

OBSCENE, ABUSIVE, AND HARASSING TELEPHONE CALLS

FEBRUARY 27, 1968.—Referred to the House Calendar and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 375]

The Committee on Interstate and Foreign Commerce, to whom 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, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

“OBSCENE OR HARASSING TELEPHONE CALLS IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMUNICATIONS

“SEC. 223. Whoever—

“(1) in the District of Columbia or in interstate or foreign communication by means of telephone—

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

“(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;

“(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

“(2) 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.”

SEC. 2. Section 3(e) of the Communications Act of 1934 (47 U.S.C. 153(e)) is amended by inserting “(other than section 223 thereof)” immediately after “title II of this Act”.

PURPOSE

The bill makes the use of a telephone (or the granting of such use) for the placing of obscene, abusive, or harassing telephone calls (most of which are anonymous) across State boundary lines or within the District of Columbia a Federal crime punishable by a fine of not more than \$500 or imprisonment for not more than 6 months, or both. The bill is reported by your committee with an amendment in the nature of a substitute which makes only technical changes in the bill as passed by the Senate.

NEED FOR LEGISLATION

Since its invention, the telephone has been the source of many and great benefits to the American people. But recently its use has been perverted by some to make it an instrument for inflicting incalculable fear, abuse, annoyance, hardship, disgust, and grief on innocent victims, who, in many instances, are young women and children. It is hard to imagine the terror caused to an innocent person when she answers the telephone, perhaps late at night, to hear nothing but a tirade of threats, curses, and obscenities, or equally frightening, to hear only heavy breathing.

On the other hand, it is easy to sympathize with the anger and uneasiness that develops in persons whose telephones ring repeatedly at various times in the day and night only to have the calling party hand up when the phone is answered.

Even more vicious and cowardly is the practice of calling families of men serving in Vietnam and falsely reporting the serviceman's death, or, if death has in fact occurred, of gloating over it.

These are some of the ways the telephone has been turned into a weapon of cowardice.

The magnitude of the overall problem is readily shown by statistics. Beginning with February 1966, the Bell Telephone System has been filing a monthly report with the Federal Communications Commission setting forth the number of complaints received by the Bell System from its subscribers because of telephone calls received which were of an obscene, harassing, or threatening nature, or which caused interference.¹ In the 11 months of 1966 for which reports were made, there were 568,774 such complaints. For the year 1967 there were 641,821 such complaints.

In considering these statistics, it should be remembered that since approximately 80 percent of the telephones in the United States are serviced by the Bell Telephone System they would have to be increased by about 25 percent to reflect all such complaints in the United States. Furthermore, many persons receive such calls but fail to complain. One reason for such failure is that many of these persons are unaware that techniques and equipment have been developed to identify the persons making such calls.

These techniques and equipment have been effective in bringing about the apprehension and conviction of persons making obscene, abusive, or harassing telephone calls. Two were demonstrated in the course of the hearings on this legislation. Still others are available

¹ The breakdown of calls into categories of obscene, harassing, threatening, and interference is one used by the Bell Telephone System.

but were not demonstrated because widespread knowledge of them would limit their effectiveness. The effectiveness of these techniques and of this equipment is in part responsible for the fact that in the areas served by the Bell Telephone System there were 358 persons convicted in 1965; 788 persons convicted in 1966; and 1,105 persons convicted in 1967 of making telephone calls which were obscene, harassing, or threatening or caused interference. It should be noted that none of these techniques requires monitoring the content of conversations on the calling or called person's line.

Since S. 375 was passed by the Senate in April 1967, the 12 States not having laws dealing with the problem of obscene, abusive, or harassing telephone calls at that time have enacted such laws. Today each of the 50 States has legislation dealing with this problem. This fact has also contributed to the increased number of convictions.

The fact that all the States today have such legislation is even more reason for passage of the bill. It would be ironic, if because of failure to enact this legislation, the risk of conviction for making obscene, abusive, or harassing telephone calls across State lines was less than the risk from making such calls intrastate.

The bill applies only to interstate calls and to those within the District of Columbia. It is not the intention or desire of your committee that the Department of Justice assume any of the investigatory or enforcement responsibilities of the several States in this area. The equipment and techniques developed by the telephone company lend themselves to this purpose since in most cases before apprehension of a caller occurs, the location of the telephone from and to which a call is made is known.

The committee is determined that interstate and foreign telephone communications be kept free of the foul traffic of obscene, abusive, and harassing telephone calls. This should place no inordinate burden on the Department of Justice since the number of such calls is estimated to be approximately 500 a year.

However, the incidence of interstate calls of all types will continue to rise and, unless this legislation is enacted, the obscene, abusive, and harassing calls could grow in proportion. This is attributable to several factors—the increasing simplicity of making such calls because of technological advances such as direct dialing and wide-area telephone service; the decreasing cost of such calls; and the growth of the metropolitan areas which sit astride one or more State boundaries and within which it is as simple and inexpensive to make a call from one State to another as it is to make a call wholly within a State. The Washington, D.C., metropolitan area illustrates this point. It is as simple and inexpensive to call by telephone to the Virginia or Maryland suburbs from the District of Columbia as it is to make a telephone call wholly within the District. Yet the procedural and jurisdictional problems are obvious when one considers what must be done to apprehend and prosecute an individual who makes an abusive, obscene, or harassing telephone call from the District of Columbia where at present individuals making such calls are prosecuted under a disorderly conduct statute (D.C. Code, sec. 22-1121) to the Virginia or Maryland suburbs of the District. But even putting aside these problems, it is the responsibility of the Congress to regulate interstate and foreign commerce—of which interstate and foreign communica-

tions are an essential part. To rely on the several States for this purpose would be dereliction indeed.

In addition to the obvious advantage of giving victims of obscene, abusive, and harassing interstate telephone calls and those in the District of Columbia an effective remedy, your committee feels that enactment of this legislation will also serve to inform the victims of such calls (whether they be interstate or intrastate in character) that effective remedies are available and will also serve as an effective deterrent against such practices.

HEARINGS

Hearings on this legislation and several identical bills (H.R. 611, Gallagher, New Jersey; H.R. 1422, Van Deerlin, California; H.R. 5867, Brasco, New York; H.R. 6283, Murphy, New York; H.R. 7830, Cunningham, Nebraska; H.R. 13323, Halpern, New York) were held on January 30, 1968, before the Subcommittee on Communications and Power of the committee. Testimony was received from several Members of the House, the Chairman of the Federal Communications Commission, a representative of the Department of Defense, and representatives of the American Telephone & Telegraph Co., and the National Association of Regulatory Utility Commissioners. All of the witnesses supported enactment of this legislation.

COST

Most of the costs to the Federal Government arising from this legislation will be for apprehension and prosecution of persons making obscene, abusive, or harassing telephone interstate calls or calls in the District of Columbia. Since detection under existing effective techniques is largely carried out by the telephone company and the number of such calls is considered to run about 500 calls a year for interstate calls and an equal number wholly within the District of Columbia, such costs should not be great.

CONCLUSION

This legislation was unanimously reported by your committee. The committee urges its passage by the House.

AGENCY REPORTS

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., January 30, 1968.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 611, a bill to amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce. This report also

represents our views on H.R. 1422, H.R. 5867, H.R. 6283, H.R. 7830, H.R. 13323, and S. 375, bills which are identical to H.R. 611.

H.R. 611 would prohibit the making of obscene, lewd, lascivious, filthy, or indecent telephone calls, or the making of anonymous calls which intend to annoy, abuse, threaten, or harass any person at the called number. In addition, it would prohibit the making of repeated calls to harass a person, either in interstate or foreign commerce or within the District of Columbia. The bill provides for a fine of \$500 or imprisonment up to six months, or both for violations.

While the Bureau favors the objectives of H.R. 611, we believe that the comments and suggestions expressed by the Department of Justice in the report it is making to your committee merit careful consideration.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., February 9, 1968.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Commerce,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN: This is in response to your request for the views of the Department of Justice on the several bills (H.R. 611, H.R. 1422, H.R. 5867, H.R. 6283, H.R. 7830, H.R. 13323, and S. 375, which we note passed the Senate on April 24, 1967) to amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce or in the District of Columbia.

These bills each would add a new section 223 to make it a misdemeanor punishable by a fine of not more than \$500 or imprisonment for not more than 6 months, or both, for any person by means of an interstate or foreign commerce or District of Columbia telephone communication, (1) to make a comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent, (2) to make an anonymous call with intent to annoy, abuse, threaten, or harass another, (3) to make repeated calls solely to harass a person, or (4) to permit a telephone under his control to be used for a purpose prohibited by the proposed section.

The Department in its testimony on similar bills has agreed that the "obscene and harassing" phone call should properly be punishable as a criminal offense. It has been our position that enforcement of such a penal provision was primarily a matter of State concern and responsibility. We feel that it is significant for the committee to note that there are 38 States with statutes punishing such activity and that 11 of the remaining 12 are considering enactment of similar legislation. We have also stated that if a bill of this kind were enacted into law the Federal Bureau of Investigation would be obligated to investigate large numbers of complaints to determine in the first instance whether the

offending call was "inter" or "intra" state in nature. We feel this problem still exists. We are aware that the phone companies have indicated that they now have sophisticated electronic equipment which would identify the source of the call. However, we note that such equipment would only be effective in those situations where the calls are repeated. Further, it is our expectation that when the Federal remedy is available complainants in large numbers will contact the FBI directly. If this expected burden materializes it can only detract from the FBI effectiveness in other areas of higher priority.

While we oppose a Federal law enforcement role in this area, it is clear that such legislation should not preempt, or detract from, existing or future State laws. In this regard, it should be noted that the Federal Communications Act sets forth a comprehensive scheme of regulation for wire and radio communication. In so doing it does not set forth any definition of "interstate commerce" for general applicability throughout the act. In fact, the general purposes of the act make clear that the Congress intended to exercise its full authority under the commerce clause. Areas reserved to the States are expressly set forth (for example, see, 47 U.S.C. 221(b) which expressly grants State jurisdiction with respect to charges, classifications, etc., for wire service). To avoid any question of preemption we feel the bill must define "interstate commerce" to include generally only those calls which emanate from a State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and are received in any place outside thereof which is within the United States and calls wholly within the District of Columbia. Further, even within the class of "interstate" calls which would be of Federal concern there will be instances when the State from which the call originated will be the better agency to handle prosecution (as in the case of juveniles and mental defectives). To preserve this flexibility the bill should expressly allow for concurrent jurisdiction in the State from which the offending call originated (the offending acts having been committed within its boundaries).

"Sec. 223(b)" in all the bills punishes the single anonymous call where the caller's intent is to "annoy, abuse, threaten, or harass." We note that subsections (c) and (d) use only "harass" and not the descriptive series found in subsection (b). Since each of the subsections with the exception of (a) is designed to punish the use of the phone for harassment, we see no clear reason for this lack of continuity.

Although the Department of Justice is sympathetic to the objectives of these bills, we fail to see the need for Federal action in this area. For the reasons given above, we are unable to support enactment of legislation of this type.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 20, 1967.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of March 10, 1967, seeking the Commission's comments on H.R. 611, a bill to amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce.

On July 7, 1966, the Commission adopted comments on S. 2825, 89th Congress, which, as it passed the Senate on June 29, 1966, is identical to H.R. 611. It is requested that these comments, copies of which are enclosed, be accepted as the Commission's comments on H.R. 611. 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
(89TH CONG.), 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, have 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 3227 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.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

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TITLE I—GENERAL PROVISIONS

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DEFINITIONS

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

* * * * *

(e) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the

District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not, with respect to the provisions of title II of this Act (*other than section 223 thereof*), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

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TITLE II—COMMON CARRIERS

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

SEC. 223. *Whoever—*

(1) *in the District of Columbia or in interstate or foreign communication by means of telephone—*

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

(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;*

(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*

(2) *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.