who can somehow derive satisfaction or pleasure from frightening other people. This cloak has been availed of by such people in various ways. The telephone may ring at any hour of the day or night, to produce only a dead line when answered. Sometimes the caller will merely breathe heavily and then hang up. Sometimes he will utter obscenities.

And, recently, a new and most offensive form of harassment has been devised. Families of servicemen are called and given false reports of death or injury, or even, hard as it is to believe, are gloatingly reminded of the death of a son or husband in service.

The depth of this vicious practice can best be illustrated by the following examples submitted by the Department of Defense. To prevent further harassment of the families mentioned, the names of personnel and families concerned have been deleted at the request of the Defense Department:

Prior to departure for Vietnam in the early part of July 1966, a U.S. Air Force technical sergeant was telephonically contacted by persons unknown to him, and who urged him not to go to Vietnam. He was also called derogatory names. Since the sergeant's departure for Vietnam, his dependent wife has received numerous anonymous telephone calls, calling her a warmonger and other derogatory names and making reference to her husband's service in Vietnam. One of the remarks is as follows: "If you keep flying the American flag we will come over there and cut you to ribbons." All the calls were made during the hours of darkness. On one occasion, when she was preparing to take her pet dog to the veterinarian for an emergency at 0435, as she was leaving the house, two men drove rapidly past her, threw a beer bottle at her, and called her a warmonger.

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In October 1966 the mother of a marine wounded in action in Vietnam received about six telephone calls at her Pittsburgh, Pa., home. The caller said nothing but played martial music, sometimes accompanied by sounds of heavy breathing or apparent shouted military commands.

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The parents of a marine killed in action in Vietnam received three telephone calls in November 1966 at their

Washington State home. The caller asked on each occasion "How do you like having your son killed in Vietnam?"

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In early December 1966, the wife of an airman stationed in Okinawa received a phone call at her residence allegedly from a Sergeant Miller, of Seymour-Johnson Air Base. Miller asked her to identify her husband which she did. Miller then stated that her husband had been killed in an explosion on Okinawa and that he and the chaplain planned to visit her in a few hours. Several hours later, after she had informed relatives and associates of the news, Miller called again and stated he had the final details of the incident including the fact that there were no remains and that she could go ahead with a memorial service for her husband. The Kadena Red Cross requested verification of her husband's death on December 6, 1966, at which time the Red Cross was informed that her husband was alive. Prior to this call (August or September 1966), the airman's wife had received "mash" calls from a man in Randleman who requested that she go out on a date with him.

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It is quite evident that the dimensions of the problem are large and still growing. The Bell Telephone System, which provides more than 80 percent of the Nation's telephones, received over 531,000 complaints from March through December 1966 concerning abusive telephone calls that threaten or harass the recipients. It received some 46,000 complaints of such calls in March 1966. Subsequently, the number reached a high of some 68,000 such complaints in August 1966. Some 51,000 complaints of such calls were received in December 1966.

A telephone company witness testified that most of the calls are probably intrastate but indicated that it is only after an investigation of a complaint has been successfully completed that the telephone company is able to classify offending calls as intrastate or interstate. It should not be overlooked that these figures deal with complaints actually received by the telephone companies. It is to be assumed that many such calls are made which never become the subject of such a complaint.

Some remedies do exist at the present time. Thirty-eight States have statutes, varying somewhat in content, but generally prohibiting the making of various types of obscene, harassing, or annoying telephone calls. These specific laws, many of which are of recent origin, appear to be helping. Eleven of the twelve remaining States currently have before them proposals to outlaw abusive calling. The telephone companies' right to discontinue service where making such calls violates company tariffs is probably also of some value. And it is to be hoped that telephone company publicity given to the problem and how they will serve customers who receive such calls will have a beneficial effect on the problem. But no Federal law deals with the problem (except 18 U.S.C. 875(c) prohibiting interstate communication containing a threat of personal injury and 18 U.S.C. 837(d) prohibiting use of the telephone to make threats of damage to certain property or threats to persons seeking to make specified uses of such

property) and the witnesses before your committee generally agreed that Federal legislation directed to such abusive calls in interstate commerce is desirable to close the "interstate gap." This is a logical approach in view of the fact that the Federal Government has undertaken under the Communications Act of 1934 to establish a comprehensive scheme or regulation of the telephone system. Federal legislation dealing with interstate abusive calls should also simplify prosecutions of interstate calls by permitting them to take place where it may be convenient for the witnesses. In this regard, 18 U.S.C. 3237, would permit prosecution of such offenses in any district in which the offense was begun, is continued, or is completed.

COMMITTEE HEARINGS

S. 375 was introduced by Senator John O. Pastore, chairman of your committee's Subcommittee on Communications. Hearings on S. 375 were held on February 16, 1967, by the Subcommittee on Communications.

→ Congressman Van Deerlin of California testified before the subcommittee of his concern with the growing problem of telephone harassment and stated that he had introduced an identical bill, H.R. 1422, in the House. He related that he had learned firsthand what it's like to be the target of abusive telephone calls. After receiving a series of such calls at his Washington home in January 1967, he reluctantly took an unlisted number. One such call occurred when his 13-year old daughter took a call from an anonymous person who used obscenities in threatening to kill her and her brothers and sisters.

→ Rosel H. Hyde, Chairman of the Federal Communications Commission, testified that, while enforcement of any such legislation would appropriately be the responsibility of the Department of Justice, the Commission was in full accord with the committee's efforts to deal more effectively with the problem of obscene and harassing telephone calls as set forth in S. 375 and strongly supports its enactment. He recalled an instance of a call to his home when his wife said: "I am certainly glad it wasn't Marilyn—our daughter—who received that call," because it was a revolting type of call that no one should be subjected to.

→ Brig. Gen. William W. Berg, Deputy Assistant Secretary of Defense for Military Personnel Policy, presented the views of the Department of Defense. General Berg testified that the Department of Defense strongly supports this legislation. In his May 1966 testimony he indicated that a spot check of only nine representative military bases in the United States to get some idea of the magnitude of the general problem of obscene and harassing telephone calls turned up approximately 500 reported cases of all types during the preceding year at those installations. Some 87 of those were incidents of harassment of about 50 military families related to military operations overseas, mostly in connection with service in Vietnam. Those contacts were mostly by telephone but also included letters, postcards, telegrams, and even face-to-face visits. General Berg indicated there has been a slight drop in the number of such cases since that time and attributes this to your subcommittee's earlier hearings on this subject and to the high degree of cooperation provided by the telephone industry.

General Berg indicated the Department of Defense welcomes and will strongly support any legislation which promises a measure of protection to the members of our Armed Forces and their families from these vicious and despicable acts. He stressed the impact of such acts on the morale and well-being of our servicemen and their families, particularly as they relate to our military operations in Vietnam and elsewhere.

Mr. Hubert Kertz, operating vice president of the American Telephone & Telegraph Co., appeared on behalf of the Bell System telephone operating companies. Mr. Kertz referred to his previous testimony in which he had given the committee helpful explanations of some of the techniques used by telephone companies to identify the telephone lines from which abusive calls originate. Other techniques he had thought it best not to disclose publicly lest the information make it easier for annoyance callers to avoid detection.

Three basic detection devices are used. One is a tone set, a box equipped with an on-and-off switch and connected by a wire to the annoyed customer's telephone. When a crank call is received, the customer flips the switch which places a 20,000-cycle tone on the circuit and also activates an alarm in the central office, alerting a switchman on duty to start tracing the call. This tone cannot be heard by either party to the telephone call. Another device is a pen register attached to the line of a prime suspect in a crank-call case.

The instrument records the number called and the time of the call. A third device acts as a computer in the central office and puts the calling number, called number, date, and time on a punchcard.

Mr. Kertz testified that these detection techniques have grown more sophisticated as telephone switching systems have become more complex and that the Bell System is continually working on better and quicker ways of making line identifications.

Mr. Kertz stressed the Bell System's national advertising campaign to offer assistance to any victim of such calling within its operating areas. He outlined the company procedures followed in cases of abusive calls, stated that all successful prosecutions are publicized for their deterrent effect, and testified that local law enforcement authorities have been most cooperative and extremely helpful in investigating these cases.

Mr. Kertz testified that existing State and local criminal legislation is of great help to the telephone companies in their attempts to eliminate abusive calls. He stated that in the areas served by the Bell System the courts convicted 358 abusive callers during 1965 and 788 abusive callers in 1966.

He emphasized that the Justice Department is not brought into a situation of this kind until after the technology of the Bell System companies has determined that an interstate call, as contrasted with an intrastate call, of an abusive nature has been made. He testified that such technology is not a bugging or monitoring device to overhear or record conversations, but is an electronic technique to register on tape the time of day and the called telephone number made on a particular line.

He stated that the Bell System believes Federal legislation will have a deterrent effect on potential offenders and would be of practical advantage to the telephone companies in attempting to deal with

abusive calls. Mr. Kertz specifically endorsed legislation along the lines of S. 375.

Adm. William C. Mott, executive vice president of U.S. Independent Telephone Association (USITA), a trade association composed of some 2,300 telephone companies, testified in support of the legislation. Admiral Mott stated that a Federal statute prohibiting obscene or harassing telephone calls in interstate or foreign commerce should have a deterrent effect on the making of such calls and might further set an example for those States not now having statutes or whose statutes might need revision.

He testified that one added reason for the necessity for Federal legislation in this area is the increased usage of what is known as WATS (wide area telephone service) line for making an interstate call. WATS is a fast-growing service and national in scope. There is no individual charge for messages and in that respect it is similar to local telephone calling.

Mr. Paul Rodgers, general counsel, National Association of Railroad & Utilities Commissioners, expressed the view that State legislation in 38 States deals adequately with intrastate threatening or harassing telephone calls and 11 States now have specific legislation under consideration to deal with this matter. He testified that Chairman Ben T. Wiggins, of the NARUC Committee on Communications Problems, plans to present to his committee a model State bill dealing with this problem. The language of his model State bill will closely parallel the language of S. 375.

He testified that S. 375 will complement the State activity and NARUC supports its enactment to combat the making of such calls in interstate or foreign commerce.

Senator Edward B. Long of Missouri and Congressman Cornelius E. Gallagher, of New Jersey, submitted statements placed in the record supporting the enactment of S. 375.

CONCLUSION

There can be no doubt that the increase in these vicious and cruel attacks over the telephone must be reversed by legislative action. Your committee believes that passage of this legislation will aid in deterring obscene and harassing telephone calls generally and will provide an appropriate remedy to reach those calls made within the District of Columbia or in interstate or foreign commerce. The loophole which exists today because of the lack of a Federal law covering this subject matter will be closed. The enactment of this legislation will serve the public interest.

AGENCY COMMENTS

Letters from Chairman, Federal Communications Commission, dated February 15, 1967, enclosing the agency's comments; President, District of Columbia Board of Commissioners, February 15, 1967; letter dated February 16, 1967, from Assistant Comptroller General of the United States—

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 15, 1967.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
 U.S. Senate, Washington, D.C.*

DEAR Mr. CHAIRMAN: This is in reply to your request of January 23, 1967, seeking the Commission's comments on S. 375, a bill to amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce.

On July 27, 1966, the Commission adopted comments on S. 2825, 89th Congress, which, as it passed the Senate on June 29, 1966, is identical to S. 375. It is requested that these comments, copies of which are enclosed, be accepted as the Commission's comments on S. 375.

The Bureau of the Budget has advised that while there is no objection to the presentation of this report from the standpoint of the administration's program, it believes that the comments and recommendations made by the Department of Justice on S. 2825, 89th Congress, merit careful consideration by your committee.

Sincerely yours,

ROSEL H. HYDE, *Chairman.*

COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION ON S. 2825,
 A BILL TO AMEND THE COMMUNICATIONS ACT OF 1934 WITH RESPECT
 TO OBSCENE OR HARASSING TELEPHONE CALLS IN INTERSTATE OR
 FOREIGN COMMERCE

S. 2825 would add a new section 223 to the Communications Act of 1934, to prohibit, in substance, the making of obscene, lewd, lascivious, filthy, or indecent telephone calls or those intended to annoy, abuse, threaten, or harass, either in interstate or foreign commerce or within the District of Columbia.

Obscene and harassing telephone calls have become a matter of serious concern, for the dimensions of the problem are already large and are apparently growing. While the Bell Telephone System, which provides more than 80 percent of the Nation's telephones, has only recently begun to compile statistics concerning the number of calls as to which it receives complaints, it estimates it receives approximately 375,000 complaints a year concerning abusive telephone calls that threaten or harass the recipients. Figures provided the Commission by the Bell System show almost 43,000 abusive calls in April of this year, and about 46,000 in May.

S. 2825 would deal not only with obscene calls, but also the anonymous call made with intent to harass, and repeated calls made solely for the same purpose. The bill thus covers certain types of anonymous calls which have been of increasing concern. The telephone may ring at any hour of the day or night, to produce only a dead line when answered. Sometimes the caller will merely breathe heavily and then hang up. Sometimes he will utter obscenities. Recently a new and most offensive form of harassment has been devised. Families of servicemen are called and given false reports of death or injury, or even, hard as it is to believe, are gloatingly reminded of the death of a son or husband in the service. S. 2825 reaches all of these vicious practices.

Some remedies do exist at the present time. Thirty-eight States have statutes generally prohibiting the making of various types of obscene, harassing, or annoying telephone calls. These laws, many of which are of recent origin, appear to be helping to check intrastate abusive calling. In addition, telephone company tariffs prohibit obscene language over the telephone or the use of telephone service in such a manner as to harass or frighten others.

The Bell Telephone System has developed improved equipment to determine the source of anonymous abusive calls, and has issued instructions to operating companies for close cooperation with subscribers who complain of obscene or harassing telephone calls. It is to be hoped that telephone company publicity recently given to the problem and the manner in which they will serve customers who receive such calls will have a beneficial effect.

However, no Federal law deals with any part of the problem, except for 18 U.S.C. 875(c), which prohibits interstate communications containing a threat of personal injury. S. 2825 would apply to all interstate calls and those calls made within the District of Columbia. Its enactment would facilitate prosecutions for interstate calls by permitting prosecution where it may be convenient for the witnesses, since section 3237 of title 18, United States Code, permits prosecution of offenses in any district in which the offense is begun, is continued, or is completed.

While enforcement of a Federal criminal statute dealing with obscene and harassing calls would appropriately be the responsibility of the Department of Justice, the Commission is fully in accord with the effort to deal with this problem which is embodied in S. 2825, and we support its enactment.

Adopted: July 27, 1966. Commissioner Johnson not participating.

FEBRUARY 15, 1967.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: The Commissioners of the District of Columbia have for report S. 375, 90th Congress, a bill to amend the Communications Act of 1934 with respect to obscene and harassing telephone calls in interstate and foreign commerce.

The bill amends existing law by adding to title II of the Communications Act of 1934, immediately following section 222 (47 U.S.C.A. 222), a new section 223 making it an offense to make a telephone call in the District of Columbia or in interstate or foreign commerce (1) for the purpose of making any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent; (2) without disclosure of identity and with intent to annoy, abuse, threaten, or harass any person at the called number; (3) for the purpose of making or causing the telephone of another to ring repeatedly or continuously, with intent to harass any person at the called number; or (4) for the purpose of making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number. Any person engaging in any of the proscribed activities, or knowingly permitting any telephone under his control to be used for any of the proscribed

activities, would, upon conviction, be fined not more than \$500 or imprisoned not more than 6 months, or both.

The existing District of Columbia disorderly conduct statute (District of Columbia Code, sec. 22-1121) provides in pertinent part that whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby, acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others, shall be fined not more than \$250 or be imprisoned not more than 90 days, or both. This provision of the disorderly conduct statute on occasion has been used to prosecute persons who by using a telephone annoy or harass other persons with anonymous, repeated, or obscene and lewd calls. The Commissioners are informed, however, that as a practical matter it has been very difficult for the prosecution to prove that such calls, by such means, constitute a violation of the disorderly conduct statute.

Maryland and Virginia have statutes which prohibit the type of conduct made unlawful by the bill. Both statutes provide for a fine of not more than \$500 or imprisonment up to 12 months, or both. See art. 27, sec. 555A, Annotated Code of Maryland (1964); secs. 18.1-9 and 238, Code of Virginia (1950); and secs. 18.1-238, Code of Virginia (1964 Supp.).

The Commissioners believe the bill is needed for the purpose of providing an effective means of dealing with the kind of activity prohibited by it. However, they suggest that the bill might be more effective were it amended to provide that an offender may be prosecuted in the jurisdiction in which the telephone call was made, or in the jurisdiction in which it was received. Further, they believe provision should be made for requiring a pretrial mental examination of a person making a call of the kind prohibited by the bill. Accordingly, they suggest the insertion of the subsection designation "(a)" immediately before the first word of the text of the proposed new section 223, the striking of the quotation marks at the end of line 17 on page 2, and the addition of the following subsections "(b)" and "(c)":

"(b) A violation of this section shall be deemed to have occurred at either the place at which the telephone call was made or the place at which the telephone call was received.

"(c) The court may in its discretion order any person arrested, indicted, or otherwise charged with violating this section to undergo a pretrial mental examination, at a mental hospital designated by the court. All costs of such examination shall be paid by the Government."

The Commissioners urge enactment of the bill, preferably with the amendments they have recommended.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

(Signed) WALTER N. TOBRINER,
President, Board of Commissioners, District of Columbia.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 16, 1967.

B-157919.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
 U.S. Senate.*

DEAR MR. CHAIRMAN: By letter of January 20, 1967, you requested our comments on S. 375, entitled "A bill to amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce."

We have no special information as to the desirability of this measure and, therefore, make no comments regarding its merits.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italic):

COMMUNICATIONS ACT OF 1934, AS AMENDED

"OBSCENE OR HARASSING TELEPHONE CALLS IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMERCE

"*SEC. 223. Whoever by means of telephone communication in the District of Columbia or in interstate or foreign commerce—*

"(a) makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent; or

"(b) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number; or

"(c) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

"(d) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

"Whoever knowingly permits any telephone under his control to be used for any purpose prohibited by this section—

"Shall be fined not more than \$500 or imprisoned not more than six months, or both."

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