

AMENDMENT OF THE COMMUNICATIONS ACT OF 1934

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 184, S. 375.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 375) to amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report—No. 189—explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

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 whom-ever 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.

"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.

"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?'

"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."

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 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.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 375) was passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title II of the Communications Act of 1934, as amended, is further amended by adding at the end thereof the following new section:

"SEC. 223. OBSCENE OR HARASSING TELEPHONE CALLS IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMERCE.—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."

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. CHURCH. Mr. President, if there is no further business to come before the Senate this afternoon, in accordance with the order entered on Wednesday, April 19, 1967, I move that the Senate stand in adjournment until 11 o'clock a.m.; tomorrow.

The motion was agreed to; and (at 3 o'clock and 8 minutes p.m.) the Senate adjourned until tomorrow, Tuesday April 25, at 11 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate April 24, 1967:

COAL MINE SAFETY BOARD OF REVIEW

Dennis L. McElroy, of Pennsylvania, to be a member of the Federal Coal Mine Safety Board of Review for the term expiring July 15, 1972, vice Edward Steidle, term expiring.

FEDERAL RESERVE SYSTEM

William W. Sherrill, of Texas, to be a member of the Board of Governors of the Federal Reserve System for the unexpired term of 14 years from February 1, 1964, vice Charles Noah Shepardson, resigned.

CONFIRMATION

Executive nomination confirmed by the Senate April 21, 1967:

FARM CREDIT ADMINISTRATION

Jonathan Davis, of Massachusetts, to be a member of the Federal Farm Credit Board, Farm Credit Administration, for a term expiring March 31, 1973.