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ANONYMOUS USE OF AUTOMATIC TELEPHONE DEVICES

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

S. 2693 and S. 2713

BILLS THAT WOULD AMEND THE COMMUNICATIONS ACT OF 1934 TO MAKE UNLAWFUL THE TRANSMISSION OVER A TELEPHONE OF RECORDED MESSAGES THAT DO NOT IDENTIFY THE SUBSCRIBER THROUGH WHOSE TELEPHONE SUCH MESSAGE IS TRANSMITTED

NOVEMBER 18 AND 19, 1965

Serial 89–43

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ANONYMOUS USE OF AUTOMATIC TELEPHONE DEVICES

THURSDAY, NOVEMBER 18, 1965

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met at 10 a.m. in room 5110, New Senate Office Building, the Honorable John O. Pastore, chairman of the subcommittee, presiding.

Senate PASTORE. The hour of 10 having been reached, the hearing will please come to order.

The hearing that is opening this morning is on two bills, S. 2693 and S. 2713. Both of these bills are designed to accomplish the same objective of making known the name and address of the subscribers to the so-called automatic telephone announcement services.

S. 2693 was introduced by my colleague, Senator McGee, who is here. Mr. McGee has had a long and continuing interest in this entire subject. This bill makes it unlawful for a telephone company to transmit a recorded message by a telephone connected with the toll system unless the message gives the subscribers' names and addresses. It would also require the telephone company to keep a public file of the names and the addresses.

S. 2713, introduced by Senator Javits, also requires that the carrier keep a public list of names and addresses, and directly requires any person using a telephone for a recorded message to include his name and address as part of the message. It further requires that if such message is on behalf of another person, that person's name and address shall also be given.

(The bills follow:)

[S. 2693, 89th Cong., 1st sess.]

A BILL To amend the Communications Act of 1934 to make unlawful the transmission over a telephone system of any recorded message which does not identify the subscriber through whose telephone such message was transmitted, and for other purposes

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 is amended by inserting immediately after section 222 (47 U.S.C. 222) the following new section:

"TRANSMISSION OF RECORDED MESSAGES BY TELEPHONE

"SEC. 223. (a) It shall be unlawful for any telephone company to provide for, or to permit, the transmission of any recorded message by means of a telephone connected with any message toll telephone system operated by such telephone company if such message does not state the name and address of the subscriber of such telephone.

Staff counsel assigned to this hearing: Nicholas Zapple and Robert M. Lowe.

"(b) Each telephone company shall maintain a file for identification of the name and address of each subscriber of a telephone which is connected into any message toll telephone system which it operates, and which the company knows is used for the transmission of a recorded message. Such file shall be open to the public."

SEC. 2. The amendment made by this Act shall take effect on the sixtieth day following the date of its enactment.

[S. 2713, 89th Cong., 1st sess.]

A BILL To amend the Communications Act of 1934 in order to establish certain requirements with respect to the use of recording equipment for conveying messages by telephone

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title V of the Communications Act of 1934 is amended by inserting at the end thereof a new section as follows:

"USE OF RECORDING EQUIPMENT FOR CONVEYING MESSAGES BY TELEPHONE

"SEC. 511. (a) Any carrier engaged in wire telephone communications which makes available equipment to be used in such communications for conveying recorded messages shall maintain a current listing of all persons, including the address of such persons as determined in accordance with regulations prescribed by the Commission, to whom such equipment has been made available and such listing shall be public information and shall be made available for public inspection in accordance with regulations prescribed by the Commission.

"(b)(1) Any person using the facilities of any carrier by wire telephone to communicate a recorded message shall as part of such message disclose his identity and his address, as determined in accordance with regulations prescribed by the Commission, and if such message is on behalf of another person, shall also disclose the identity of such other person and his address, as determined in accordance with such regulations. In any case where any such person is an organization, in addition to the identity of such organization, the identity of at least one responsible officer of such organization shall also be disclosed.

"(2) Any person who knowingly violates any provision of this subsection shall for each such violation, be fined not more than $5,000 or imprisoned not more than one year, or both."

Senator PASTORE. Early this summer a number of observations and strong criticisms concerning the anonymous messages recorded on automatic announcement services provided by various telephone companies were made in Congress and in the press. It was contended that such anonymous recorded message where being used to attack and abuse individuals and private and public institutions.

For example, on July 27, 1965, Senator McGee in a speech on the floor of the Senate, referred to the so-called University of Miami case and stated as follows:

In the University of Miami case, people throughout the community were called by unnamed voices the night after the teach-in and asked if they knew what was going on on the campus and that if they did not know, to dial 221-6767. Upon dialing that number, a woman's recorded voice said, in part, as follows:

"This is "Let Freedom Ring." Last Tuesday night, at Miami's own Little Red Schoolhouse, there was a strange assortment of pinks, punks, beatniks, and leftwing educators assembled for the unashamed purpose of pleading for a soft line against the Communists.

An extended diatribe then proceeded to link anyone who had participated in the affair with specifically named individuals who were accused of being Socialists, Communists, pacifists, and odd balls. A U.S. Senator who participated was likewise singled out for attack

and described as being "shoulder to shoulder with a Marxist who advocates selective assassination."

Finally, the feminine voice concluded the canned message with, "Thank you for calling. Call us Monday for a new weekly message. Let Freedom Ring."

On the same day, Senator Long of Louisiana, in relating one of his experiences, stated as follows:

> Mr. President, in my own case, I recall that sometime ago I had urged that this Nation might recommend certain changes in the structure of the United Nations.
>
> Someone put such a recorded message over the New Orleans telephone, advertised in the newspaper to dial a certain number, to "find out about your Senator," or some such thing. The advertisers turned it into propaganda, as though I were trying to turn the United Nations into a part of the Communist conspiracy. In this partciular case the people did not identify themselves at all. There were many smears and misrepresentations that came over the telephone wire by means of a recorded message when a person dialed a certain number.

An informal complaint was filed by the Anti-Defamation League with the Federal Communications Commission on August 31, 1965, urging immediate action to curb the anonymous recorded telephone messages that were being used to attack individuals and institutions. In its letter to the FCC, it stated, among other things, that:

> "Let Freedom Ring" scripts are lurid visions of a "Communist conspiracy" allegedly lurking behind civil rights, the United Nations, the U.S. Supreme Court, the last three U.S. Presidents, the State Department, the press, the National Council of Churches, the American Civil Liberties Union, and others.

Excerpts were then set out.

On September 29, 1965, the National Council of the Churches of Christ in the United States expressed deep and grave concern—

> with the rapid expansion of the commercially organized use of the Bell Telephone System's automatic announcement service equipment responding to widely disseminated, unrecorded telephone numbers and thereby broadcasting, interstate and intrastate, anonymous, flagrantly defamatory attacks and libels on individuals and institutions and sowing fear, distrust, strife, and hate through the communities of our land—

then proceeded to outline the specific messages it had in mind.

Recently the NBC Huntley-Brinkley newscast discussed this issue as it involved the parent-teachers' association and at this point I will have the audio portion of that newscast played.

(The recording follows:)

> Mr. BRINKLEY. The National Congress of Parents & Teachers charged a rightwing group is waging a scurrilous campaign against the PTA with recorded telephone messages. The messages are being heard in 45 cities, including Chicago. Floyd Calber reports:
>
> "Mr. CALBER. A former Navy flight surgeon, Dr. William Campbell Douglass, of Sarasota, Fla., formed the National Anti-Communist Telephone Network, claiming he wants to do something about encroaching socialism and communism.
>
> "In order to get his recorded message into a city he needs an active telephone number. In Chicago the number is registered to a Northwest Side residence. A woman living there admitted she belonged to Dr. Douglass' rightwing group, but she would say no more.
>
> "Here is a part of the recorded telephone message concerning the PTA:
>
> "'VOICE. The PTA is basically a political lobby for leftwing educators who work closely with the bureaucrats in the U.S. Office of Education to completely federalize our schools in the Russian manner. You are one of 12 million sheep routinely noted as concurring in the socialistic and Marxist schemes of the National Congress of Parents & Teachers which works in collusion with the Federal Government.

" 'Next week we will take a closer look at the Marxist attitudes of the PTA.
" 'Let freedom ring.'
"Mr. CABER. This message has produced a strong reply from Mrs. Jean L. Moorehead, national president of the PTA. She calls it despicable, and on the claim our schools are being federalized in the Russian manner said this:
" 'Mrs. MOOREHEAD. That is a lie. That is not true. There is no organization that has worked harder for the local control of public schools than has the PTA.
" 'We are engaged right now in our program of the critical issues of our democracy, of urging our 47,000 units across the United States to work with their local school boards. So to say that we are a party to that kind of a scheme is, I think, slanderous.'
"Mr. CALBER. Mrs. Moorehead has complained to the telephone companies who in turn say they cannot act as censors and they find no grounds for withdrawing or refusing service. But the Federal Communications is investigating an earlier complaint.
"Floyd Calber, NBC News, Chicago."

Senator PASTORE. The American Telephone & Telegraph Co., being aware of the public irritation resulting from the activities of those who sponsored the "Let Freedom Ring" recorded announcement, voluntarily moved ahead with a policy that stripped the cloak of anonymity from these messages, when it advised its associated Bell companies of the need for filing appropriate tariffs that would have for its purpose the identification of subscribers who transmitted recorded public announcements over facilities provided by the company, the name of the organization or individual responsible for the service, as well as the address at which the service is provided.

It should be made clear at this point—and I emphasize this—that the bills—the subject of today's hearings—are in no way to deal with the contents of the messages. No attempt is made to censor the contents.

The action being sought here through the legislation as well as through the voluntary action of the telephone companies will result in pushing back the cloak of anonymity which hides an individual or an organization that attacks, abuses, or defames another person or institution through the use of automatic telephone recording devices. The voice on the recorded telephone message thus will take on a real identity by requiring the subscribers to include in the recorded message the name and address of the subscriber of such telephone.

In order to make sure that all aspects of this problem were covered, the committee asked each public utilities commission in the 50 States, including the District of Columbia, for their observations and recommendations. Copies of their replies have been received and will be made part of the record at this time.

(The communications follow:)

ARKANSAS PUBLIC SERVICE COMMISSION,
Little Rock, November 15, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SIR: This will acknowledge receipt of your letter dated October 27, 1965, concerning Senate bills S. 2693 and S. 2713 amending the Communications Act of 1934.

You will please be advised that the Southwestern Bell Telephone Co. has filed with this commission a tariff that we think will render these two bills unnecessary to accomplish.

Yours very truly,

LEWIS M. ROBINSON, *Chairman.*

DELAWARE PUBLIC SERVICE COMMISSION,
Dover, November 16, 1965.

NICHOLAS ZAPPLE, Esq.,
Communications Counsel, U.S. Senate,
Committee on Commerce, Washington, D.C.

DEAR MR. ZAPPLE: Thank you for your letter of October 27, 1965, which forwarded two bills, S. 2693 and S. 2713, which would amend the Communications Act of 1934 in respect to the transmission of recorded messages through the telephone system.. Your thoughtfulness in extending to me the opportunity to express my views and comments on this matter are sincerely appreciated.

We had already discussed this subject with the Diamond State Telephone Co. and have been informed of the steps they have taken to make available the names of those subscribers who make use of recorded announcement service for the dissemination of anonymous recorded messages. Their practice will serve to identify such subscribers to the public. A statement of this policy has been released to the press by the company.

In addition to their public statement of policy on the matter, the Diamond State Telephone Co. is also reviewing the possibility of a tariff filing covering identification of the customer disseminating the message over the recorded announcement service. Because of the availability of this information, the establishment of additional records and the continuing maintenance thereof would appear to be unnecessary.

Thank you again for your consideration. I will inform you of any further comments I may have in respect to this matter. We welcome the opportunity to provide our views for your consideration.

Very truly yours,

VERNON B. DERRICKSON, *Chairman.*

FLORIDA PUBLIC UTILITIES COMMISSION,
Tallahassee, November 12, 1965.

Mr. NICHOLAS ZAPPLE,
Communication Council, U.S. Senate,
Committee on Commerce, New Senate Office Building,
Washington, D.C.

DEAR MR. ZAPPLE: I have your letter of October 27 enclosing copies of Senate bills S. 2693 and S. 2713 suggesting certain amendments to the Communications Act of 1934 in connection with transmission over telephone systems of recorded messages.

I delayed a few days replying to your communication because, although this commission had approved certain tariff filings dealing with this subject, we had been advised that further tariff filings were to be made by Southern Bell Telephone & Telegraph Co. related to the same matter and I desired to give you as complete information as possible.

This commission has approved tariff provisions in connection with automatic answering and recording service. The tariffs filed by Southern Bell Telephone & Telegraph Co., General Telephone Co. of Florida, and Southeastern Telephone Co. provide an additional rule in connection with providing such service, reading as follows: "The automatic answering and recording service will not be furnished with nonpublished telephone service." The commission has been advised that a similar provision will be proposed for approval in the tariff of Inter-County Telephone & Telegraph Co. and Florida Telephone Co.

This commission has further addressed a communication to all of the other telephone companies operating in Florida requesting that a similar tariff provision be filed by each of them. This tariff provision will permit the telephone company, when requested by an inquirer, to advise the name of the organization providing such recorded messages.

This commission further, on November 5, approved a tariff filing by Southern Bell Telephone & Telegraph Co. for additional rules in its "Rules and Regulations Applying to All Subscribers' Contracts" applicable to recorded public announcements. We are enclosing for your information a copy of this new tariff provision. You will note from the enclosed copy of the new tariff provision that it requires subscribers to telephone service who transmit recorded public announcements to include in the recorded message the name of the organization or individual responsible for the service and the address at which the service is provided. This new tariff provision further provides that such service will not be furnished in connection with nonpublished telephone service.

This commission will, as promptly as possible, request each of the telephone companies operating in Florida under this commission's jurisdiction to file similar tariff provisions.

I would comment that the tarff filings referred to above adequately meet the main thrust of the provisions of Senate bills S. 2693 and S. 2713 and this commission believes these will adequately control this particular situation.

Yours very truly,

EDWIN L. MASON, *Chairman.*

SOUTHERN BELL TELEPHONE & TELEGRAPH CO.

FLORIDA

GENERAL EXCHANGE TARIFF

RULES AND REGULATIONS APPLYING TO ALL SUBSCRIBERS' CONTRACTS

Section 29

20. *Recorded public announcements*

Use of telephone company facilities or service in connection with automatic announcement service, automatic answering and recording service, recorder-coupler service or miscallenous devices for recorded public announcements are subject to the following conditions:

(*a*) For purposes of identification, subscribers to telephone service who transmit recorded public announcements over facilities provided by the company must include in the recorded message the name of the organization or individual responsible for the service and the address at which the service is provided.

(*b*) Subscribers transmitting factual public announcements such as time, stock market quotations, airline schedules, and similar information are excluded from the preceding condition.

(*c*) Nonpublished telephone service will not be furnished for use with recorded public announcements.

(*d*) Failure to comply with the provisions of this tariff shall be cause for termination of the service.

(By L. E. Rast, vice president and general manager, Jacksonville, Fla.)

NEW YORK PUBLIC SERVICE COMMISSION,
Albany, November 10, 1965.

NICHOLAS ZAPPEL, Esq.,
Communications Counsel,
Senate Committee on Commerce,
Subcommittee on Communications,
Senate Office Building,
Washington, D.C.

DEAR MR. ZAPPLE: I have your letter of October 27, 1965, enclosing copies of S. 2693, which would amend the Communications Act of 1934 to make unlawful the transmission over a telephone system of any recorded message which does not identify the subscriber through whose telephone such message was transmitted, and for other purposes; and S. 2713 which would amend the same act to establish certain requirements with respect to the use of recording equipment for conveying messages by telephone. You solicit our views and comments.

We believe that the purposes of both measures may be accomplished administratively, both interstate and intrastate, and that, therefore, enactment of neither measure is required at this time.

For instance, tariff revisions recently filed with this commission by the New York Telephone Co. to become effective November 1, 1965, provide that the company will furnish, upon request, the name and address of the subscriber to whose telephone automatic announcement facilities are connected. Further, it is understood that the company contemplates filing in the very near future additional tariff revisions designed to require the sponsor of such recorded messages to identify himself by name and address on the tape or other recording facility. The latter requirement will pertain to all such announcements other than those which are purely factual such as time, weather, stock market quotations, airline schedules, etc. We understand that similar

tariff revisions have been or are about to be filed by other members of the Bell System with other State commissions throughout the country. We further understand that similar tariff revisions have been or will be filed with the Federal Communications Commission covering interstate service.

This method of regulating (restricting or conditioning the use of) recorded announcements and related telephone facilities is quite effective. Operating telephone companies must abide thereby under potential penalties of various kinds prescribed by State and Federal law. Under the circumstances, therefore, we see no need for resort to the direct legislative means of rectifying abuses which have recently been brought to light and which undoubtedly provided the inspiration for these measures.

Sincerely yours,

JAMES A. LUNDY, *Chairman.*

THE STATE OF WYOMING,
BOARD OF EQUALIZATION AND PUBLIC SERVICE COMMISSION,
Cheyenne, November 3, 1965.

COMMITTEE ON COMMERCE,
U.S. Senate,
Washington, D.C.
(Attention: Nicholas Zapple, Esq., communications counsel.)

DEAR MR. ZAPPLE: This is to thank you for providing our commission with copies of two bills recently introduced in the U.S. Senate:

(1) S. 2693 introduced by Wyoming's Senator McGee, which would amend the Communications Act of 1934 to make unlawful anonymous recorded messages transmitted over a telephone system; and

(2) S. 2317 introduced by Senator Javits, which would amend the said act to establish certain requirements with respect to use of recording equipment for converying messages by telephone.

The subject bills and the press release of Senator J. O. Pastore, chairman of the Subcommittee on Communications of the Senate Committee on Commerce, announcing that hearings will be held thereon on November 18 and 19, 1965, have been duly noted by this commission.

This is to inform you that by its letter directive dated October 5, 1965, the Wyoming Public Service Commission approved restrictive regulations requiring that subscribers transmitting recorded messages over a Wyoming intrastate telephone system must be identified.

We appreciate your cooperation in this matter.

Very truly yours,

RICHARD J. LUMAN,
Chairman, Public Service Commission.

KANSAS STATE CORPORATION COMMISSION,
Topeka, Kans., November 10, 1965.

MR. NICHOLAS ZAPPLE,
Communications Counsel,
U.S. Senate Committee on Commerce,
Washington, D.C.

DEAR MR. ZAPPLE: Thank you for your letter of October 27, 1965, enclosing two bills, S. 2693 and S. 2713. Since I will be in Washington on November 18 and 19 on matters pertaining to the Federal Power Commission I plan to attend some of your hearings in room 5110, New Senate Office Building, on those dates.

Since in most instances the calls or messages involved in both bills would be strictly intrastate in that they would originate in one town and terminate in one town, I am somewhat perplexed about the congressional authority with respect to such legislation. I can readily see that the legislation might be applicable to calls transmitted in interstate commerce from one State to another, but I would imagine this would entail a great minority of the instances involved. Therefore I would appreciate your advice as to the necessity for such legislation and whether or not you feel it is a proper matter for congressional legislation or whether it should be confined solely to State legislation or at least supplemented by State legislation on local calls.

Very truly yours,

WILLIAM L. MITCHELL, *Chairman.*

TENNESSEE PUBLIC SERVICE COMMISSION,
Nashville, Tenn., November 10, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: This acknowledges receipt of your letter of October 27 requesting my views on S. 2693 and S. 2713, same being bills which pertain to the use of recording equipment and the transmission of recorded messages over telephones.

I submitted your said letter and its attachments to Mr. George W. Shuff, general counsel for this commission and he has furnished me with a memorandum dated November 10 which is self-explanatory in its nature and a copy of which I enclose for your information.

I believe that Mr. Shuff's communication to me sets forth my views on the subject. I am also enclosing copies of the tariffs referred to by Mr. Shuff in his memorandum.

Yours very truly,

HAMMOND FOWLER, *Chairman.*

NOVEMBER 10, 1965.

To: Chairman Fowler.
From: George Shuff, general counsel.
Subject: Senate hearing on bills S. 2693 and S. 2713.

I have discussed the above-mentioned Senate bills with the commission's staff and reviewed this commission's intrastate tariffs relative thereto and it would appear that the proposed legislation would not have any benefits insofar as Tennessee subscribers of Southern Bell Telephone & Telegraph Co. are concerned inasmuch as the company has heretofore amended its general exchange tariff sheet 35, third revised sheet 4, section 37; ninth revised sheet 2, both of which became effective October 16 and has proposed an amendment which will become effective on and after November 10 applicable to section 29, original sheet 6 of its general exchange tariff, all of which accomplish the purposes for which the two subject Senate bills are proposed.

It, therefore, is our opinion that insofar as Tennessee is concerned, there are no benefits to be provided Tennessee telephone subscribers by the adoption of the Federal legislation. This assumes, of course, that all of the independent companies in Tennessee capable of providing a service similar to that offered by Southern Bell would accordingly amend their tariffs so as to provide identification of the responsible person for whom the recording is transmitted as a condition precedent to accepting a subscriber request.

SOUTHERN BELL TELEPHONE & TELEGRAPH CO.

TENNESSEE

GENERAL EXCHANGE TARIFF

CONNECTION WITH CUSTOMER-PROVIDED RECORDING, REPRODUCING, AND AUTOMATIC ANSWERING AND RECORDING EQUIPMENT

Section 35

A. Regulations

* * * * * * *

2. Basis of connection:

* * * * * * *

(*d*) The magnitude and character of the electrical signals delivered to the telephone company connecting equipment referred to in 1, above, from customer-provided equipment and the operation and maintenance of such customer-provided equipment shall be such as not to interfere with any of the services offered by the telephone company. The customer-provided equipment shall operate in such a manner as to avoid hazard or damage to telephone company plant, or injury to telephone company employees or

customers, because of the character or location of the customer-provided equipment and of sources of power to which it is connected. Upon notice from the telephone company that the equipment of the customer is causing or is likely to cause hazard or interference, the customer shall make changes as may be necessary to remove or prevent such hazard or interference.

(*e*) Customer-provided reproducing and automatic answering and recording equipment shall not be used with nonpublished telephone service.

3. Responsibility of the telephone company:

(*a*) Telephone service furnished by the telephone company is not represented as adapted to the recording of telephone conversations or incoming messages, or to the transmission of prerecorded messages. The use of customer-provided recording, reproducing, and automatic answering and recording equipment in connection with the facilities of the telephone company is permitted only on the condition that the liability of the telephone company for damages arising out of mistakes, omissions, interruptions, delays, or errors or defects in transmission, or failures or defects in the telephone company connecting equipment occurring in the course of furnishing service and not caused by negligence of the customer, or of the telephone company in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision, shall in no event exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake, omission, interruption, delay, or error or defect in transmission, or failures or defects in the telephone company connecting equipment occurs.

* * * * * * *

5. Where the automatic answering and recording equipment provided by the telephone company incorporates the use of a disk for recording the message from the calling party, one disk for such purpose will be furnished at the time of installation without additional charge. Additional disks will be furnished upon request in quantities of 10 or any multiple thereof at the rates specified in paragraph B, below.

6. The automatic answering and recording service is not to be used for time of day, weather reports, and other similar services which induce a large volume of telephone calls to be directed to the customer at or about the same time resulting in, preventing, obstructing, or delaying the telephone service of others.

7. The automatic answering and recording service will not be furnished with nonpublished telephone service.

B. Rates

1. The following charges apply to the automatic answering and recording service and are in addition to the other rates and charges applicable to the associated telephone facilities and service:

	Nonrecurring charge	Monthly charge
(*a*) Automatic answering equipment:		
(1) With an answering cycle of 1 minute [1]	$16.50	$9.90
(2) With an answering cycle of 2 or 3 minutes, including remote operation keys	20.00	12.00

[1] Discontinued offering. Rates shown applicable only to equipments in service on Nov. 18, 1961.

RULES AND REGULATIONS APPLYING TO ALL SUBSCRIBERS' CONTRACTS

Section 29

30. Use of telephone company facilities or service in connection with automatic announcement service, automatic answering and recording service, recorder-coupler service, or miscellaneous devices for recorded public announcements are subject to the following conditions:

(*a*) For purposes of identification, subscribers to telephone service who transmit recorded public announcements over facilities provided by the company must include in the recorded message the name of the organization or individual responsible for the service and the address at which the service is provided.

(*b*) Subscribers transmitting factual public announcements such as time, stock market quotations, airline schedules, and similar information are excluded from the preceding condition.

(*c*) Nonpublished telephone service will not be furnished for use with recorded public announcements.

(*d*) Failure to comply with the provisions of this tariff shall be cause for termination of the service.

IDAHO PUBLIC UTILITIES COMMISSION,
Boise, November 10, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: It is probably the intent of the sponsors of S. 2693 and S. 2173 to inhibit or cut back on obnoxious, anonymous recorded phone messages. The added regulations may create more problems than the sponsors of this legislation may realize. There are weather reports, time-of-day messages, and other matters of public interest that technically would fall under the wording of this act, and if the Federal Communications Commission is to be a rulemaking body and determine which type of message shall be covered, then nothing has been accomplished. It is very simple for any regulatory body to require that the name of any subscriber using recording messages can be ascertained and that the listing be made a public record.

It is my considered judgment that the telephone company would be acting somewhat in the way of a censor. The telephone company and Federal and State regulators have enough problems dealing with economic questions and should not be placed in the position of having to decide whether a message is political, a hate message, or whether, in fact, it may be in the public interest and does not need disclosure of name, address, and principal officer.

To the best of my knowledge no abuses have existed in Idaho, and if a problem does exist in some areas then it would seem best to solve that problem locally.

Sincerely yours,

RALPH H. WICKBERG, *President.*

CORPORATION COMMISSION OF OKLAHOMA,
Oklahoma City, Okla., November 10, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR NICHOLAS: I am in receipt of your letter of October 27, in connection with the provisions of Senate bills 2693 and 2713.

We have reviewed these bills, as requested, and it seems to us that they are unnecessary, as far as Oklahoma is concerned. Revised tariffs, filed with our commission, dealing with the major portion of telephone subscribers, which became effective October 1, 1965, provide that the telephone company will furnish, upon request, the name and address of the customer to exchange service when such service is used to provide recorded announcements. In the case of a corporation, the tariffs also provide that telephone company will furnish, according to its records, the name of the corporation and its officers.

We would hope that these tariffs would solve the problem and, if they do not, we have sufficient authority to provide whatever regulation is necessary.

Sincerey yours,

RAY C. JONES, *Chairman.*

OHIO PUBLIC UTILITIES COMMISSION,
Columbus, Ohio, November 12, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce, Communications Subcommittee, U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: In response to your letter of October 27, 1965, please be advised that the Ohio Public Utilities Commission has authorized the filing of tariffs by Ohio Bell and others in which the companies undertake to disclose

upon request the sponsor of recorded telephone messages. The commission has not required such filings but has accepted and approved them when offered by a telephone company, as being in the best interests of the public.

As to the bills introduced by Senators McGee and Javits, this commission would not be in complete accord for the following reasons:

(1) It seems unnecessary to require the inclusion in the recorded message of all the information indicated provided the companies maintain adequate records and disclose the name and address of the sponsor upon request.

(2) The bills propose to prohibit the use of recorded messages not in accordance with the terms and conditions of the proposed statute regardless of whether the message is interstate or intrastate, thus invading the jurisdiction of State commissions.

(3) The possibility that the telephone companies will be required to censor recorded messages. Certainly they will have to monitor all known recorded message subscribers in order to verify compliance with the proposed statutes.

(4) Insofar as Senator Javits' bill makes a violation subject to fine and imprisonment it seems too harsh.

I trust this satisfactorily states the position of the Ohio commission.

Yours very truly,

CARL R. JOHNSON, *Chairman.*

IOWA COMMERCE COMMISSION,
Des Moines, Iowa, November 9, 1965.

MR. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: This is response to your letter of October 27, 1965, together with copies of two bills; namely, S. 2693 and S. 2713, on which the views and comments of this commission are solicited.

No complaints concerning the situations proposed to be covered by the legislation have come to the attention of this commission. Under these circumstances, we assume there is no critical situation concerning the same in the State of Iowa. We are concerned with the additional cost of policing telephone messages as required, for example, by section 223 of bill S. 2693, which reads in part as follows:

"It shall be unlawful for any telephone company to * * * permit the transmission of any recorded message by means of a telephone connected with any message toll telephone system operated by such telephone company if such message does not state the name and address of the subscriber of such telephone."

Likewise, under section 511 of bill S. 2713, the telephone company is required to maintain a list of subscribers in accordance with regulations prescribed by the Federal Communications Commission and make such list available to the public.

We hope that all costs incurred in such legislation will be considered a part of the cost of interstate commerce and will not be made a burden on intrastate commerce, over which this commission has jurisdiction, and from which costs it must determine rates. We suggest both bills be amended to make certain this is the case.

Very truly yours,

BERNARD J. MARTIN, *Chairman.*

MICHIGAN PUBLIC SERVICE COMMISSION,
Lansing, Mich., November 8, 1965.

MR. NICHOLAS ZAPPLE,
Communications Counsel,
U.S. Senate, Committee on Commerce,
Washington, D.C.

DEAR MR. ZAPPLE: This is in reply to your letter of October 27, 1965, regarding bills, S. 2713 and S. 2693, which would amend the Communications Act of 1934.

Concerning the sections of the bills which would make unlawful the transmission over a telephone system of any recorded message that does not identify

the subscriber through whose telephone such message is being transmitted, the Michigan Public Service Commission concurs in the purpose and need of such a bill. It is this commission's belief that the source of recorded announcements offered for the public consumption should be identified. Accordingly, our order No. U–2109 setting forth such requirement of identification was authorized for the tariff of Michigan Bell Telephone Co. on September 23, 1965. Because of the possible serious consequences of anonymous telephone messages through the use of the facilities of other telephone companies in this State, I propose to direct my telephone staff to invite similar applications from all companies within the State of Michigan which presently offer automatic public announcement services or recorded announcement services. I have attached a copy of order No. U–2109 for your inspection.

Concerning the sections of the bills which would require any carrier providing equipment to be used for conveying recorded messages to maintain a current listing of all persons, including addresses, and that such list shall be open to the public, no such requirement exists in present MPSC tariffs. It would appear that the existence of such a list, which would be available to the public, should reduce the volume of irresponsible messages via the telephone public announcement services or recorded announcement services. I intend to review this facet of the bills with regard to determining whether commission action is needed in this area.

Thank you for inviting my views in this matter. I will follow this legislative activity with full interest.

Yours very truly,

PETER B. SPIVAK, *Chairman.*

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Case No. U–2109

In the matter of the application of the Michigan Bell Telephone Company for authority to revise its tariff MPSC Nos. 2 and 7 in order to insure that the source of announcements and messages offered for public consumption by means of automatic public announcement service is readily identifiable

At a session of the Michigan Public Service Commission held at its offices in the city of Lansing, Mich., on the 23d day of September, A.D. 1965.

Present: Hon. Peter B. Spivak, chairman; Hon. John E. Tormey, Commissioner; Hon. George Washington, Commissioner.

APPROVAL OF APPLICATION

On September 23, 1965, an application in the above matter was filed by Michigan Bell Telephone Co., hereinafter referred to as "applicant."

The applicant, a Michigan corporation, requests commission authority to revise its tariff MPSC Nos. 2 and 7 in order to insure that the source of announcements and messages offered for public consumption by means of automatic public announcement service is readily identifiable.

From the application and records and files of the Commission, it appears that:

1. Applicant presently offers automatic public announcement service which allows subscribers to record announcements or messages which can be received by anyone who calls the number on which the automatic public announcement service is provided. Subscribers to this service may also use it for announcements and messages sponsored by others, and may obtain this service on a nonpublished basis. In addition, subscribers are not required to identify themselves or their sponsors in the recorded announcement or message.

2. It has been brought to applicant's attention that certain subscribers to automatic public announcement service have caused considerable concern because of the message content of the recorded announcements offered for public consumption. This concern is increased in those cases where the recorded announcements are anonymous and there is no way for the public to ascertain their source.

3. It is applicant's belief that the source of recorded announcements offered for public consumption should be identifiable. Accordingly, applicant proposes

to revise its Tariff MPSC Nos. 2 and 7 to provide that automatic public announcement service will not be provided on a nonpublished basis, and in order to provide that the customers subscribing to the service will be required to identify themselves or the sponsors of the message at some point in the recorded message or announcement. Attached to the application as exhibit 1, are proposed Tariff MPSC Nos. 2 and 7 sheets incorporating applicant's proposals and also containing certain textual changes. Corresponding present tariff sheets are attached to the application as exhibit 2.

4. No customer's rates, charges or services would be adversely affected by applicant's proposals.

The Commission having carefully considered the matter before it and being advised in the premises finds that the applicant's proposal is just, reasonable, in the public interest and that the application should be granted.

THEREFORE, IT IS ORDERED that Michigan Bell Telephone Co. is hereby authorized to prepare and submit to the Commission, for approval and filing, revised Tariff M.P.S.C. Nos. 2 and 7 sheets, represented by those sheets attached to the application as exhibit 1, which application is by reference made a part of this order to insure that the source of announcements and messages offered for public consumption by means of automatic public announcement service is readily identifiable.

The Commission specifically reserves jurisdiction of the matters herein contained and the authority to issue such further order or orders as the facts and circumstances may require.

MICHIGAN PUBLIC SERVICE COMMISSION,
PETER B. SPIVAK, *Chairman.*
JOHN E. TORMEY, *Commissioner.*
GEORGE WASHINGTON, *Commissioner.*

[SEAL]

By the Commission and Pursuant to its action of September 23, 1965.

NORMAN BERKOWITZ, *Secretary.*

MINNESOTA RAILROAD & WAREHOUSE COMMISSION,
St. Paul, November 4, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: Reference is made to your letter of October 27, 1965, wherein you ask for our views and comments on two bills, S. 2693 and S. 2713, now before your committee. These bills have to do with the regulation of individuals and organizations who transmit recorded messages over telephone lines.

Just recently our commission approved a tariff filed by the Northwestern Bell Telephone Co. which forbids any subscriber to said company from having a nonpublished telephone number if said subscriber is transmitting prerecorded messages over his telephone line. Under this tariff the telephone company will, upon inquiry from the person offended by a recorded message, reveal the name and address of the subscriber to the telephone service who transmitted the message. A copy of this tariff, properly marked, is enclosed herewith.

Our experience in Minnesota indicates that we have had no trouble from individuals and organizations transmitting undesirable messages and/or propaganda from recording units attached to telephone lines. We can visualize that such legislation as is proposed by the above bills would have little, if any, control over messages transmitted by customer-owned recording units which are acoustically coupled to telephone handsets. It is our belief that there are many customer-owned units with the acoustical coupling feature that are in service throughout the country. Such units would be difficult for any telephone company to locate, and it appears to us that the two bills mentioned herein fail to cope with this type of recording unit and the user thereof. It appears to us that such legislation as is proposed in these bills would be very costly and difficult to administer by the telephone companies as well as by the regulatory authorities throughout the country.

We further feel that a telephone company may file tariffs such as the Northwestern Co. has done which will control to a very high degree, at a minimum of expense to the telephone company, in the few instances where the transmission of propaganda by individuals or organizations might occur.

We hope that the material contained herein may be of some assistance to you.

Sincerely yours,

PAUL A. RASMUSSEN, *Chairman.*

NORTHWESTERN BELL TELEPHONE CO., STATE OF MINNESOTA

GENERAL EXCHANGE TARIFF

CONNECTIONS WITH CUSTOMER-OWNED EQUIPMENT AND FACILITIES

Section 25

D. Recording, reproducing, and automatic answering and recording equipment

Regulations—1. *General.*

* * * * * * *

(*b*) Recording of incoming messages only:

(1) Connection of customer-provided recording equipment with the facilities of the telephone company for the recording of incoming messages only shall be made through connecting equipment furnished, installed, and maintained by the telephone company. Such connecting equipment permits an attendant to use telephone sets furnished on the same line to monitor the recording of incoming messages but physically prevents recording during two-way telephone conversations. A recorder tone is not required.

(*c*) Transmission of prerecorded messages:

(1) Connection of customer-provided reproducing equipment with the facilities of the telephone company for the transmission of prerecorded messages shall be made through connecting equipment furnished, installed, and maintained by the telephone company.

(2) Listings for central office lines with which customer provided equipment is asssociated for the purpose of transmitting prerecorded messages may be shown in the directory and on information records or on information records only. Listings for such lines will not be omitted from both the directory and information records.

(*d*) Automatic answering and recording equipment:

(1) Connection of customer-provided automatic answering and recording equipment with facilities of the telephone company for transmitting a prerecorded message to the calling party, if desired, and recording an incoming message only shall be made through connecting equipment furnished, installed, and maintained by the telephone company. Such connecting equipment will automatically trip the ringing and hold the connection.

(2) At the request of the customer, automatic answering equipment for transmitting the prerecorded message will be provided by the telephone company at the charges shown in section 11 of this tariff.

BOARD OF RAILROAD COMMISSIONERS,
PUBLIC SERVICE COMMISSION OF MONTANA,
Helena, November 8, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SIR: In response to your letter of October 27, 1965, concerning the above, we wish to advise that the Montana Public Service Commission has approved tariffs for the Mountain States Telephone Co. covering the subject matter of S. 2693 and S. 2713 insofar as it applies to intrastate service.

Sincerely yours,

W. M. JOHNSON, *Auditor.*

ILLINOIS COMMERCE COMMISSION,
Springfield, November 2, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: Relative to your letter of October 27 concerning my views on S. 2693 and S. 2713, the subject matter of these bills concerns me deeply, and I do not believe the solution to be as simple as it appears on the face of it.

I am aware that there certainly has been an abuse of the service by certain groups of people.

I also am aware that legitimate organizations and business firms are using this service for legitimate and legal purposes.

I also am aware that to require the identification suggested might require an exorbitant proportion of a short 2-minute message.

I feel that some solution should be resolved. We in Illinois have approved and ordered that Illinois Bell disclose all of these identifications to anyone requesting such information. I believe that this was a good move. Whether it is sufficient to solve the problem, I am not yet ready to say. At least it doesn't put any burden on the legitimate use of the service.

I am happy to have the opportunity to give the benefit of my experience.

Respectfully yours,

JAMES W. KARBER, *Chairman.*

MARYLAND PUBLIC SERVICE COMMISSION,
Baltimore, Md., November 4, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. ZAPPEL: This will acknowledge the receipt of your letter dated October 27, 1965, enclosing two bills, S. 2693, which would amend the Communications Act of 1934 to make unlawful the transmission over a telephone system of any recorded message which does not identify the subscriber through whose telephone such message was transmitted, and for other purposes; and S. 2713, which would amend the Communications Act of 1934 in order to establish certain requirements with respect to the use of recording equipment for conveying messages by telephone.

I have reviewed both of these bills and feel that they would serve a useful purpose. While it is possible that the proposed legislation could create some additional burden on the telephone utility industry by requiring it to keep additional records, this in itself should not act to prevent the passage of necessary or desirable legislation.

I would also like to add that the Chesapeake & Potomac Telephone Co. of Maryland is now adhering to the purpose of this legislation on a voluntary basis.

Very truly yours,

SOLOMON LISS, *Chairman.*

NORTH CAROLINA UTILITIES COMMISSION,
Raleigh, November 5, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: With reference to your letter of October 27, 1965, relative to S. 2693 and S. 2713, this commission has had under consideration for some time the provisions of the two respective bills.

We have on file by Southern Bell Telephone & Telegraph Co., who serves approximately 55 percent of the telephone population in this State, tariffs which provide for essentially the same regulation as proposed by S. 2693 and S. 2713. In addition, the independent telephone companies operating in North Carolina, who serve the remaining 45 percent of the telephone population, either have tariffs on file for the respective members or a letter of intent to file tariffs within the next few days similar to those filed by the North Carolina Bell Co. In other words, this matter is being handled in North Carolina on the State level which depicts our views relative to the subject matter under consideration by your committee.

Very truly yours,

H. T. WESTCOTT, *Chairman.*

INDIANA PUBLIC SERVICE COMMISSION,
Indianapolis, November 5, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, U.S. Senate Committee on Commerce,
New Senate Office Building, Washington, D.C.

DEAR MR. ZAPPLE: The Public Service Commission of Indiana appreciates your recent letter in regard to S. 2693 and S. 2713 and the opportunity to make comment regarding the bills.

The Indiana commission has no objection to section 223(b) of S. 2693 nor to section 511(a) of S. 2713. Both are reasonable provisions and would make available information, as to the parties responsible for any recorded message. However, section 223(a) of S. 2693 and section 511(b) of S. 2713 are unduly restrictive and serve no useful purpose. Recorded telephone messages serve many useful purposes and their use should not be restricted by either of the above provisions.

The fact that a subscriber's name and address are on file with the telephone company is sufficient information to permit any person, who feels that he is wronged by a message, to file action in a court.

The penalty provision of S. 2713 seems unduly harsh for a violation of the action. However, the committee will have sufficient facts to evaluate this section.

Very truly yours,

MERTON STANLEY, *Chairman.*

GEORGIA PUBLIC SERVICE COMMISSION,
Atlanta, Ga., November 3, 1965.

MR. NICHOLAS ZAPPLE,
Communications Counsel,
U.S. Senate,
Washington, D.C.

DEAR MR. ZAPPLE: Thank you for the opportunity afforded us to express the views of this commission on the two bills, S. 2693 and S. 2713, dealing with the use of telephone subscribers of automatic announcement recordings to transmit anonymous messages.

The Georgia Public Service Commission has already approved tariffs filed by some telephone companies which would deny this service to nonpublished numbers and would require the subcribers to identify themselves in the recorded message. This tariff provision should fulfill the need for identification which was formerly lacking.

Any other evils of the misuse of this service would likewise be corrected by tariff provisions or by rules and regulations of the State commission. To the extent that any telephone company under this commission's jurisdiction fails to take voluntary steps to curb any unfair practices, this commission can prescribe regulations to correct such evil.

Our commission has always construed exchange service as being purely an intrastate matter and not subject to the control of the FCC, which is empowered to make interstate toll rates.

For these reasons, the Georgia Public Service Commission does not feel that legislation by Congress is necessary to deal with the problem which this commission is empowered to remedy and has already done so.

Very truly yours,

CRAWFORD L. PILCHER, *Chairman.*

ARIZONA CORPORATION COMMISSION,
Phoenix, November 2, 1965.

MR. NICHOLAS ZAPPLE,
Communications Counsel, U.S. Senate,
Committee on Commerce, Washington, D.C.

DEAR MR. ZAPPLE: In reply to your letter of October 27, 1965, referring to the two bills you enclosed, S. 2693 and S. 2713, you may be assured that I am in full accord with the intent of said bills. If, with the adoption of one of these bills, this writer feels that the intrastate aspect of this situation is not fully covered, I will seek to remedy it at the State level.

We have run into the problem of recorded messages which are offensive to people in Arizona. I feel that the proposed legislation will go a long way to discourage offensive recorded messages.

If I can be of further service to you in this matter, please call upon this commission.

Sincerely,

MILTON J. HUSKY,
Chairman.

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION,
Concord, November 2, 1965.

NICHOLAS ZAPPLE,
Communications Counsel, U.S. Senate,
Committee on Commerce, Washington, D.C.

DEAR MR. ZAPPLE: This will acknowledge receipt of your informative letter dated October 27, 1965, relative to S. 2693 and S. 2713.

It appears to this commission that identification of anyone using a public utility communications system is not undesirable and even has certain merit. If nothing more, it is courteous. Beyond this it would seem desirable that use of public facilities should not be cloaked in anonymity. It is our opinion that such legislation would be in the public interest.

Sincerely yours,

FREDERICK N. CLARK, *Chairman.*

DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION,
Washington, D.C., November 3, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel,
Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. ZAPPLE: Your letter of October 27, 1965, requests my views and comments on Senate bills S. 2693 and 2713.

I have been aware for sometime of complaints concerning the dissemination of prerecorded messages and under date of September 20, 1965, the following modification of the telephone tariff covering regulations and rates of "automatic answering service" here in the District of Columbia was made effective:

"6. Where equipment is used to provide prerecorded messages for the general public, the subscriber's name, or that of an agent in the case of business service, shall be made available to the public upon request."

I note that the proposed bills make it mandatory for full disclosure of the name and address of the telephone subscriber authorizing the prerecorded message connected with "* * * any message toll telephone system * * *" and require the maintenance by the company of a listing of all persons to whom such equipment has been made available and that such listing be open to the public for inspection.

In my opinion, the authorship of prerecorded messages should be disclosed, but the maintenance of a public list of all subscribers with an answering-service device is not necessary and may work a hardship upon such subscribers through making public a list of unattended offices. Many doctors and other professional people use such a device for their convenience and economy and should not be grouped with mass advertisers using telephone equipment.

I thank you for the opportunity to comment about this matter.

Very truly yours,

JAMES A. WASHINGTON, Jr., *Chairman.*

ALABAMA PUBLIC SERVICE COMMISSION,
Montgomery, Ala., November 2, 1965.

MR. NICHOLAS ZAPPLE,
Communications Counsel,
U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: This is in reply to your letter of October 27, in which you have asked for my views and comments with respect to two bills, S. 2693 and S. 2713, both of which would amend the Communications Act of 1934 in certain respects.

I am enclosing a portion of the authorized tariff in the State of Alabama for the Southern Bell Telephone & Telegraph Co. relating to automatic answering and recording service. This is a part of the company's authorized general exchange tariff, section 37, second revised sheet 1–A. You will note under subparagraph 7 of paragraph A of this section that the automatic answering and recording service will not be furnished with nonpublished telephone service.

In my opinion, this requirement in our authorized tariff effectively gets the same job done as that contemplated in the two Senate bills to which you refer.

This is because all of such service must be furnished on a published basis with information relating to the subscriber on file with the telephone company.

In view of this tariff requirement in our State, it is our further opinion that we do not need at this time further Federal legislation in this regard.

Very truly yours,

EUGENE (BULL) CONNOR, *President.*

SOUTHERN BELL TELEPHONE & TELEGRAPH CO.

ALABAMA

GENERAL EXCHANGE TARIFF

AUTOMATIC ANSWERING AND RECORDING SERVICE

Section 37

A. Regulations

* * * * * * *

4. As the subscriber and calling parties have exclusive control over the quality and characteristics of speech used and intelligence contained in, the fixed messages transmitted and the messages recorded, the telephone company has no liability for the quality of, or defects in, the transmission or recording of such messages, and the subscriber indemnifies and saves the telephone company harmless against all claims arising from the intelligence or lack of intelligence transmitted over facilities furnished hereunder, including claims for libel, slander, fraudulent or misleading advertisements, infringement of copyright, or any other claims, and against all claims arising out of any act or omission of the subscriber or of the calling party in connection with facilities provided by the telephone company. The telephone company's liability for damage arising from an interruption to the service, which is not due to the negligence or willful act of the subscriber, or of the telephone company in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision, shall not exceed a pro rata adjustment of the fixed monthly charges for the service and facilities rendered useless and inoperative, during the period of said interruption.

5. Where the automatic answering and recording equipment provided by the telephone company incorporates the use of a disk for recording the message from the calling party, one disk for such purpose will be furnished at the time of installation without additional charge. Additional disks will be furnished upon request in quantities of 10 or any multiple thereof at the rates specified in paragraph B below.

6. The automatic answering and recording service is not to be used for time of day, weather reports and other similar services which induce a large volume of telephone calls to be directed to the customer at or about the same time resulting in preventing, obstructing or delaying the telephone service of others.

7. The automatic answering and recording service will not be furnished with nonpublished telephone service.

NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS,
Washington, D.C., October 29, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Senate Committee on Commerce, Senate Office Building, Washington, D.C.

DEAR MR. ZAPPLE: This is to acknowledge receipt of and thank you for your letter of October 27, 1965, in connection with the hearings scheduled by the Senate Committee on Commerce relative to S. 2693 and S. 2713, both proposing to amend the Communications Act of 1934.

This matter is being referred to our general counsel and you should hear from him in the near future as to the association's views and comments on the subject matter.

Sincerely,

EVERETTE KREEGER, *Secretary.*

NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS,
Washington, D.C., November 1, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: Thank you very much for your letter of October 27, 1965, addressed to Chairman Dillon of the Virginia State Corporation Commission and referred to this office for reply, in which you enclosed copies of S. 2693 and S. 2713 proposing amendments to the Communications Act of 1934, relating to the regulation of telephonic recorded messages.

The National Assocation of Railroad & Utilities Commissioners, which includes within its membership the commissioners of the Virginia State Corporation Commission, is intensely interested in this proposed legislation.

I will confer with various officials and members of the NARUC during the next 2 weeks concerning this matter, and then communicate our position to you prior to the hearings scheduled on November 18 and 19, 1965.

Please keep me advised of further developments in this matter.

Sincerely yours,

PAUL RODGERS, *General Counsel.*

ARKANSAS COMMERCE COMMISSION,
Little Rock, Ark., November 1, 1965.

Hon. WARREN G. MAGNUSON,
Senate Office Building, Washington, D.C.

DEAR SENATOR: I received your communication and a copy of two bills, S. 2693, and S. 2713. Since the Arkansas Commerce Commission does not have jurisdiction over communications, I am passing this information on to Hon. Lewis M. Robinson, chairman of the Arkansas Public Service Commission. I am sure that Commissioner Robinson will give you his thought and comments at an early date.

Sincerely yours,

J. ORVILLE CHENEY, *Chairman.*

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA,
Charleston, November 1, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: This is in reply to your letter dated October 27, 1965, inquiring about the view of the Public Service Commission of West Virginia on the proposed Senate bills 2693 and 2713.

The Public Service Commission of West Virginia regulates the intrastate activities of telephone companies, as you well know. To date, this commission has not had any particular difficulty in this area of unidentified recorded telephone messages. This being the case, the commission does not feel that it should take any position, either for or against, the two bills in question.

Very truly yours,

BOYCE GRIFFITH, *Chairman.*

COMMONWEALTH OF VIRGINIA,
STATE CORPORATION COMMISSION,
Richmond, October 29, 1965.

Hon. NICHOLAS ZAPPLE,
Communications Counsel, in care of Senator John O. Pastore,
Senate Office Building, Washington, D.C.

DEAR MR. ZAPPLE: Your letter of October 27, 1965, addressed to Chairman Jesse W. Dillon, of the State Corporation Commission, received. As I am a member of the legislation committee of the NARUC, he asked me to answer your letter.

I am forwarding your letter and enclosures to our national office in Washington, D.C., for their attention. I am certain they will get in touch with you promptly.

Yours very truly,

H. LESTER HOOKER.

RAILROAD COMMISSION OF TEXAS,
Austin, November 2, 1965.

MR. NICHOLAS ZAPPLE,
Communications Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: The Railroad Commission of Texas has no jurisdiction over the telephone system of the State, and at the present time there is no State agency with authority to regulate such system.

Very truly yours,

BEN RAMSEY.

NEW JERSEY DEPARTMENT OF PUBLIC UTILITIES,
Camden, N.J., November 15, 1965.

U.S. SENATE, COMMITTEE ON COMMERCE,
Washington, D.C.
(Attention of Mr. Nicholas Zapple, Communications Counsel.)

DEAR MR. ZAPPLE: Thank you for your invitation requesting the views of this department on Senate bills 2693 and 2713.

I am enclosing for your information a copy of a recent decision of the board of public utility commissioners which approved an amendment of the tariff of New Jersey Bell Telephone to permit the disclosure of the identity of subscribers to telephone announcement service. This is one of the aims which both of the bills you have drawn to our attention have in common.

Both bills go one step further, however, in requiring that the disclosure of the identity of a subscriber to announcement service be included in the message itself. I frankly question the need for such a provision in view of the requirement that the identity of the sponsor be made available to the public from telephone company records. On the other hand, both bills place a seemingly impossible burden on the telephone company. Each makes it unlawful to permit the use of announcement service without the inclusion of identity in the message itself. I take it that this places an obligation on the telephone companies to monitor the content of each message to insure the inclusion of the required identification. I do not believe that this burden is justified in view of the other provisions of the bills which make the same information readily available to the public.

Yours very truly,

WILLIAM F. HYLAND, *President.*

STATE OF NEW JERSEY
DEPARTMENT OF PUBLIC UTILITIES
BOARD OF PUBLIC UTILITY COMMISSIONERS

IN THE MATTER OF THE FILING BY NEW JERSEY BELL TELEPHONE CO. OF A REVISION OF ITS TARIFF, PUC, NEW JERSEY, NO. 1, PART I, GENERAL

ORDER ACCEPTING TARIFF REVISION

(Docket No. 659–656)

Adrian C. Cassidy, Esq., Newark, N.J., for New Jersey Bell Telephone Co.

BY THE BOARD:

On September 17, 1965, New Jersey Bell Telephone Co. submitted to the board a revision of its tariff, PUC, New Jersey, No. 1, part I, general, bearing an effective date of November 1, 1965, as follows:

Pt. I	*General*
Sec. 10	Listings: 3d revised, p. 1.
Sec. 20	Telephone answering service facilities: 2d revised, page 7; 1st revised, p. 8.

The filing provides for an amplification of the regulations governing facilities provided by the telephone company for use by customers in the provision of announcement services and requires the company to furnish the name of the subscriber to the service upon request. The revision also includes a change in the listing section of the tariff to indicate specifically that such services may be listed.

The acceptance of this revision of the New Jersey Bell Telephone Co.'s tariff will introduce a requirement enabling any member of the public to learn the

identity of any subscriber to announcement service. This service is utilized for the purpose of offering prerecorded telephone messages to those who dial the subscriber.

In the past, this announcement service has sometimes been utilized by persons or organizations desiring to disseminate political or other kinds of messages to the public without disclosing the identity of the sponsor. This has opened the door to an abuse of important public utility services in the fostering of campaigns of hate, vilification, or smear. The public is entitled to every reasonable protection government can afford against such practices, and the most effective remedy is likely to be removal of the mask of anonymity. Accordingly, the policy of this board henceforth shall be to permit such announcement service to be made available only if the name and address of the subscriber can be had from the utility upon request.

This policy is consistent with recent legislative enactments. Chapter 57 of the laws of 1963, for example, requires identification of the sponsor of all election campaign literature. This clear articulation of the "right to know" of the public should extend to the identity of those who attempt to influence the public mind and morals through prerecorded telephone messages.

Beyond this there also is involved the basic principle that every man has the right to know the identity of his accuser and to seek appropriate legal redress. When accusations are launched from a secret or furtive source this great right is frustrated.

For these reasons the board is of the opinion that the proposed filing is clearly in the public interest.

Therefore, the board hereby orders that the tariff revision referred to herein to become effective November 1, 1965 be and the same is hereby accepted for filing.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
By WILLIAM F. HYLAND, *President.*

Dated: October 12, 1965
(SEAL)
Attest:

EDWARD F. HAMILL, *Secretary.*

ALASKA PUBLIC SERVICE COMMISSION,
Anchorage, November 29, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel,
Senate Office Building,
Washington, D.C.

DEAR MR. ZAPPLE: Thank you for your letter of October 27, 1965. Mr. Chertkov is no longer with the Alaska Public Service Commission. He is now back in Washington, D.C.

With regards to your letter, the only comment I can offer from the commission is that Alaska does not have any law similar to Senate bills Nos. 2693 and 2713. I would appreciate your keeping us on your mailing list, since we are definitely interested in any bills concerning communications or, for that matter, any public utility.

Very truly yours,

ANDREW E. HOGE,
Assistant Attorney General.

COLORADO PUBLIC UTILITIES COMMISSION,
Denver, Colo., November 30, 1965.

Mr. NICHOLAS ZAPPLE,
Communications Counsel,
U.S. Senate,
Committee on Commerce,
Washington, D.C.

DEAR MR. ZAPPLE: Relative to your letter of October 27, 1965, concerning Senate bills 2693 and 2713, after taking up the matter with our staff and commissioners and after full consideration, we wish to state that we would prefer Senate bill 2713.

Yours truly,

HENRY E. ZARLENGO,
Chairman.

HAWAII PUBLIC UTILITIES COMMISSION,
Honolulu, Hawaii, November 22, 1965.

U.S. SENATE,
Committee on Commerce,
Washington, D.C.
(Attention of Mr. Nicholas Zapple, communications counsel).

GENTLEMEN: In reply to your recent request relative to Senate bills S. 2693 and S. 2713 we make the following observations:

1. Message toll service is not presently available in Hawaii and none is contemplated;

2. Electronic secretary and similar voice-recording equipment used on a subscriber's premises contain recorded messages advising callers that the subscriber is out of the office. Such equipment should, perhaps, be exempted from any of the proposed identification requirements since the caller is aware of the party he is calling and the proposed additional identification would serve no useful purpose; and

3. To prevent abuse of subscribers who are called by telephone and subjected to recorded or other sales solicitations and promotions, as well as other unsolicited recorded messages, the proposed legislation should be beneficial in identifying the person or organization calling. The proposed legislation should, therefore, discourage unsolicited or anonymous telephone calls. Since it would be practically impossible for the telephone utility to adequately police the use of its equipment, it should be made unlawful for the subscriber, rather than the utility, to make or allow such unidentified calls. Such a provision can be made a part of the utility tariffs which would permit or require the utility to terminate or disconnect service in the event of abuse by any subscriber.

Very truly yours,

RICHARD SASAKI, *Executive Director.*

PUBLIC SERVICE COMMISSION OF WISCONSIN,
Madison, Wis., November 18, 1965.

MR. NICHOLAS ZAPPLE,
Communications Counsel,
Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. ZAPPLE: We appreciate very much your letter of October 27 inviting us to express our views on two bills, S. 2693 and S. 2713, which would amend the Communications Act of 1934.

This commission, which regulates rates and service of telephone companies operating within the State of Wisconsin, has received no complaints about the practice against which these bills are directed. Consequently we assume that the matter of recorded telephone messages and their identity or lack thereof does not present a problem of concern to the telephone subscribers of this State. We are advised, however, that Wisconsin Telephone Co., the largest company operating within the State, is in the process of filing amendments to its tariff which would require that recorded messages be identified and in other respects would be in substantial compliance with the proposed legislation. This commission will, of course, accept such amendments to the tariff.

I think it a fair statement that this commission has no objection to the proposed legislation. However, if the writer may add his personal comments, in the absence of a serious problem it would seem that the proposals could be likened to the fellow who used an elephant gun to hunt squirrels.

Very sincerely yours,

ARTHUR L. PADRUTT, *Chairman.*

MISSISSIPPI PUBLIC SERVICE COMMISSION,
FIRST DISTRICT,
Jackson, Miss., November 9, 1965.

HON. NICHOLAS ZAPPLE,
Communications Counsel, Subcommittee on Communications, Senate Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. ZAPPLE: This letter is written in response to yours of October 27, 1965, concerning hearings scheduled by the Subcommittee on Communications on two bills, S. 2693 and S. 2713, for which we thank you. Our understanding

is that these hearings will be held in the New Senate Office Building on November 18 and 19, 1965.

We have carefully considered the contents of these amendments to the Communications Act of 1934 and feel that enactment will be of material benefit to the continued provision of adequate communications by telephone which is so vital to all areas. Please be assured of our interest in and support of these measures.

Yours very truly,

NORMAN A. JOHNSON, Jr., *Chairman.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
DEPARTMENT OF BUSINESS REGULATION,
Providence, R.I., December 28, 1965.

Mr. NICHOLAS ZAPPLE,
Communication Counsel, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. ZAPPLE: In response to your letter of October 27 to Mr. DiPrete, the former director of business regulation, I am enclosing a memorandum prepared for me by Mr. Nunes, public utilities administrator of the State of Rhode Island, concerning Senate bills 2713 and 2693.

Please accept my apologies for the delay in answering your letter. I became director of business regulation on November 1 and your letter arrived just prior to that date. Unfortunately it became misplaced during the changeover from one director to another.

Sincerely yours,

ROBERT M. SCHACHT,
Director of Business Regulation.

STATE OF RHODE ISLAND,
December 24, 1965.

Interdepartmental communication.

To: Robert M. Schacht, director, department of business regulation.
From: Frank L. Nunes, administrator, division of public utilities.

This memo is written in response to your request for my comments on Senate bills 2713 and 2693, both bills dealing with the transmission of recorded messages over a telephone system.

As I understand the problem, this legislation deals with the handling of automatic announcements via telephone, announcements which are prepared by certain groups and which constitute so-called rate techniques against persons and institutions. When one dials the telephone for such an announcement, a recorder plays back a message to the caller. I further understand that the equipment has been perfected to such a point that in the future an automatic dialing system may be added to this system which will cause these recorders to repeat the message over and over again to various unsuspecting people who hear the phone ring, pick up the receiver, and are subjected to this taped message. In my opinion this appears to be an invasion of privacy in the home of the telephone subscriber. I also recognize that there must be care exercised in the type of bill written since the question of freedom of speech might enter into the picture.

Of the two bills, I favor the Javits bill, S. 2713, which provides for the identity and address of the organization and the identity of a responsible officer of such organization sponsoring these messages. I would assume that regulations could be set up to properly exclude all such public service announcements from the provisions of this bill. At part of its tariff the Rhode Island division of the New England Telephone & Telegraph Co. has already filed requiring the identification of all persons purchasing such recorded messages. Over 99 percent of our citizens are served by this company, so as far as Rhode Island is concerned, and as far as the immediate individual problem is concerned, it appears that this bill may not be necessary.

Since the developments in electronic data transmission have progressed so rapidly, it might do well for the Federal Power Commission to continue its study of the problem with the cooperation of the National Association of Railroad & Utilities Commissioners.

The division of public utilities stands ready, and as a matter of policy, to work closely with the respective Federal regulatory agencies that handle these matters.

FRANK L. NUNES, *Administrator.*

Senator PASTORE. I also want to state at this moment that one of the things that has distributed me to no small extent—and I think has disturbed many, many of our citizens—is the use of the telephone to spew out obscene language against subscribers. This is not directly connected with what I have already said in my opening statement, but Mr. Henry, who is our first witness, has been apprised of my feeling on this. I haven't talked with him about it. I would hope that we could get into that somewhat.

Mr. Thayer, who represents the telephone company, I would hope that he would give this some consideration.

In other words, in the course of our overdevelopment or the development of our communications system, in creating the bigness which has inured to the benefit of the consumer and the subscriber in lower rates because of the development of the technology involved whereby today you can dial just as easily to San Francisco as you can, say to Kensington, Md., from Washington, have we overlooked, or have we neglected the small problems which affect the human being. As our system of telephone communications becomes so vast and each community, whether in the North or South, is easily accessible, will a subscriber be required to accept as a way of life abuses, torments, and harrassments perpetrated by certain obscene and pornographic minds spewing and venting their dirty statements on the American telephone public? I think that is quite important, and I would like to get the reactions of Mr. Henry and the representatives of the telephone company as to whether or not we have to accept this or whether something can be done about that, and what the answers might be.

We are going to develop that either during this day or some later day.

Senator McGee would like to make a statement.

Senator MCGEE. Mr. Chairman, I first want to mention that the chairman of this subcommittee has long been one of the sharpest and most articulate leaders in the question of trying to measure the consequences of our modern communications phenomena, the revolution in communication really that has dominated our time, and to weigh the consequences in terms of preserving elementary freedoms that we hold rather dear.

I suppose it is the one word "freedom" which has been the most by those who would do away with it. It is one of the dearest words in our language, but it has never carried with it the license to destroy somebody else in the name of it. That really is what has come to be a point of issue here with the proliferation of radio and TV stations it has become possible in these later days to inundate areas of our country in ways that were never possible even as recent as the 1930's or the early 1940's, and thus proceedings have had to be devised for the individual citizen. And thus the laws of libel have had to be spelled out and updated in more modern terms, terms that were once confined to newspaper publicity or newspaper stories have now had to be carried on into new media.

In terms of politics, the equal time provision has been the point of a great deal of deliberation and hearings on the part of this committee.

The fairness doctrine is another of those that very much is the concern of the FCC and the rest of us at the present time.

We are here in this opening today to focus on one of the newest gimmicks in our modern communications technology. This gimmick contains a quality that was one of the qualities that required other protections for freedom and that was the strength of anonymity, the anonymous accuser, character assassination accomplished behind the screen of anonymity through a telephone number and a tape recording, can be in its own way as deadly to the future of an individual as actual assassination by more immediate means such as a rifle.

Both depend upon secrecy to strengthen the mock courage of the purveyors of these devices.

And so the issue really is, and I think this is of the utmost importance that we keep at the top of our priority, not censorship, not abolishing somebody or somebody's idea, but rather to extend to individuals or institutions who are criticized and attacked by telephone recording devices, the same protections afforded those who are libeled in a newspaper or through the conventional broadcast media.

This amounts in short to extending to those attacked the means to find out not only what was said about them, but who said it, and who paid to have it said.

Our telephone companies have been very cooperative in this at this stage of the game. They are for that to be commended. But in my judgment this is an area of public concern and public interest. And it is neither proper nor fair nor in the tradition of our handling of this kind of problem to expect or require that a private corporation on its own initiative police this problem.

For that reason I have introduced a bill, and my colleague on the other side of the aisle, Senator Javits, has another bill that would seek to cover this existing practice which in effect is a vacuum, a void in an area that is so new that it was not specifically covered by existing legislation.

It has been suggested to me that the dialing of a telephone is a fundamental freedom and that therefore you are impinging on somebody's freedom because it is a personal exercise. It is a personal freedom likewise to shout "fire" in a theater or to defame someone in public print. But again, freedom does not carry with it in our context the license to destroy. So buying a newspaper requires your initiative, or turning on your radio, or turning on your TV set still commands your own initiative. You have to make the first move, and that is your personal freedom.

But because of this phenomena of modern communications, what comes out of the other end has now become a matter of public interest and public responsibility.

We have heard some examples of the kind of messages that have been coming out. Their contents are really irrelevant. It is simply that those who are the objects have some orderly, legal and rational recourse to confront the accuser, to defend themselves. I think most would agree this is a fundamental part of what we call the American system.

The proposed legislation that I have submitted in no way tampers with the right of anybody to use these telephone devices or to say

anything they please on these devices. This does not impugn the right to be heard, the right to speak freedom of speech. It simply would make it responsible for the consequences at the same time.

Among our very sacred rights not only is the right to freedom of speech, it is the right to disagree, the right to criticize, the right to be a crackpot, if you will. We have been hearing a great deal about civil rights. Our freedoms involve the freedom to protect uncivil rights, as I sometimes put it.

So those are necessarily cherished and protected because of the principle at stake. And I don't think we can emphasize often enough that the issue here is that of trying to protect everyone's rights and not to permit the abuse of somebody's freedom to destroy somebody else's freedom.

The bill that I have is an extremely simple one, that would only require that in all telephone communications of this mechanical type that we will see illustrated here today, that we require the identity of the persons who buy the time and put it on, and that there be contained in the message the identity, so that all who may listen to that message will know who said it. This, it seems to me, is only fair.

I have left out of the bill any further specification as to what the FCC must do on it, or what the definition of damages may be, and that is one of the differences between the bills that we will talk about tomorrow, I am sure, when Senator Javits is here to explain his bill. Because I believe those responsibilities already rest with the FCC. They have plenty of power to do what needs to be done under the circumstances.

The reactions have already begun to produce responses across the country. I would like in particular to mention one which I hope that I have license to mention, since it comes from the State of Wyoming. But because of the efforts of the staff of this committee, all State commissions were also alerted to this problem and its development.

I would like to make a part of the record, Mr. Chairman, if I may, the response from the Public Service Commission of the State of Wyoming, in which they point out that they have likewise, through their means of communication, advised all local telephone agencies in the State to take the precautions that we envisaged making a part of the law in this bill.

Senatore PASTORE. Without objection, the letter will be made a part of the record at this point.

(The letter follows:)

STATE OF WYOMING,
BOARD OF EQUALIZATION AND PUBLIC SERVICE COMMISSION,
Cheyenne, November 3, 1965.

U.S. SENATE COMMITTEE ON COMMERCE,
Washington, D.C.
(Attention of Nicholas Zapple, Esq., Communications Counsel).

DEAR MR. ZAPPLE: This is to thank you for providing our commission with copies of two bills recently introduced in the U.S. Senate:

(1) S. 2693 introduced by Wyoming's Senator McGee, which would amend the Communications Act of 1934 to make unlawful anonymous recorded messages transmitted over a telephone system; and

(2) S. 2713 introduced by Senator Javits, which would amend the said act to establish certain requirements with respect to use of recording equipment for conveying messages by telephone.

The subject bills and the press release of Senator J. O. Pastore, chairman of the Subcommittee on Communications of the Senate Committee on Commerce, announcing that hearings will be held thereon on November 18 and 19, 1965, have been duly noted by this commission.

This is to inform you that by its letter directive dated October 5, 1965, the Wyoming Public Service Commission approved restrictive regulations requiring that subscribers transmitting recorded messages over a Wyoming intrastate telephone system must be identified.

We appreciate your cooperation in this matter.

Very truly yours,

RICHARD J. LUMAN, *Chairman.*

Senator MCGEE. The final emphasis, then, is that we not permit the media, through whatever device, to become the weapons of unfair abuse without recourse to proper and orderly action in a more sophisticated society.

I think perhaps it would be in order if I would mention one other element here that the chairman and I have discussed at length, and that is that as these hearings proceed, it ought to be stressed that they are confined to the problems of communications. They are not zeroing in on the leftwing, or the rightwing per se. They rather are designed to measure the consequences of this very sudden barrage of programs that are utilizing the new facilities of modern communications media. We need to know what the consequences are. Thus, again, it is not content; it is impact, and the meaning of these impacts in the new media. And thus I would hope that in the course of these hearings we will be able to examine in these updated terms the fairness doctrine as it has slowly developed down through the Commission, that it would raise the question of balanced programing which I hope that the Commission will have something to say on and may respond to committee questions in regard to the problems of balanced programing.

It finally should reduce itself to where the responsibility for these things really should rest. Does it rest with the Commission? Does it rest with the program director of the local station? Does it rest with some other source? In any event, all of these should be laid on the table in the course of these deliberations so that we might reexamine them in the light of these questions that confront us today.

I might conclude by echoing the chairman's suggestion that we look into the implications of the free use of telephones and the epithets and obscenities that are telephoned over them, because we have two little girls in our household. We have found it necessary for that very reason to take our phone number out of the listing here in the District and keep it as an unlisted phone. The 2 and 3 a.m. calls that I get I could take. In our business we are accustomed to that. But the calls that came at 3 o'clock in the afternoon, 5 o'clock in the afternoon, when a little 10- or 12-year-old girl would pick up the phone, were the ones that upset me. I hope we have an opportunity to pursue that point.

Thank you, Mr. Chairman, for the time.

Senator PASTORE. Thank you, Senator McGee.

Another significant question involving the use of automatic telephone recording devices concerns the use of the machine for solicitation purposes. Recently I received a letter from a Mr. Wallace, of Massachusetts, in which he states:

I would estimate that no more than 100 calls could be completed by 1 person in an 8-hour day.

Compare the above total with that which is possible by means of recorded announcements. The present state of the art permits recording devices to be set up in conjunction with automatic dialers preprogramed with telephone numbers. Assuming 15 seconds to dial and call each number, plus 30 seconds for the commercial. A single machine could call 80 homes per hour all day long without any human intervention or supervision.

I'm concerned that this will change the economics of this form of advertising so that in the future our phones could be ringing almost constantly with recorded commercials.

I feel that this practice of recorded phone announcements, in fact, constitutes an invasion of privacy and as such, should not be allowed to continue.

On December 3, 1963, Senator Douglas in a speech on the floor of the Senate concerning tape-recorded telephone solicitations, stated:

I will introduce a bill which would, if such a device is used in Illinois, prohibit the use of telecommunication lines used in interstate communications by any individual, organization, or company through the use of any electronic device employing unsolicitated prerecorded messages.

Our Nation must continue to make technological advances, as it has in the past. But we must protect ourselves from abuses which may occur through the improper use of these scientific achievements. There is a right of privacy which should not be invaded. We cannot allow the worst features of George Orwell's "1984" to become a reality.

As recently as September 9, 1965, Senator Long of Missouri, in referring to this automatic solicitation device, said:

If this machine is introduced into widespread use, not only will the telephone subscribers have to endure unwarranted advertisements, but they will have the use of their telephones considerably curtailed.

The committee also has been in receipt of a number of complaints in this field.

Does the Commission have any policy on the use of such devices for solicitation purposes? If not, should there be one or should there be any legislation necessary?

A further question: Is there any basis for the allegations that this type of service is an invasion of privacy?

I will incorporate in the record at this point the full statements from the Congressional Record of Senator Douglas, of Senator Long, and a report the committee received from the Federal Communications Commission concerning a complaint dated July 19, 1965, from Mr. Hall M. Simons, of Portland, Oreg.

[From the Congressional Record, Dec. 3, 1963]

TAPE-RECORDED TELEPHONE SOLICITATION

Mr. DOUGLAS. Mr. President, developments in the electronic and scientific fields have brought unprecedented benefits to all our lives. I hope that these developments will continue to help us live in peace and harmony with our neighbors without having to sacrifice our basic rights to solitude and privacy.

The December 1, 1963, issue of the Chicago Sun-Times contains an article about the development of an electronic sales pitch device, which I want to bring to the attention of the Senate. The article describes a method of telephoning literally hundreds of thousands of people and having a tape recording extol the glories of a product, show, book, or whatever else is being advertised in this manner. I believe that personal telephone solicitations are bad enough, but in this article I read of electronic telephone solicitations which can barge into the privacy of any home which has a telephone and rattle off their advertising message or political solicitations.

Mr. President, the manufacturers of these new devices allegedly defend their products by saying that since the messages will be tape recorded, people will be

more willing to hang up if they do not choose to listen. At one time or another in our lifetimes, we all have made a mad dash for the telephone. Many times we have had to climb down ladders, come out of the bathtub, come in from working in the garden, and leave the dinner table in order to answer the telephone. Mr. President, I do not want to have to be subjected to receiving tape-recorded telephone calls from companies advertising their products. I do not think my constituents want to be subjected to them, and I do not think the rest of the Nation wants to be subjected to them, nor should the Nation be subjected to them.

If someone began showing movies on my livingroom wall from a projector across the street, I would naturally be outraged. Picture yourself sitting in the kitchen, your wife is preparing the shopping list, and then from a truck parked in front of the house a subliminal suggestion to buy a certain brand of soup or canned ham is flashed onto the wall. What an intrusion that would be, and so, too, would be an unsolicited and unwanted mechanical telephone call.

The developers further allege that if your line is busy when the device calls, it will call you back later. Such a device could soon gain the stature of a monster. If one manufacturer begins using it, others almost certainly will do so, and soon our days could be filled by trips back and forth to the telephone answering calls from these sales-pitch devices, or "phone monsters," as I term them. We would have little or no time for our personal use of the telephone. Our personal rights would be invaded, our personal lives would suffer, and many would boycott any product of a manufacturer who applied such an obnoxious sales technique in their home.

I will introduce a bill which would, if such a device is used in Illinois, prohibit the use of telecommunication lines used in interstate communications by any individual, organization, or company through the use of any electronic device employing unsolicited prerecorded messages.

Our Nation must continue to make technological advances, as it has in the past. But we must protect ourselves from abuses which may occur through the improper use of these scientific achievements. There is a right of privacy which should not be invaded. We cannot allow the worst features of George Orwell's "1984" to become a reality.

I ask unanimous consent that the article from the December 1, 1963, edition of the Chicago Sun-Times be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

"[From the Chicago Sun-Times, Dec. 1, 1963]

"MASS PHONE SOLICITATIONS DEVISED

"(By Dial Torgerson)

"HOLLYWOOD.—You answer the phone, and a silky voice you remember from somewhere says:

" 'This is Gloria Glamoure and I have a grand idea for a party. Invite your friends for a dinner downtown and afterward, all of you come to see me at the Bijou, where I'm appearing in "Practically Nothing at All," Wednesday through Sunday. I'll be waiting.'

"This could happen—if a couple of bright young men succeed with their telepone advertising brainstorm.

"Jeff Schottenstein and Joe Fischer have come up with a machine which can take a list of 50,000 telephone numbers, call them, tell when a voice answers, play a tape recorded message, say goodby, and hang up. Or call you back if the line is busy or if you're out.

"FANTASTIC POSSIBILITIES

"It's called Electro-Com, and it has some fantastic possibilities—as well as some aspects that Schottenstein and Fischer want to be very careful about.

" 'We're very aware of the resentment factor in telephone solicitation,' said Schottenstein. 'We will be very strict. We will have strict creative control over the machine, to make sure that irritating messages aren't used.

" 'We don't think a person should be called more than three times a month.'

"What if you don't want to be called? There's nothing you can do about it, anymore than you can about ordinary solicitors, except, of course, hang up.

"LESS RESENTMENT

"'Matter of fact,' said Schottenstein, 'that's one of the advantages of the machine. It's a recording, and people have no qualms about hanging up on it. The resentment factor is less than if there's a person on that phone.'

"The commercial uses of the device are almost literally staggering.

"Schottenstein and Fischer think it could be used as the basis for a system of television ratings which could call 180,000 people while present rating concerns are calling 1,800. (The viewer's remarks would be tape recorded to be transcribed later by clerical workers.)

"Or it could announce department store sales to charge-account customers, or let you know what movie is at the local theater. But in politics is where its richest fields may lie.

"NOT USED COMMERCIALLY

"Said Schottenstein:

"'Before we perfected the automatic machine, we tried out a device where a girl dialed a number and then pressed a button, and out came the recorded message. We used it this year in 18 local political campaigns, and 11 of the won.'

"Only the prototype of the automated version is now operating and it hasn't yet been used commercially. Another 75 are being built, however.

"NATIONALITY PITCH

"Schottenstein and his associates are aware of what they call the 'ethnocentric aspect' of political solicitation. In calling Chinese homes they have used Chinese pitchmen.

"'We usually have someone the people know introduce the candidate, who then says a few words,' Schottenstein said. 'A known voice first is better.'

"In the same way, someone with a well-known Italian name could introduce the candidate to people with Italian names, and so on.

"Schottenstein is a recent graduate of Ohio State University. His family owns soft drink bottling franchises in Columbus. Fischer, son of a Hollywood managerial expert, went to Hebrew University in Jerusalem, and speaks five languages."

[From the Congressional Record, Sept. 9, 1965]

BIG BROTHER: HOME IS NOT A CASTLE

Mr. LONG of Missouri. Mr. President, today's Big Brother item consists of an article from the Los Angeles Herald-Examiner of August 20, 1965. The article brings to light a new and probably vicious means whereby the average citizen's privacy can be invaded. Apparently, someone has invented an automatic solicitation device which can flood the homes of all telephone subscribers with more and more recorded advertisements.

According to the article, this devilish machine will outwit all but the most persistent subscriber. For example, if the subscriber hangs up his telephone halfway through the recording, the machine will simply redial his number.

If this machine is introduced into widespread use, not only will the telephone subscribers have to endure unwarranted advertisements, but they will have the use of their telephones considerably curtailed.

I shall bring this article to the attention of both the Federal Communications Commission and the American Telephone & Telegraph Co.

I ask unanimous consent that this article be printed at this point in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

"PHONE DEVICE PROBED

"(By Jack Welter)

"SACRAMENTO, August 20.—Assemblyman Joseph M. Kennick, of Long Beach, said today he has initiated preliminary investigation of automatic solicitation devices that can make telephone subscribers virtual captives of prerecorded sales pitches.

"Unless there is action, either by the public utilities commission or the legislature, telephone solicitations may reach a new and unbearable high in California, Kennick said.

"Kennick, chairman of the assembly committee on public utilities and corporations, said the device described in an August 17 PUC report represents 'a new and frightening' technique for flooding homes with prerecorded advertisements.

" 'The device places calls automatically and then calls back immediately if the line is busy or no answer,' Kennick said. 'But this is not all. This devilish machine is also capable of placing the call again if the solicited person hangs up before the call is complete.

" 'Unless use of this kind of material is controlled, I can envision the day when a person will have to listen to dozens of solicitations before he can call out of his own home.'

"Kennick said his committee staff is working with the PUC to locate the source of this machine and the extent of their actual or potential use.

"He said telephone companies are not to blame for their distribution, and apparently neither phone companies nor the PUC can control them without new law."

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 16, 1965.

HON. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: This is in response to your letter of August 5, 1965, and the accompanying letter, addressed to Senator Wayne Morse, from Mr. Hall M. Simons, requesting legislation to curtail sales solicitation by telephone.

First, I might point out that the Communications Act of 1934, which delegates to this Commission certain regulatory authority regarding interstate and foreign communication services, does not prohibit the use of a telephone for soliciting or advertising purposes. We are not aware of any other statutes which might bear on this matter, nor do we have knowledge of any pending or contemplated legislation to control this activity. The use of the telephone for such purposes ordinarily does not involve long distance calling, and, therefore, interstate or foreign communication service usually is not involved. Local exchange telephone service, which is usually employed for such purposes, generally is not subject to the regulatory authority of this Commission, but is subject to the jurisdiction of the various States and their regulatory commissions.

Any legislation regarding use of solely local or intrastate services would appear to be a State matter. It is likely, in our view, that any Federal legislation purporting to regulate intrastate telephone service would be opposed by the States as an encroachment of their authority, and Federal legislation regarding the use of interstate services would not appear to be effective, as a practical matter, in dealing with the problem.

I agree that such calls can be most annoying at times, and the problem appears to be a growing one. The Bell System in responding to complaints concerning use of the telephone for soliciting business has indicated concern about use of telephone service in a manner that is offensive or annoying to the called person. The policy of the company with respect to sales solicitation calls is outlined in the enclosed statement.

I hope this information will be helpful to you. If we can be of further assistance, don't hesitate to call on us.

Your sincerely,

ROSEL H. HYDE, *Acting Chairman.*

SELLING BY TELEPHONE

Telephone selling should always aim at the mutual advantage of buyer and seller. The first essential is to consider thoughtfully the interest and convenience of the person called. A home telephone is a doorway to the family's private life. It must not be invaded. The telephone call, like a personal visit, needs sound appraisal of its possible value to the prospective buyer, and courtesy and respect when the call is made. Telephone selling that slights these essentials creates resentment. It becomes a nuisance. And it does not sell.

When telephone selling is appropriate and well done, however, it helps expand markets, save time, and lower costs. Consumers benefit from having a wider choice of goods and services, and from the prices lower costs permit. High-caliber telephone selling requires:

1. Clear definition of the job.—Telephone selling reflects the character of a business and influences its reputation. It should be carefully considered by management, clearly defined, and closely coordinated with the total company sales program.

2. Product value.—The products or services offered should have intrinsic value and buyer appeal.

3. Sensible selection of prospects.—Prospects should be selected on the basis of probable need and ability to pay.

4. Trained sales personnel.—People who sell by telephone should have special aptitude for the job and be trained in its requirements and techniques.

5. Timeliness, truth, and good manners.—Sales calls should be timed to the prospect's convenience. They should be courteous. They should give information that will interest the prospect. They should be completely free from deceptive and pressure tactics.

These elements protect the buyer against intrusion and misrepresentation. They protect the seller against ill will and disappointing results.

The Bell telephone companies work with other businesses to help develop the skills and sensitivities that are essential to high-quality telephone selling.

Equally, they try to dissuade businesses from undertaking, or continuing, telephone sales efforts that do not meet the requirements for excellence.

HALL M. SIMONS & ASSOCIATES,
Portland, Oreg., July 19, 1965.

Senator WAYNE MORSE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MORSE: I would like to enlist your support in supporting some type of legislation which can put an end to unsolicited telephone calls from people who are selling all sorts of gimmicks.

The number of them today that are harassing the people is getting beyond all reason and certainly some type of legislation that would indicate people who do not wish to be called by telephone solicitation should be made into law.

I would appreciate anything that could be done in this regard.

Yours truly,

HALL M. SIMONS.

Senator PASTORE. I understand Mr. Henry will touch on these areas. You may proceed, Mr. Henry.

STATEMENT OF HON. E. WILLIAM HENRY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. HENRY. Thank you, Mr. Chairman.

I do have a statement which, with your permission, I would like to read. It discusses a number of areas and makes a number of points.

I will get into the anonymous defamation which I believe is the real concern underlying the two bills under consideration today. I will discuss the obscenity question which you raised. I will also discuss the new forms of harrassment and abuse made possible by the increasing mechanization of the telephone. And then the jurisdiction of the Commission, the need for legislation, the interstate versus intrastate questions, and so on.

My statement today does not cover the additional matters raised by Senator McGee; that is, the fairness doctrine and the question of balanced programing. At such time as the committee would like us to discuss that, we will be delighted to do that.

Senator MCGEE. These hearings are confined to the telephonic device for these 2 days. This can come later.

Mr. HENRY. With your permission, Mr. Chairman, I will read my statement. If there are any questions I will be glad to answer.

Senator PASTORE. You may proceed as you wish.

Mr. HENRY. My name is E. William Henry and I am Chairman of the Federal Communications Commission. I am here today at the committee's invitation to discuss S. 2693 and S. 2713, bills dealing with the use of recorded telephone messages. Both these bills would generally prohibit the transmission by telephone of any recorded message unless there is a disclosure of the name and address of the telephone subscriber.

The concern which led to the introduction of these bills is, I believe, centered on the rapid growth of recorded messages utilizing virulent and anonymous attacks on persons and institutions. Also, part of the underlying problem seems to be a fear that the growth of recorded announcements is threatening the American public with wholesale invasions of privacy. Such devices, we hear, are approaching full automation, and may initiate calls automatically without waiting to be triggered by a curious caller.

The immediate aspect of the general problem, and that part of it which these bills would deal with, is the recent use of the telephone companies' recorded announcement service by persons who have seized upon it as a new technique for making anonymous personal attacks on those with whom they disagree on social and political issues. The mechanized invasion of our privacy threatened by the automatic dialing of telephone numbers on a mass basis to deliver recorded commercial or political messages is a newer development. I should like to come back to this "invasion" problem later, after discussing the two bills now before us.

S. 2693 and S. 2713 deal with the services provided by the telephone companies which permit a subscriber to deliver a recorded message to anyone who calls his number. The particular service which has been utilized to date for anonymous attacks is the automatic announcement service. This service provides for the automatic answering of a called telephone with a recorded announcement, generally limited to 2 minutes or less. It is an answering service only, and there is no provision in this service for recording the response, conversation, or communication of the calling party.

There is another similar service provided by the telephone companies, called the automatic answering and recording service. This takes the calling party's message. I don't believe that particular service is related to the bills presently before us.

Senator MCGEE. Except it might help you psychologically if you could unburden yourself.

Mr. HENRY. It might.

Senator PASTORE. You are referring now to calling up, say, a television repairman or some such service, or the weather report, and you leave your complaint and they call you back?

Mr. HENRY. That's right.

There are some 30,000 of these services in effect. The Bell System calls it its electronic secretary. You cannot only listen to what they may have to say but you can also dictate your own message.

Senator PASTORE. We are not primarily concerned with that.

Mr. HENRY. The charges for the device with which we are concerned, made by the various Bell System companies, range from $10 to $16.50 per month, plus installation charges of from $15 to $35.

In the District of Columbia the charge is $15 per month, in addition to the local telephone exchange rate, plus the nonrecurring installation charge of $15. Illustrative of the type of equipment provided by the telephone companies to furnish this service is the 100–A automatic answering system of the Bell Telephone Co. described in a brochure which is attached hereto as appendix B.

Typical uses of the automatic announcement service of the Bell System are public service announcements such as time and weather, school closings, and traffic conditions; general business uses, such as the working hours and holidays of subscribing retail stores, produce prices, and daily bargains; and entertainment announcements, such as theater schedules and television program listings. A detailed breakdown of these services is attached to this statement as appendix C.

The Bell System estimates that it has 14,100 installations used by subscribers to its various automatic announcement services. The General Telephone Cos. have 1,454 such installations in similar, but fewer, categories of service.

While these ingenious services have a host of beneficial uses, they have also been utilized to make anonymous attacks on individuals and organizations, both private and public. It is these anonymous attacks which have led to the introduction of S. 2693 and S. 2713.

This Nation is founded upon the belief that the fullest possible discussion of public issues is a public good, indeed, is essential to our form of government. Therefore, the concern which has arisen over these recorded announcements has not been with the right of any person to express himself on issues which he considers important, but rather with the anonymous hit-and-run nature of the attacks made.

This new technique of public comment has apparently become widespread in a fairly short time, and is presently the subject of two complaints pending before the Commission. The two complaining parties are the Anti-Defamation League of B'nai B'rith, and the National Council of the Churches of Christ in the United States of America.

I should like to submit their basic complaints for the record as appendixes D and E hereto, since they illustrate the problem with which we are concerned. Both groups complain of recorded announcements in several cities by an organization called Let Freedom Ring. Both seek relief from the Federal Communications Commission, by way of prohibition or of identification requirements to remove the feature of anonymity in the messages.

The Commission has taken up with the telephone companies the questions raised by these complaints, which are now pending before us.

We are informed that Let Freedom Ring was started by a Dr. William C. Douglass, of Sarasota, Fla., about 3 years ago, and that it is now incorporated. It has achieved "coverage" of some 40 cities in 23 States with its series of recorded messages. A list of 36 of these cities furnished to the Commission by the Bell System is appended hereto as appendix F. Four additional cities in Florida and California are reported by General Telephone Co.

The Let Freedom Ring messages are prepared in Florida and then distributed to individuals or groups in other parts of the country at a reported charge of $24 for 1 year and $12 a year thereafter. These purchasers make their own arrangements locally with the telephone com-

pany under the telephone company's tariff for automatic announcement service, and the messages are recorded by the subscribers on equipment furnished by the telephone company. This equipment is kept on the subscriber's premises.

Senator PASTORE. At this point—and I hope that everyone understands this dramatic way of showing what we are talking about here—we will have a demonstration of the type of equipment that is in use.

This is through the cooperation of the telephone company. A telephone and automatic recording device has been set up in this committee room. Mr. McMullen, service engineer for the telephone company, will dial one of the numbers listed by the Commission, 377–7460 in Baltimore, Md., and you will hear an actual message presently being transmitted on that number.

Let freedom ring.

The great majority of American Negroes are awakening to the danger to themselves and to their country inherent in the civil rights movement. All across the country local Negro groups are forming to alert Negro and white alike to this Communist-inspired and Communist-controlled agitation.

The civil rights agitators who are not Communists and have not considered the ultimate result of their excitement are counting on the restraint of other Americans and on the proceedings of local police forces against rising wrath. These agitators are barking up the Communist-planted tree from which they will swing if the Communists have their way.

The simultaneous arming of militant and Negro groups and their white opposites can mean only bloodshed for Americans to the delight of the Communist criminals in control. Despite this, the agitators continue to mount their soapboxes and warn that provocations will continue until every pain is assuaged.

We quote George Schuyler, noted Negro columnist:

"We fortunately still have powerful sources of good will and good sense and as soon as Negroes themselves realize and understand where we are headed, the power of the Communist murder bund will be destroyed.

"Up to now they have been using the Negroes as the smokescreen of Red revolution, just as prescribed in the literature of the Communist convention in Bridgman, Mich., 43 years ago.

"When Negroes generally become aware of what they have to conserve in this country, they will give Pied Pipers of civil rights short shrift."

For a clear understanding of Communist influence in the civil rights movement, we recommend the civil rights pact available at $1, plus sales tax, from the American Opinion Library, a patriotic bookstore at 602 East Joppa Road. The bookstore is open from 11 a.m. to 9 p.m., weekdays; 6 p.m. on Saturday.

Call Monday for a new message. Let freedom ring.

FEMALE VOICE. Let freedom ring.

Revolution is taking place in the United States because two opposing ideologies, Communist slavery and American freedom, are meeting head on. Caught in the middle of this revolution and taking most of the brutality are the men of your local police department.

In 1964, 18,000 policemen were assaulted in line of duty. Sixty-seven of these were murdered. These are not other than citizens. Candidates for police training are carefully selected and their background must be above reproach. Many applicants are turned down—even though police departments are usually understaffed—because your police department knows that a deterioration in the caliber of the force would lead to corruption and lawlessness.

A top Communist objective is the demoralization of America's last line of defense, your local police. The enemy has made considerable headway in this vicious campaign through false news reports of police brutality and through the paralyzing effect of liberal-dominated police review boards.

Chief William Parker of the Los Angeles Police says:

"The police are now being relegated to the same level as the criminal. The police always find themselves on the defensive in an attempt to justify what they do. This downgrading of the police cannot continue if America as we have known it is to survive."

Should the income tax be repealed? A constitutional amendment for this repeal has been passed by seven States. Mr. Willis E. Stone, industrial engineer, columnist, and author of the "Liberty Amendment To Repeal the Income Tax," will speak this Friday night, November 19, at 8:30 p.m., at the Townsend Senior High School at Egbert Road, near Cedar Avenue. Tickets are $1.50 and are available at the door, or from the American Opinion Library, a patriotic bookstore, 602 East Joppa Road.

Call Thursday for a new message. Let freedom ring.

Mr. McMULLEN. This is today's message.

OPERATOR. Your number, please?

Mr. McMULLEN. 225–2050.

FEMALE VOICE. Let freedom ring.

The Liberty amendment, the proposed amendment to abolish the personal income tax, is supported by some 6,000 organizations and millions of informed Americans. It has been approved by the States of Wyoming, Texas, Nevada, Louisiana, Georgia, Mississippi, and South Carolina.

Our Federal Government has ample income to finance all of its constitutional activities, including national defense, without the personal income tax.

The unconstitutional direct competition with private business in over 700 different business-type activities is financed by the personal income tax. These operations, being governmental, are naturally operated at a loss. The deficit is financed by your personal income tax.

These operations eliminate taxes that would be paid by private business and in every case capable of analysis the Government operation produces poorer products at higher rates than does the corresponding private business.

The VA, a classic example, is said to have created a Garden of Eden, yet 72 of the 95 counties in that Garden of Eden qualify for Lyndon Johnson's antipoverty program.

Mr. Willis E. Stone, industrial engineer, columnist and author of the "Liberty Amendment To Repeal the Income Tax," will speak this Friday night, November 19th, at 8:30 p.m. at the Townsend Senior High School, Egbert Road near Cedar Avenue. Tickets are $1.50, and are available at the door, or from the American Opinion Library, a patriotic bookstore at 602 East Joppa Road.

Call Monday for a new message. Let freedom ring.

Senator PASTORE. Mr. Henry, can we say for the record that there is no identification of the voice?

Mr. HENRY. Yes. That is our understanding, Senator.

Senator PASTORE. In other words——

Mr. HENRY. We have been furnished with the actual transcripts of a number of these messages. In no message was there any identification of the source, other than "Let freedom ring."

Senator PASTORE. I would hope that if we have these messages that have just been heard reduced to writing, I think the press is anxious to have them. I would hope that we can provide the press with these statements, if they are interested.

You may proceed.

Mr. HENRY. I might point out that both the complaints of the Anti-Defamation League and the National Council of Churches, appended to my statement, also contain excerpts and in one case a full transcript of these messages.

Senator PASTORE. All right.

Mr. HENRY. We have been advised by the American Telephone & Telegraph Co., which provides about 84 percent of the Nation's telephones, that it is advising all Bell System companies to require that recorded announcements of this type include "the name of the organization or individual responsible for the service and the address at which the service is provided." A.T. & T. now has tariffs containing this requirement in effect in nine States, and expects to have such

tariffs in effect in all States by February 1, 1966, subject, of course, to their acceptance by the appropriate State regulatory bodies. In the States in which they are in effect this would, of course, change the situation, and we would assume that if such messages are now going on in those States, they do contain identifying information.

The Bell System excludes from this disclosure requirement factual announcements such as airline schedules, time, and weather. Bell System companies have already put into effect in all States a requirement that there be made available at their offices the names and addresses of subscribers to all recording services, without exception.

Both S. 2693 and S. 2713 are designed to accomplish this same objective of making known the name and address of the subscribers to the service. S. 2693 makes it unlawful for a telephone company to transmit a recorded message by means of a telephone connected with a toll system unless the message gives the subscriber's name and address. It would also require the telephone company to keep a public file of subscribers' names and addresses. S. 2713 similarly requires that the carrier keep a public list of names and addresses of those persons to whom its equipment is made available, and requires any person using a telephone for a recorded message to include his name and address as part of the message. It further requires that "if such message is on behalf of another person," that person's name and address shall also be given.

Where an organization is involved, S. 2713 requires that the identity of one responsible officer be disclosed, in addition to the name of the organization.

Both of these bills initially raise the question of constitutionality which must be considered when any statute requires disclosure of the identity of persons commenting on public affairs. I will discuss that question first, and then turn to the question of the commission's role and its jurisdiction.

In *Talley* v. *California* (362 U.S. 60 (1960)) the Supreme Court struck down as too broad a Los Angeles City ordinance prohibiting any distribution of handbills in any place unless the cover of the handbill contained the name and address of the persons making and distributing it. The Court stated that there was no indication in the bill itself or its legislative history that it was drafted to accomplish the purpose asserted for it—the prevention of fraud, false advertising, or libel. The Court also specifically noted that it was not passing upon the validity of an ordinance which might be limited to the prevention of fraud, false advertising, or libel.

However, subsequent to the *Talley* case, statutes somewhat similar to the bills now under consideration have been sustained by lower courts. Thus, in *United States* v. *Scott* (195 F. Supp. 440), a U.S. district court in North Dakota sustained the constitutionality of 18 U.S.C. 612, a Federal statute which prohibits the publication or distribution of any statement concerning a candidate for specified Federal offices without giving the name of the person responsible for it. The court found that Congress was constitutional empowered to remove the harm which could be wrought by anonymous publications concerning candidates. In that case, the court found that the defendant's alleged fear of reprisal, which had been an important ele-

ment in cases like *Bates* v. *City of Little Rock* (361 U.S. 516 (1960)), involving disclosure of membership and donor lists of the NAACP, to be highly speculative and conjectural in the circumstances presented in the *Scott* case.

In other words in the *Scott* case the court upheld such a statute whereas they had struck down in *Bates* v. *Little Rock* a local ordinance which had required disclosure of membership lists of the NAACP. One of the elements in the *Bates* case was the defendant's alleged fear of reprisal. The court found such fear was not justified in the *Scott* case.

The Supreme Court of California in a 1964 case, *Canon* v. *Justice Court for Lake Valley Judicial District* (39 Cal. 228, 393 P. 2d 428), sustained the validity of a California statute requiring the name and address of any person distributing a statement designed to injure or defeat any candidate for public office by reflecting upon his personal character or political action. In this case, the court found that it was not the aim of the statute to hinder the communication of ideas, but rather to deter scurrilous hit-and-run smear attacks, and to enable the electorate to make a better evaluation of campaign material.

These cases indicate that while any disclosure requirement may raise a serious constitutional question, each situation must be considered on its own facts, in light of the purpose of the particular statute, and the likelihood that it will substantially inhibit the free expression of ideas. These hearings, therefore, are most important as a means of determining the need for legislation and, if legislation is deemed by Congress to be warranted, the scope and form of any statute which may be enacted.

I might note at this point that the Communications Act itself presently contains a section which, while applicable only to the broadcast services, has a requirement of similar effect. This is section 317, which requires all broadcast stations to identify the persons paying for or furnishing matter they broadcast. This section has certain general exemptions for material furnished without charge, or at a nominal charge. However, it specifically authorizes the Commission, even with respect to such material, to require an appropriate identification announcement in the broadcast of a political program, "or any program involving the discussion of any controversial issue," for which any material has been furnished the station as an inducement to the broadcast of the program. The Commission has adopted rules imposing such a requirement.

The constitutionality of section 317 has never been challenged. Of course, section 317, and the rules adopted to implement it, operate in the broadcast field, and thus have a background somewhat different from that of the proposals now before this committee. However, they are clearly analogous.

As I mentioned earlier, A.T. & T. is in the process of filing intrastate tariffs with appropriate local bodies to require disclosure in the recorded telephone message itself. These tariffs raise the same free speech question as the pending legislative proposals, and their validity will also have to be considered in the same context. The new tariffs may be too broad.

However, assuming that properly drafted tariffs will be put into effect by the telephone companies, such voluntary action may eliminate

the need for legislation along the lines of S. 2693 and S. 2713. Of course, this is a question for Congress to decide in the light of these hearings. The Commission would be most happy to assist the committee in arriving at a final draft of legislation, if the committee believes legislation to be desirable.

Senator PASTORE. May I interrupt you?

I would assume you have had your legal staff look into these bills with reference to these cases that you have already cited.

Mr. HENRY. Yes, sir.

Senator PASTORE. What is their opinion as of the moment? Are these two bills that have been introduced rather broad an inconsistent with these two cases that you have discussed with reference to the constitutionality of it?

Mr. HENRY. Our staff feels that they may be. We have not considered this in the context of a Commission meeting. There has been no give and take in discussion about it at the Commission level.

The feeling is that they may be too broad in that they are not limited to the particular purposes at which they are aimed, although the *Talley* case, which was an opinion written by Justice Black, indicated that sufficiently clear legislative history as to the purpose of the statute might be sufficient.

All we can say at this point is that there is a question. We are not sure as to the answer.

I might add that I think Congress might consider in connection with these bills whether it wants to limit them, for example, to messages which constitute an attack on persons and institutions, or whether it wants to include broad generalized messages of any kind which express an opinion on matters of importance.

There could be a line drawn between the two.

Senator MCGEE. May I raise a question there, Mr. Chairman?

In your judgment are the principal differences that may be raised constitutionally between, say, S. 2693, as a starting point, and section 317? I think the record might well show that.

If you don't want to develop that right now perhaps you can supply that for the record. I think it would be helpful.

Mr. HENRY. We would be glad to do that, Senator McGee.

The reason that I said that they are clearly analogous although somewhat different, is that broadcasters are not common carriers and are subject to responsibility and to libel suits, whereas the transportation companies are common carriers.

Senator PASTORE. That won't affect the constitutional question. I think the constitutional question resolves itself on the question of freedom of speech. As we have been saying here right along, there is no attempt here to restrict or constrict or to interfere or encroach upon any man's right to say what he thinks.

As a matter of fact, I come back to the ancient inscription that we have on the dome of the State Capitol in Rhode Island by Tacitus: "Beware the Felicity of the Time When It Is Permitted To Think What You Like and Say What You Think."

I believe in that. I believe in that inherently. We don't want to encroach on any man's right to say what he wants. On the other hand, other people have rights; if they don't trespass on the rights

and name of a fellow human being, that is what we are trying to protect here. We are not interested in identification insofar as discussion of issues are concerned because an issue anyone can take issue with.

But when you speak of a man and you speak of him in a defamatory or derogatory way, I think he has certain rights. And if he has these rights he has the right to pursue them. When he begins to pursue them he can't direct himself to his objective because he doesn't know who it is. That is what we are interested in.

I think you would agree with that.

Senator McGee. Right.

That is why I hope the comment that you will supply for the record—and I hope you will—is not addressed to the technical differences as such, but rather to what other constitutional elements may enter into the ones that aren't present in 317, for example, since you drew that. You suggested they were analogous, and that 317 hadn't been challenged constitutionally, and, therefore, we would be interested in the Commission's views of those differences.

It just seems to me that on this device that we have seen illustrated here, and about which we are talking at the present time, that it is sort of parallel to our present problems in Vietnam in a way. It is guerrilla tactics—hit and run.

We have had to devise new military concepts in terms of coping with that instead of a nuclear war. It is an entirely new area that has no, apparently, reasonable or measurable legislation that can govern it at the present time. That is why we want to make sure it isn't forfeited by default if there is something in the public interest here that needs to be protected.

Senator Pastore. If we may pursue that, we have a message here that had to do with the stability of the police department. From a constitutional standpoint I can't find any fault with it. I may disagree with it, but I can't challenge a man's right to say it.

No names were used, no person was defamed. I think it is a proper expression because that individual could make that statement and the press could pick it up and publish it. I have heard that before. That is not what we are after here.

When they begin to use people's names and they associate them with a nefarious cause or make an assimilation that reflects upon the reputation of that individual, then I think you are invading the person's personal rights and I think he has a right of redress. At least if he thinks so he ought to have a right to pursue it.

I think all this is being broadcast to anyone who chooses to pick up the telephone and dial that number. The harm is in the publication of it. That person has a right to redress. I think that is where identification is necessary.

On these general discussions of issues, I don't think that is any concern of ours. If a person wants to say it and somebody else wants to believe it, that is their right to believe it. If somebody wants to refute it, they have a perfect right to refute it. They can go on and hire the same equipment and refute it if they want. That is another question.

Here I think we are interested in what you do to an individual and how you invade his personal rights without granting him the privilege of seeking a remedy.

Mr. HENRY. Of perhaps to an identifiable group of individuals.

Senator PASTORE. That's right.

I think here what I would ask you to do, if you will, is to have your staff get into these two bills, and if you feel they are too broad and they should be restricted to be consonant with what we are discussing here, I will welcome your suggestion.

Mr. HENRY. We will do that.

(Material submitted for record follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., January 7, 1966.

Hon. JOHN O. PASTORE,
Chairman, Subcommittee on Communications,
Senate Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN PASTORE: In my testimony of November 18, 1965, on S. 2693 and S. 2713 before the Communications Subcommittee of the Committee on Commerce, I suggested that the salutary purpose of the two bills might be accomplished by legislation in somewhat different form. You indicated that you would like to have a draft of such an alternative measure, and I am happy to transmit such a draft herewith.

In order that the reasons for the changes we have made may be clear, I should also like to describe briefly the principal features of the revised draft.

S. 2693 and S. 2713 might be thought to leave some doubt as to whether they apply to all telephone calls or only to those which are interstate. The proposed revision has been drafted to make clear that the requirements of the bill apply to all recorded telephone messages, whether interstate or intrastate, so long as the telephone is connected with the interstate toll system. A subscriber using a recording device will not know whether any incoming call is interstate or not, and thus would have to make his announcement comply with the requirements of the bill even if the bill were limited to interstate calls, in order to be sure that he was in compliance with the law when an interstate call was involved. Since this is so, the bill would in any event have the practical effect of governing announcements made on intrastate calls, and it seems desirable to make it clear in the legislation that it does cover all telephone calls.

S. 2693 makes it the responsibility of the telephone company to refuse to transmit a recorded message which does not contain the subscriber's name and address. S. 2713 makes it illegal for the person sending the message to fail to disclose his identity. Both bills require the telephone company to keep a public record of the subscriber's name and address. Since the telephone companies have stated that they will make the subscribers' names and addresses available, this provision has been omitted from the new draft. The proposed draft also adopts the approach of S. 2713 in that it applies directly to the subscriber sending the recorded message, and makes him responsible for complying with the disclosure requirements. Putting the responsibility for insuring disclosure upon the telephone companies would require the carriers to maintain a constant check on all recorded announcements. For the recordings are made at the subscriber's premises and may, on occasion, be made on equipment not even furnished by the telephone company. Since the conduct at which the legislation is directed is that of the person making the announcement, it seems definitely preferable to put upon him the direct responsibility for complying with the disclosure requirements.

The proposed draft also follows the approach of S. 2713, with slightly more specific wording, in requiring disclosure of the name and address of both the subscriber and any other person for whom the subscriber is acting merely as an agent.

The revised draft also differs from both S. 2693 and S. 2713 in that, with an exception to be mentioned later concerning announcements relating to candidates for Federal office, it applies only to attacks upon the character or reputation of identifiable persons or organizations. This change has been made to eliminate any problem of coverage of such announcements as weather and time reports, and also to limit the legislative remedy to the problem which has arisen. Thus, the revised proposal would not apply to general discussions of issues or to statements in support of particular persons or organizations.

Certain exceptions are made to the disclosure requirements for announcements that are directed at particular categories of persons or organizations. In par-

ticular, the draft exempts from its requirements those attacks which are directed at the Federal Government, any local government, or any government organization, to the end that there may be no question of any attempt to stifle criticism of governmental policies or actions. An additional important consideration here is that a disclosure requirement for attacks on government policy, whether Federal or local, is not required to serve the ends of the legislation. The bill, of course, also exempts attacks upon foreign governments. Attacks on individuals who are in government service, Federal or local, would be covered. Thus, an attack on Congress, or upon an intergovernmental organization like the United Nations, would not be covered, but an attack on a particular Congressman or Senator would. The bill aso exempts announcements attacking nonresident foreign nationals. That is, it would not apply to attacks upon the individuals in any foreign government or to other citizens of foreign countries who do not live in the United States. In sum, the bill would cover attacks on individuals living in the United States, and on private organizations operating in the United States.

Finally, the draft bill essentially incorporates the provisions of 18 U.S.C. 612, which requires identification statements on any writings which concern persons seeking Federal office. Thus, this portion of the proposal requires disclosure in the case of any mention of a person seeking office, whether the mention is derogatory or not, in accordance with the similar impact of section 612, and in recognition of the broad interest of Congress and the public in the election process.

It has also been suggested that the subscriber should be required to submit to the telephone company, for maintenance in a file available to the public, the text of the recorded message. The attached proposed draft does not contain such a requirement because it has been written primarily from the standpoint of removing the cloak of anonymity from recorded announcements. However, Congress may feel that an additional requirement concerning the filing of the texts of the messages is desirable to insure responsibility in cases where actionable defamation is involved. The following language could be added to the attached draft as a new section 2, renumbering the present section 2 as section 3, to carry out such a congressional purpose:

"SEC. 2. Where a subscriber is required by this section to include his name and address in a recorded message, he shall also submit to the telephone company which renders him service one copy of the full text of the recorded announcement prior to the time the announcement is first made. Where an announcement is changed in any manner, the subscriber shall submit the complete new text. The telephone company receiving the material required to be submitted to it under this section shall retain each such submission in a file available to the public for a period of one year from the date of submission. Any person desiring to do so shall be permitted to examine and copy the material herein required to be submitted."

I hope that this draft will be helpful to the committee. I shall be happy to discuss the question further with you if you wish, and the Commission's General Counsel, Mr. Henry Geller, will, of course, be available for any desired consultation.

Your sincerely,

E. WILLIAM HENRY, *Chairman.*

A BILL To amend the Communications Act of 1934 to establish certain requirements with respect to the use of recorded telephone messages

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 is amended by inserting immediately after section 222 (47 U.S.C. 222) the following new section:

"TRANSMISSION OF RECORDED MESSAGES BY TELEPHONE

"SEC. 223(a) It shall be unlawful for any person to use the telephone facilities of any common carrier to send a recorded message by any telephone connected directly or indirectly with interstate telephone facilities, without including in the message the name and address of the subscriber of the telephone, and, if the subscriber is acting merely as the agent for another person, the name and address of such other person, where—

"(1) the recorded message mentions by name, or makes such reference as to permit ready identification of, any person or organization, and

"(2) the message attacks that person's or organization's character or reputation.

"(b) Where the subscriber or other person whose name and address is required to be given by this section is an organization, in addition to the name and address of the organization, the name and address of at least one responsible officer of such organization shall also be given.

"(c) This section shall not apply to any recorded message insofar as such message mentions or refers to—

"(1) any foreign national not resident in the United States;

"(2) any organization in the executive, legislative, or judicial branches of the government of the United States, including any department or agency of the United States as defined in 18 U.S.C. section 6;

"(3) any government body or organization of any State or subdivision thereof, or of any foreign government, any inter-government organization, or any organization not functioning in the United States, its Territories, or possessions.

"(d) This section shall apply, whether or not the message constitutes an attack upon character or reputation, to any mention of, reference to, or clear identification of any person who has publicly declared his intention to seek the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, Congress, in a primary, general, or special election, or at a convention to be held by a political party, or has caused or permitted his intention to do so to be publicly declared.

"SEC. 2. The amendment made by this Act shall take effect on the sixtieth day following the date of its enactment."

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., December 15, 1965.

Hon. JOHN O. PASTORE,
Chairman, Subcommittee on Communications,
Commerce Committee, U.S. Senate,
Washington, D.C.

DEAR SENATOR PASTORE: At the hearings on S. 2693 and S. 2713 which were held by the Subcommittee on Communications of the Senate Committee on Commerce on November 18, 1965, I was requested to furnish the subcommittee with a memorandum on the question of the relationship of section 317 of the Communications Act to the free speech questions which had been raised concerning the two bills before the subcommittee.

I have referred the question to the Commission's General Counsel, Mr. Henry Geller, and he has expressed his views in a memorandum to me dated December 7, 1965. He has concluded that because section 317 operates in a different field from S. 2693 and S. 2713 ,the fact that section 317 presents no substantial constitutional question does not mean that the two pending proposals are similarly valid in their present form.

I am in agreement with the views expressed in the General Counsel's memorandum, and I am pleased to forward it to the subcommittee. In view of Senator Gale McGee's interest in this question, I am also sending a copy of the memorandum to him.

We are presently working on a suggested revision of S. 2693 and S. 2713, and are also actively looking into the desirability of a Federal statute prohibiting obscene and harassing telephone calls. We shall report to you the result of this work in the near future.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., December 7, 1965.

Memorandum.

To: Chairman.

From: General Counsel.

Subject: The relationship of section 317 of the Communications Act to S. 2693 and S. 2713, with respect to the conformity of each with constitutional free speech requirements.

You have requested my views concerning the relationship of section 317 of the Communications Act of 1934, as amended, to the free speech questions which the Commission raised concerning S. 2693 and S. 2713 in the testimony given by you in

hearings on these bills on November 18, 1965, before the Subcommittee on Communications of the Senate Committee on Commerce.

S. 2693 and S. 2713 would both prohibit the transmission of recorded messages by telephone unless there is a disclosure in the message of the name and address of the subscriber. Although the bills differ in that S. 2693 makes it unlawful for the telephone company to transmit the message, and S. 2713 applies to the person using the telephone, this difference is not germane to the present question. Your testimony was that the bills might be somewhat too broad in their unlimited disclosure requirements, but that the disclosure principle could be effectuated through constitutionally valid legislation.

You also called to the attention of the committee section 317 of the Communications Act, which specifically authorizes the Commission to require an identification announcement in the broadcast of a political program, "or any program involving the discussion of any controversial issue," for which any material has been furnished the station as an inducement to the broadcast of the program. You told the committee that the constitutionality of section 317 has never been challenged and that, while that statute operates in the broadcast field and thus has a background somewhat different from S. 2693 and S. 2713, it is clearly analogous to the bills which were the subject of the hearing.

Senator Gale McGee requested a memorandum on the question of why S. 2693 and S. 2713 might be too broad, and thus constitutionally infirm, while section 317, which appears to be similar, apparently presents no substantial constitutional problem. This is the question on which you have requested my views. It is my opinion that the two pending bills are sufficiently different from section 317, both in their applicability and their setting, to raise questions which section 317 does not raise.

Section 317 applies only to broadcast stations. It requires that an announcement be made when any matter is broadcast for which the station receive a valuable consideration. It also specifically authorizes the Commission to require an announcement when any material is furnished to a station, without charge or at a nominal charge, as an inducement to its broadcast, in the case of political programs or any program involving the discussion of any controversial issue.

Section 317 was originally enacted as section 19 of the Radio Act of 1927 (44 Stat. 1170). At that time it merely required that a broadcasting station announce the name of any person or corporation which paid for the broadcast of any material.[1] The purpose of the original provision was, "to make sure that advertising shall not be hidden from the listener," (H. Rep. No. 404, 69th Cong., 1st sess., on H.R. 9108, p. 3). When the Communications Act of 1934 was enacted, the language of the 1927 act was incorporated as section 317.

Section 317 was subsequently amended once, in 1960, after hearings on "rigged" quiz shows and "payola" practices. It was given its present form at that time. Although the major concern of the 1960 amendments was to clarify and strengthen the provisions applicable to advertising practices, Congress also then added the specific recognition of the Commission's authority to require that an announcement be made in the case of any political program, or program involving the discussion of any controversial issue, where the program matter is furnished without charge or at a nominal charge as an inducement to the broadcast of the program. (See H. Rept. No. 1800, 86th Cong., 2d sess., on S. 1898, pp. 24–25.)

Section 317 operates in a field which is inherently not open to all, and where it is well established that reasonable regulation, but not censorship, in the public interest is consonant with the right of free speech. *National Broadcasting Co.* v. *United States* (319 U.S. 190); *Simmons* v. *Federal Communications Commission* (83 U.S. 1890); *Simmon* v. *Federal Communications Commission* (83 U. S. App. D.C. 262, 169, F. 2d 670, *cert. den.* 335 U.S. 846); *Henry* v. *Federal Communications Commission* (112 U.S. App. D.C. 257, 302 F. 2d 191, *cert. den.* 371 U.S. 821). Such regulation may also go beyond what would be permissible with respect to other modes of expression, since "[e]ach method tends to present its own peculiar problems," and it does not follow from the fact that the first amendment protects all modes of expression that each is "necessarily subject to the precise rules governing any other particular method of expression" (*Burstyn* v. *Wilson*, 343 U.S. 495, 502–503; *Kovacs* v. *Cooper*, 336 U.S. 77, 96 (Frankfurter, J., concurring), 97 (Jackson, J., concurring)).

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[1] A Senate version of the section which added further requirements concerning political broadcasts, and made the licensee a common carrier with respect to such broadcasts, was not adopted.

In its setting, section 317 appears to be a perfectly reasonable solution to the problem of confusion and concealment in the broadcast of specified kinds of matter to the public. It prevents fraud upon the public, in the broad sense of that term. In light of the limited access in this field, the necessity of licensing in the public interest, and the public impact of matter broadcast by a radio or television station, it is both proper and necessary that controversial views and advertising matter ostensibly carrying the weight of the station's prestige in the community be announced as paid for or contributed by another source when that is the case.

S. 2693 and S. 2713, however, operate in a different field and with somewhat different impact. If these differences are substantial—and I believe they are—then the two bills may raise questions not raised by section 317. First of all, the telephone is a medium of expression which, unlike radio, is open to all. Therefore, Government regulation (and Government-approved telephone company tariff provisions) generally restrict the user only to the extent that his use may impair the efficient operation of the system or interfere with the use of the telephone by others. Regulation of the content of telephone conversation has therefore been limited to subjects which are traditionally regulated by Congress under the commerce clause; e.g., the prohibition of fraud by wire (18 U.S.C. 1343) and the prohibition of the transmission of wagering information (18 U.S.C. 1084).[2]

The fact that a telephone company is a common carrier and a monopoly has no apparent relevance to regulation of the use made of the telephone by the public in the present context, since there is open access to the telephone by the public. (See *Hannegan* v. *Esquire, Inc.*, 327 U.S. 146.) However, I believe it may be relevant to the validity of legislations in this field that the telephone is a medium of communication which affords a cloak of anonymity and gives no visual or other clue to the speaker's identity. Despite this consideration, regulation of the use of the telephone stands on a different footing from regulation in the broadcast field, and is probably more analogous to general regulation in the area of speech; e.g., a regulation directed to handbills distributed in interstate commerce. S. 2693 and S. 2713 thus would seem to raise the same sort of problems involved in *Talley* v. *California* (362 U.S. 60), where the Supreme Court struck down a broadly drafted disclosure statute directed at handbills.

It is important, therefore, that the salutary purpose of S. 2693 and S. 2713 be accomplished through legislation drawn to meet the particular problem raised by the use of recorded telephone messages to calumniate persons and institutions, without impinging upon the free communication of ideas. I believe this can be done. The courts have emphasized that in each case the effect and purpose of the challenged legislation must be examined. Thus, section 612 of title 18, United States Code, which required disclosure of the names of persons publishing or distributing statements concerning candidates for Federal office, has been sustained upon the basis of such an examination (*United States* v. *Scott*, 195 F. Supp. 440 (D.N.D.), 1961)). Therefore, while I believe there is a distinction between the pending bills and section 317 of the Communications Act, I also believe that appropriate legislation dealing with anonymous recorded telephone messages would be constitutionally valid.

HENRY GELLER, *General Counsel.*

Senator MCGEE. I interject the thought that bears upon this point, and that is that if we take the message that we heard here this morning, a general expression of opinion on a very general problem rather than an attack on a particular individual, I think that your reply to the committee ought well also to weigh where the line would be drawn and who would draw the line, or whether that in itself entails certain subjective judgments that might raise new problems, and whether we aren't ahead simply to have a simple requirement. If there is an honorable statement about the police departments and these people really believe that, what attends that would be unfortunate or undesirable to having them likewise identify themselves?

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[2] Various State statutes prohibit obscene and harassing calls, as do telephone company tariffs.

If we could define that and most all the possible consequences, it would be very helpful.

Offhand, I'm inclined to feel, until you educate me further, that it might be simpler to simply require the education as we require in most public ways when a man speaks out. He is known as to who he is and he is obvious to his neighbors. Rather than to go the other way.

I think we should examine those consequences.

Mr. HENRY. Well, I will be glad to advise you as soon as I educate myself about it a little better. The point you raise is a good one, though. We have thought about that. For example, who would make the judgment if you did draw a line between certain messages? Naturally the desirable result would be that it would be a line that could easily be drawn. Then, almost anyone could draw it.

You might want to consider also the possibility of making this a criminal statute. That puts the basic responsibility on the person sponsoring or subscribing to the message. If he violates the law, then it is his responsibility for not having made the right judgment.

Senator MCGEE. I would think if we went that far, if the decision were made that it were better to make it a criminal issue, then you would have a stronger case for drawing a much finer line.

Mr. HENRY. I think so.

And, of course, this gets you into the intra versus interstate question, which I will get into a little later.

While we are on that subject, I have one more very important sentence, and that is:

While the present bills may be too broad—and I emphasize the words "may be"—we do believe that the disclosure principle can be effectuated through constitutionally valid legislation.

Now if I may, I would like to turn to the question——

Senator MCGEE. That is really the nub of it, as far as our question here, the disclosure of identity.

Mr. HENRY. Yes. We do believe that a statute can be drafted which is constitutionally valid.

If I may, I would like to turn now to the question of the Federal Communication Commission's jurisdiction in this matter. Under section 205 of the Communications Act, the Commission could itself impose a disclosure requirement through an appropriate tariff proceeding. I might add that it goes without saying that our jurisdiction, and our decision as to whether we are going to exercise it or not, relate directly to the question of the need for legislation.

We would have jurisdiction to do so with respect to interstate tariffs under the existing provisions of the Communications Act. However, the decision to do so would involve policy questions, including the question of whether it would be more appropriate to defer to State action in this field. As a practical matter, any Commission requirement with respect to interstate service would preempt the field, including intrastate service. This is so because the equipment used, the automatic announcement service equipment, cannot distinguish between interstate and intrastate calls, and any requirement applicable to one type call would necessarily affect all calls. This is one of the matters we have under consideration in connection with the complaints that have been filed.

Senator PASTORE. In other words, if we enacted either of these two bills, it would apply to interstate as well as intrastate.

Mr. HENRY. It could. You could enact legislation which would apply to both, or to either.

Senator PASTORE. But constitutionally speaking, we would have jurisdiction even on intrastate calls for the simple reason that you cannot separate them or distinguish it from equipment that is used for both?

Mr. HENRY. That is right.

It is a little bit complicated but it is rather interesting here. I might take a minute to give you an example.

If in Rhode Island or Wyoming, for example, the——

Senator MCGEE. Two excellent illustrations.

Senator HARTKE. Typical illustrations.

Senator MCGEE. We have to pass through there to get from one to the other.

Mr. HENRY. Or we might take Indiana alone——

Senator HARTKE. It would be a much better example.

Mr. HENRY. Any State that has a requirement for disclosure in equipment of tihs kind, and let's assume, for example, that the Wyoming Public Service Commission did require the filing of such an intrastate tariff, then there would automatically be a requirement that the tariff be filed with the Federal Communications Commission relating to interstate calls originating in Wyoming. But the interstate tariff would be limited to interstate calls originating in Wyoming.

So the field would not be preempted if the Wyoming Public Service Commission had such a requirement. However, if you reverse that, and say that the Federal Communications Commission requires it for all interstate calls, then it would preempt the field because the equipment cannot distinguish between an incoming interstate call from a thousand miles away or an incoming intrastate call from around the corner.

One of the complaints filed with the Commission has suggested that telephone companies be required to reject messages which contain defamatory attacks on individuals and institutions. However we believe that the customary recourse to judicial relief for libel is a more salutary policy than a course which would shut off the expression of views at the outset. Moreover, a judicial remedy will now be more readily available because the telephone companies have voluntarily imposed a requirement of disclosure.

Senator PASTORE. On this point you raise a very interesting question. How about the constitutionality of that obligation being imposed upon the telephone company?

Mr. HENRY. To reject the message out of hand, you mean?

Senator PASTORE. You would require the telephone company not to publicize anything that is defamatory or derogatory of an individual. That puts them in a position of reviewing and censoring all these messages, does it not?

Mr. HENRY. Yes.

Senator PASTORE. Do you see any impediment as to the constitutionality of such a law? I think this would be the quickest and the best way, if it is an effective way. Knowing what the responsibility

of the telephone company is, any subscriber wouldn't dare make the request because they are going to be rejected summarily, and you have the answer to your problem.

I know I will get quite a reaction from Mr. Thayer on this suggestion.

For the moment let me ask you: Is it constitutional?

Mr. HENRY. I think, as you pointed out in connection with 317, the basic question is one of free speech and whether it is common carrier, a broadcast station, or what have you. What we are talking about here is rejecting the messages out of hand if they were thought to be defamatory.

Senator PASTORE. I understand that even today, during a political campaign, a broadcasting studio requests a copy of a script. They are not going to allow every Tom, Dick, and Harry to go on the air and say anything he pleases, and malign an individual and scandalize the station itself without making sure in advance that they know what he is going to say. Not that they want to censor what he is going to say, but they are anxious to find out whether or not is going to implicate them. We are all familiar with the nocensorship provision in section 315.

However, the implication is that if they allow this thing to persist, that they might jeopardize their right to renew their license. It is that constraint which brings about the policing that might be necessary.

What I am asking in this particular case, if we did pass a law which prohibited the telephone company from leasing this equipment to anyone who used it to defame the name and reputation of another individual, that would mean that in each case they would have to listen to the tape before they put it on, and if there was any defamation, or abuse of an individual, they wouldn't put it on.

Would there be any infringement of the constitutional rights involved here?

Mr. HENRY. I'm not sure whether there would be or not. That question is related to the fact that they are common carriers. I feel as a policy matter that they should not be put in this position, in effect being a censor and making the judgment.

Senator PASTORE. Why not?

Mr. HENRY. Because this would shut off certain views at the outset if the telephone company made a judgment that they might tend to incite or be defamatory, or what have you.

I simply think the more salutary policy is one which allows these statements to be made, with disclosure of the one who makes them. Also, and I will get into this a little later, the telephone company may be responsible in libel where its employees have reason to know that these messages are for the purpose of defaming another. So you also have that remedy at law.

Senator MCGEE. They wouldn't be responsible if they didn't know?

Mr. HENRY. There are just a few cases on it, I believe. There may be more. Most of the cases have arisen in the telegraph field, which I will mention in a minute.

The next paragraph in my statement reiterates what I said, that recorded announcements serve many worthwhile purposes, and we do not believe that their use to advance political or social views should

be prohibited by rule or statute, even putting aside the substantial constitutional questions that such a prohibition would raise. We can have no proper objection to views with which we merely disagree. To the extent that the boundaries of actionable defamation are invaded, local law provides a remedy.

Senator McGEE. That comes back to your statement of a moment ago to the chairman. What is defamation? It depends a little bit on the philosophy of the man, I suppose, who is making the judgment at the time. If he happens to agree with it, as you suggest, it isn't defamation of character. If he thinks so-and-so is a Communist, this is a factual statement.

Mr. HENRY. And then it is not even controversial.

Mr. McGEE. Right. So that it is a burden that perhaps does not belong there.

Mr. HENRY. Although we haven't studied it carefully, it seems to me you would have a constitutional question.

Senator McGEE. I know one or two people that I would hope weren't sitting in such a role as that trying to make that judgment.

Mr. HENRY. The Federal Communications Commission has no special expertise in the field of defamation, nor with the further question of whether a telephone company would itself be liable for defamatory matter transmitted by it in the circumstances here involved. However, we have researched this question, and find that the courts have generally limited a common carrier's liability—that is, in libel—to the situation where the carrier's personnel know that the message is spurious or that the sender is acting in bad faith, without privilege to traduce another. Cases so holding are *O'Brien* v. *Western Union*, decided by the first circuit in 1940, 113 F. 2d 539, and *Western Union* v. *Lesesne*, decided by the fourth circuit in 1950, 182 F. 2d 135.

Senator PASTORE. Before you go any further, on this question of knowledge on the part of the party, are you familiar with this equipment? How does it come about? For instance, let's assume that I want to engage such equipment. To whom do I go under the present procedure? What do I do about it? Don't I have to call up the telephone company?

Mr. HENRY. The telephone company has more information on this score. I believe you would go to the telephone company.

Senator PASTORE. When I go to the telephone company, they ask me what I want. I tell them I want to put a message on it. Who records the message? I do or the telephone company?

Mr. HENRY. I believe the subscriber. I am told the subscriber does. The subscriber himself.

Senator PASTORE. He does it himself?

Mr. HENRY. Yes; with the telephone company's equipment. Of course we know how varied these services are. I have a list in appendix C. I might read a few of them:

> Dial-a-news, dial-a-ski for ski conditions, dial-a-sport for sports, dial-a-movie for theater schedules, top tunes of the week, daily bargains, dial-a-law——

Senator PASTORE. In other words, the procedure is such that you could have an instance where the telephone company would have no knowledge of what the message was.

Mr. HENRY. Oh, yes; indeed. And I think that would be, in fact, the general rule today.

Senator PASTORE. I see.

Mr. HENRY. These cases, the *Western Union* cases, were decided in the context of telegraph messages, and they relate to the responsibility of the common carrier for libel. They rest upon consideration of the need for the rapid transmission of telegrams, without waiting for a legal opinion on each one.

We believe it is the courts' province to decide whether this rule should apply to a telephone company's recorded message service in the event of a suit for defamation with a telephone company a defendant. In the event of liability, the telephone companies in turn would decide whether to protect themselves simply by reliance upon "hold harmless" clauses in furnishing service or by other appropriate provisions, depending upon the nature of any liability found by the courts.

The Commission is presently considering the pending complaints in light of all the above circumstances. Our position in sum is that the Commission has adequate authority to deal with the problem, but has not yet concluded whether it should exercise its jurisdiction. We believe that these hearings serve a most useful function. We will be happy to obtain your views, and to assist this committee in any way possible.

It has been suggested that existing statutes on obscene and harassing telephone calls might be applicable here. There is no Federal statute of this sort, but there are a number of State and local statutes (and one bill pending in Congress, application to the District of Columbia, H.R. 10497, which has been passed by the House of Representatives) prohibiting obscene calls and harassing calls. It is doubtful whether any of them are adequate to deal with the problem now before this committee, since they clearly have been enacted to meet different problems. I have had these statutes collected for the committee's information, and they are set forth in appendix G hereto.

Moreover, both interstate and intrastate tariffs have provisions dealing with obscenity. Thus, FCC tariff No. 132 prohibits "the use of profane or obscene language" in any message toll telephone call.

State statutes which I have had checked by and large make the use of the telephone for the purpose of obscenity or harassment criminal violations.

Senator PASTORE. Say that again.

Mr. HENRY. These State statutes make the use of the telephone a violation of the criminal law.

Senator PASTORE. We have no such Federal statute?

Mr. HENRY. We have no Federal statute.

Senator PASTORE. We have prohibitions against using obscene language by rule of the FCC. But there is no penalty?

Mr. HENRY. That is right.

Senator PASTORE. Once it is done, there is no punishment provided?

Mr. HENRY. That is right. You would simply, in interstate traffic, have violated one of the tariffs.

Senator PASTORE. What is your recommendation? Should we have one? Should we have a Federal statute?

Mr. HENRY. We haven't considered this, Mr. Chairman. You get into the question of whether it should be handled at the Federal level,

the degrees of the problem, to what extent it is widespread, to what extent it is not being dealt with. I simply am not aware at this point of all those considerations.

I am sure the telephone company has cooperated willingly and helpfully with the State bodies on this subject. I don't know whether that been sufficient to deal with the problen or not.

Senator PASTORE. I am a little surprised at that answer. I am a little surprised at that answer. Why isn't it a concern of the Federal Government, of the FCC, to make it a criminal penalty, a criminal offense, to pick up the telephone and use obscene language, and harass a person at 3 o'clock in the morning? Why do we have to deliberate on that?

Mr. HENRY. I don't think we have to——

Senator PASTORE. No matter how prevalent it is, the fact of the matter is it is going on. It is going on to the distress of many people. You have heard a reputable Senator say he had to take his telephone out of listing because he was being harassed, his family was being harassed in one way or another. This is prevalent in my statement. I have had many complaints along this line. I should think it is prevalent all over the country.

You have some people who will just take advantage of it; those people who are mentally disturbed. It strikes me that anyone who picks up the telephone and indiscriminately dials a number and if a woman answers the telephone uses language that is only fit for the gutter, that there ought to be some penalty for it, if he is caught.

I think much of the trouble is catching him. We will get into that in a little bit. But once you discover it, I don't see why anyone should stand up and say, "I am not too sure we shouldn't have a law making that a criminal offense."

Mr. HENRY. There is no question but what it is a proper concern of the FCC, and there is such a tariff on file with us preventing it. The question of——

Senator PASTORE. You are saying that you can't use it for this purpose. I am saying when it is used for that purpose, what do you do about it? You are talking about trying to eliminate it and saying that it can't be used.

I don't know as you need a law for that. After all it is like the 11th commandment, isn't it? You are saying no profane language should be used over the telephone. That's fine. Glorious. Wonderful. But that is what I am concerned about.

Mr. HENRY. You asked me, as I understand it, whether there should be a Federal law on the subject.

Senator PASTORE. Absolutely.

Mr. HENRY. To me it depends on whether it is being properly enforced at the State level now. There are some 34 States which have such a law. If the Congress feels this is inadequate, of course we are concerned, and would be glad to discuss it with you.

Senator PASTORE. I would hope that you would have that discussion with your Commission rather soon because we are going to pursue this.

We are very, very detremined about this. At least I am. I think I bespeak the sentiments of the committee when I say this. This is getting more out of proportion. It is a horrible thing. We will get into the technological developments as to whether or not this can be detected. But where you find it, where you discover it, where you catch it and cope with it, I think it ought to be a very serious Federal offense.

Senator HARTKE. Mr. Chairman, along that same line, you have not found such hesitancy in the field of rates to assume Federal jurisdiction.

Mr. HENRY. Do you mean with respect to the telephone company?

Senator HARTKE. Yes.

Mr. HENRY. That is correct.

Senator HARTKE. You found no such hesitancy?

Mr. HENRY. This is a traditional area of our operation.

Senator HARTKE. Don't you think really a person ought to put money secondary to the man's mind and the condition of his human welfare? In other words here you have a matter which affects him in a manner which money could never affect him.

I am interested in the consumer. The truth of it is, the consumption and the price of paying for the telephone service may be a very small item in comparison to the embarrassment which might be occasioned to an individual from such an obscene telephone message. Isn't that true?

Mr. HENRY. Yes, sir, I would agree with you.

Senator HARTKE. How do you equate this hesitancy in the field of human rights as distinguished from economic rights?

Mr. HENRY. I don't equate them. Traditionally the question of obscene telephone calls and harassment has been treated as a matter primarily for local concern. This is why, I assume, there is no Federal statute on the subject.

Of course it is a matter of concern to our Commission if it is becoming prevalent, and I am glad to know of your interest in it. We will certainly discuss it, and we will also discuss it with the Department of Justice.

Senator PASTORE. I think that is satisfactory at this point.

Senator MCGEE. Aside from that, your new techniques now no longer make this such a restricted policing question.

Mr. HENRY. I am going to get into that right now, if I may.

Senator MCGEE. All right.

Mr. HENRY. With your permission, I should like to return briefly to the mechanized invasion of privacy which I mentioned at the beginning of this statement as an unwelcome cloud on the horizon. This problem is not covered by the bills before us today, but I believe that it warrants mention in these hearings, as indeed the chairman has already done.

As you said, Mr. Chairman, Senator Paul Douglas and Senator Edward Long have already expressed concern about this new device, which can bring into our homes recorded solicitations or other unwelcome statements distributed throughout a community on a mass basis

by means of automated dialing. And it seems to me that some consideration of the potentialities of such a device is germane to these hearings, since it is another example of the apparently growing use of the telephone as an instrument of public communication, in contrast to its traditional role as an essentially private means of communication between individuals.

We have no firm information on the extent to which such devices have been used. But, their potentialities for both commercial exploitation and public irritation are obvious. The ring of a telephone once meant to us the anticipation of speaking to a friend, a relative or a customer. And, while some of these calls may be less welcome than others, they all involve another human being with whom we can converse. No one will welcome the prospect of being summoned to the telephone in his own home, perhaps at a very inopportune moment, only to converse with a machine. The irritation doubles when the mechanical message is a singing commercial or political message with which he strongly disagrees.

Furthermore, the use of the device may prevent the called party from using his telephone again until the message is completed, even if he hangs up in the middle. This is because many central offices do not have a "called-party timed-release" feature, and without such a feature, the calling party, the incoming call, has full control over the called party's line. There are even reports that the machine is capable of calling you back if you do hang up on it.

It does not stretch the imagination very far to envision the political pitchman invading our homes with his unsolicited messages. We might well be faced with an unwelcome intruder whom we couldn't turn off, talk back to, or even identify. This combination of features would make such calls intolerable.

Senator McGEE. I interrupt to suggest something even worse. And that is, in the midst of the heat of an election campaign it would be possible to saturate, say, your telephone facilities with this kind of thing so that the usual grind that we all make near the end to be sure you get out the loyal ones to vote, could be blocked by a mass saturation program. It could cost a little money, but money sometimes seems to be no factor in some of these things.

It could be serious.

Senator PASTORE. From the practical point of view it is the sure way to lose. [Laughter.]

Senator McGEE. I was thinking less of their message than the fact that you couldn't reach the faithful——

Senator PASTORE. You don't get anybody to vote by harassment.

Senator McGEE. That is not my point. My point was not the contents of what they said, but the fact that they cluttered the telephone lines so that in our normal mobilization endeavors, say, the day before election or election day, it would be a simple matter to rule the telephone squads out of business, and they are rather effective in most local communities.

Mr. HENRY. To end on a reassuring note, I would point out, that tariffs are in existence which bear on the problem, and so far have

been able to take care of it. For example, tariff No. 132, filed by A.T. & T. with us, prohibits:

(c) the use of service or facilities of the telephone company for a call or calls, anonymous or otherwise, if in a manner reasonably to be expected to frighten, abuse, torment, or harass another;

* * * * * * *

(e) the use of the service in such a manner as to interfere unreasonably with the use of the service by one or more other customers.

Depending upon the precise manner in which automatically dialed calls were made, those provisions might be applicable. I believe the telephone company is installing these called-party timed-release devices, which enable you to disconnect the calling party by hanging up, although they are not in wide distribution yet.

Senator PASTORE. In what you have said so far, there is no mention of invasion of privacy. Isn't that the crux of the whole matter?

Mr. HENRY. Yes, sir.

Senator PASTORE. The fact that that person is being disturbed without consent to receive a machine message which is intended to sell something is only one side of the question; whether or not that person wants to buy or not is another question.

In other words, what you are actually saying is that that element of private invasion is being left out of these limitations that you have just cited. Cite those limitations again. You say the tariff requires what?

Mr. HENRY (reading):

That telephones not be used in a manner reasonably to be expected to frighten, torment, or harass another.

Senator PASTORE. That is not our question.

Mr. HENRY. Pardon me.

The use of the service in such a manner as to interfere unreasonably with the use of the service by one or more other customers.

That would mean, for example, by tying up your line.

Senator PASTORE. In other words what does it all mean? That you can or can't use it?

Mr. HENRY. So far, this tariff, and its counterparts in the States, have been used effectively to prohibit or to prevent such harassment, such invasions of privacy.

Senator PASTORE. Let me ask you in the positive. In what instance can it be permitted? To do what?

Mr. HENRY. You do get into the same constitutional questions, I believe.

Senator PASTORE. That isn't my question. I am not talking about constitutional questions. I am talking about the practical use of it. In what instance do you feel, does the FCC feel, that this sort of gadget can be used?

Mr. HENRY. I will give you an example in the way in which it might be. It might well be used—and the company has a policy statement on this which I am sure they will show you—it might be used for the solicitation of commercial sales, particularly if when you don't want to listen you can just hang up on it and disconnect your telephone. In other words, with a device which enables you to disconnect if you don't like it. Reasonable, carefully worded sales solicitations might be made.

Senator PASTORE. Do you approve of that?

Mr. HENRY. There again I wouldn't prohibit them in blanket fashion. In other words, if you can use the telephone yourself——

Senator PASTORE. What disturbs me, Mr. Henry is this: The FCC is the protector of the people, of the public. I can't be too critical of the telephone company in expanding its services in any way it feels in order to increase its economic stability and to pay higher dividends to its stockholders. That is legitimate under a free enterprise system. You get to a point where sometimes in this endeavor, which might have a good motive, it gets a little bit out of hand.

Who is there to protect the individual, the people may or may not complain. They might write to their Senator, or they may not write to their Senator.

Don't you feel it is the responsibility of the Federal Communications Commission to get into these matters and stand in the position of the general public and say this is not good for the public? Do you have to wait for a complaint?

Mr. HENRY. No, sir. There is no question but that it is our responsibility.

Senator PASTORE. Don't you think you ought to get into this quite extensively and exhaustively and determine just what this is all about, and come up with a rule?

Mr. HENRY. I think we should. I would say at this point that there has been no serious problem, however, because where it has been attempted to be put into effect, it has not succeeded. But certainly the potential is a serious one and we will consider it.

Senator PASTORE. I would hope that you will get into this. Two Senators have already spoken out on this. Apparently they have received complaints. I haven't received many, I must admit. But this idea that my telephone can ring, say, at noontime and somebody saying I have a Chevrolet car at a big bargain, how would you like to buy it, and go on that way for 2 seconds or 2 minutes, and I am disturbed, and the only remedy I have is to hang up, I think we are going too far, aren't we?

Mr. HENRY. We will look at it, Mr. Chairman. Of course you have the difference between mechanical recording and the individual——

Senator PASTORE. I hope you will get into this. I am going to be very anxious to hear what the telephone company has to say about this.

Senator MCGEE. May I break in here, too, Mr. Chairman?

You proceed with this final two pages of your testimony in response to a question that I was posing, that had to do with the obscene phone calls and the harassment phone calls and that sort. I find this doesn't address itself to the question I was raising. Mine had to do with these gimmicks, with direct dialing, that someone can pick up a phone in San Francisco and call me directly, as they did not very long ago.

Someone can pick up a phone in Alexandria, Va., and call me in Wyoming, as they did not very long ago, with this type of thing. Doesn't that make it rather ridiculous to believe that the States can move in this direction? What State would have jurisdiction in those cases?

Mr. HENRY. The State where it originated would have jurisdiction.

Senator McGee. They could regulate, they could prevent somebody from Alexandria from pecking away at this ridiculous sort of diatribe to a call to Wyoming?

Mr. Henry. I think so, criminally they could. In other words a State criminal statute would affect it.

Senator McGee. I wasn't sure that we were confining it now to criminal prosecution. We were concerning ourselves with your reply to the Chairman about why the Commission didn't believe it should move into this because of the interstate nature of this problem, rather than leave it to the intrastate.

Senator Pastore. I think there it a little misunderstanding here. If this call that harassed you from California, that could be handled by the State of California because that is where the call originates. Is that correct?

Mr. Henry. Yes.

Senator Pastore. Mr. McGee would have to go to California to make his complaint. Let's understand this. He couldn't make his complaint where he happens to be harassed for the simple reason that there is no Federal statute. He would have to go to the State where the call originated to make his complaint.

Mr. Henry. That is right. That is, of course, an important point.

Senator McGee. This is the burden of the point that I was addressing myself to, not this new device that would invade your privacy, but the opportunities that are already there. I am trying to suggest that perhaps it is time for the Commission to move in that area because of direct dialing that is so readily available today.

Perhaps the Federal statute is required.

Mr. Henry. It may well be. As I indicated we will do that right away. And also confer with the Department of Justice on it.

I would conclude by saying that I do think all of these questions point up the fact that the changes that are taking place are changes in the traditional use of the telephone into a means of public communication on a nationwide basis, and therefore these hearings are most welcome.

Senator Pastore. Before you go, Mr. Henry, since last Tuesday night, November 9, when we had that blackout, the thing that concerned me rather seriously is what happens to our communications in an instance of that kind, in order to avoid panic, to inform the public exactly what happens, what they are up against, and why? For instance, we had situations in New York where people were isolated in the subway. A person may be in an elevator on the 55th floor of a building. Or he may be stranded on some vehicle on a bridge where he can't get off and walk across because of the construction of the bridge.

In other words, what consideration has been given by your agency with reference to supplementary or auxiliary means of communication in such a situation?

Mr. Henry. We are conducting an investigation of that at the moment. While it is not complete, I have prepared, after discussions with the committee counsel, a report for you which I will be glad to hand to you or make a part of this record, however you want it treated.

We have written to all of our broadcast licensees and we have written to the major common carriers, the telephone companies,

telegraph companies, and so on. We have written to every industry advisory committee in every State, seeking their comments and descriptions of what went on in the affected area.

We found that telephone service, by and large, was uninterrupted. The telephone companies had auxiliary power ready and available, and brought it into play, and the telephone service was largely uninterrupted. I have a report from the Bell System on this. Since it is now our report, I think it would be appropriate for me also to give this to you.

We found that some of our international telegraph record companies did not have adequate standby power in New York City, but that they are in the process now of correcting that situation.

We found that roughly 30 to 40 percent of the standard AM radio stations in the affected area had auxiliary power. It worked well, and communications by radio worked as we hoped and expected they would in the event of such an emergency. Communication was maintained.

We will have a full report on this for you later on. We can go into almost any detail you want now.

Senator PASTORE. Would you also give—for example, the example I gave you, I think there was a report that a train or a vehicle was stranded on the Williamsburg Bridge, I think it was. I can imagine those people didn't know what happened. No one could tell them what happened. After all it wasn't a question of the telephone, and it wasn't a question of broadcasting because they don't carry receivers with them.

I was wondering if any thought is being given to that. Is there any modern technology that can come into play in a situation of that kind, where you can get word to people who are stranded in that fashion?

Mr. HENRY. Yes.

Senator PASTORE. As I said when I was asked about that, I said it was a dreadful thing that happened, but it could have been a blessing in disguise, because here we are living in this atomic age where we are getting into the vastness of construction as we are getting into the vastness of everything. The big question is, how do we provide for the average person to keep contact with others in this vastness? I think that we have to start reshaping our thinking with reference to many of these problems.

An incident of that kind, with people not knowing what happens, can develop into a panic. God forbid, it didn't happen. The American people are to be complimented for the way they accepted the situation. It could be a tragic situation when people don't know what happened, especially when they are in a perilous position.

Mr. HENRY. That is right. Our report will include the manner in which the transportation and other services were able to use radio communication.

Senator MCGEE. May I ask the chairman a question?

Senator PASTORE. Yes.

Senator MCGEE. With your statement you filed an appendix F, a list of identifiable "Let Freedom Ring" subscribers listed under the Bell System.

Incidentally, I notice in perusing that list that maybe there is a real point to the Senator from Indiana's plea about being omitted in our case for illustration. His State has ties with California for having the most "Let Freedom Ring" programs at the present time. Rhode Island and Wyoming don't happen to be listed. I daresay we will be on the next list after this hearing, but not now.

The point of it is, I have been in some communities and heard programs. I was in Long Beach a week ago. That isn't on the list. They were attacking UNICEF—this happened to be Halloween—as a bunch of Communist conspirators to break down our principles. They have them in Pasadena and Sacramento. These places I know of.

They would not be on this list because they are not under the Bell System in those communities? Is that right?

Mr. HENRY. That could be. General Telephone said that there were two cities in California where subscribers were, but they didn't identify the cities.

Senator MCGEE. I named three that I personally know of that aren't on your list. Which leads to my question: What means do you have of keeping up on this?

Mr. HENRY. We can easily get that from the other telephone companies.

Senator MCGEE. Do you?

Mr. HENRY. At the moment we don't have them, no.

Senator MCGEE. And you haven't been accumulating them? This I assume was assembled for the purpose of this hearing?

Mr. HENRY. That is correct.

Senator MCGEE. Would you have reason to believe that there may be more than these 40 that you refer to, or 36 that you list?

Mr. HENRY. Yes. You have just given me reason to believe that. [Laughter.]

Senator MCGEE. Substantially so. I don't mean to quibble over two, three, or four cases. I am trying to get now at whether this is an illustrative list, whether this is a nearly exhaustive list, or whether it is more widespread than this indicates?

Mr. HENRY. It may be about 50 percent. The "Let Freedom Ring" people, as I understand it, claim about 60 stations.

Senator MCGEE. I wonder if we might get the full listing of them. I think we ought to help them out and give them a little publicity.

Mr. HENRY. We will be glad to get them.

(List of "Let Freedom Ring" stations follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., December 8, 1965.

Hon. JOHN O. PASTORE,
U.S. Senate, Washington, D.C.

DEAR SENATOR PASTORE: During the November 18, 1965, hearings before the Subcommittee on Communications of the Senate Commerce Committee on S. 2693 and S. 2713, we were requested to supply the subcommittee with a current and up-to-date list of the "Let Freedom Ring" telephone numbers and locations.

Attached hereto is a two-page document which contains a listing of such numbers and locations as of December 6, 1965. The first page lists those of the Bell System and the second page lists those of the Independent Telephone Cos.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

BELL SYSTEM COMPANIES AUTOMATIC ANNOUNCEMENT SERVICES

"LET FREEDOM RING"

City	Telephone number	Number of lines	Announcement equipment
Anaheim, Calif.	714-635-3391	2	Telephone company.
Bedford, Ind.	317-BR5-5981	1	Do.
Berkeley, Calif.	415-524-0140	1	Do.
Birmingham, Ala.	205-839-6241	4	Do.
Boulder, Colo.	303-444-2213	1	Do.
Burlington, N.C.	919-226-5506	2	Customer provided.
Canton, Ohio	704-492-4255	2	Telephone company.
Charlotte, N.C.	704-536-0316	2	Do.
Chicago, Ill.	312-463-1786	2	Do.
Columbus, Miss.	601-328-0552	1	Do.
Columbus, Ohio	216-263-1881	4	Do.
Corinth, Miss.	601-328-0552	1	Do.
Danville, Ill.	217-443-2690	1	Do.
Decatur, Ill.	217-423-9733	1	Do.
Dedham, Mass.	617-329-2637	1	Do.
Des Moines, Iowa	515-265-1471	1	Do.
Detroit, Mich.	313-871-2447	10	Do.
Fair Oaks, Calif.	916-961-7370	2	Customer provided.
Gainesville, Fla.	305-372-3364	1	Telephone company.
Gloucester, Mass.	617-283-5043	1	Do.
Hudson, N.H.	603-889-2551	1	Customer provided.
Indianapolis, Ind.	317-632-1361	2	Telephone company.
Jacksonville, Fla.	305-355-2716	2	Do.
Knoxville, Tenn.	615-546-4473	2	Do.
Macon, Ga.	912-743-6721	3	Do.
Medford, Oreg.	503-773-6720	1	Do.
Miami, Fla.	305-221-6767	2	Do.
Montgomery, Ala.	205-265-0296	1	Do.
Muncie, Ind.	317-289-2433	1	Do.
Nashville, Tenn.	615-297-0931	1	Do.
Nederland, Tex.	713-RA7-1621	1	Do.
Ojai, Calif.	805-649-2495	1	Do.
Orangeburg, S.C.	803-534-2122	1	Do.
Pensacola, Fla.	305-476-8002	2	Do.
Phoenix, Ariz.	602-258-3939	1	Do.
Pittsburgh, Pa.	412-333-9300	7	Do.
Raleigh, N.C.	919-828-9067	2	Do.
San Gabriel, Calif.	213-285-2291	2	Do.
Seattle, Wash.	206-LA5-2727	1	Do.
Staten Island, N.Y.	212-YU7-4343	8	Do.
Summit, N.J.	201-CR3-0369	1	Do.
Topeka, Kans.	913-CE3-4251	1	Do.
Towson, Md.	301-377-7460	4	Do.
Wichita, Kans.	316-AM7-3348	2	Do.
Woodland Hills, Calif.	213-883-2820	1	Do.
Yorktown Heights, N.Y.	914-WI1-1779	1	Do.

INDEPENDENT TELEPHONE COMPANY AUTOMATIC ANNOUNCEMENT SERVICES

"LET FREEDOM RING"

City:	*Telephone number*
Sarasota, Fla.	924-1311
Southern Pines, N.C.	692-7191
Clearwater, Fla.	446-9197
Rocky Mountain, N.C.	446-8196
Long Beach, Calif.	436-7206
Do.	436-7207
Erie, Pa.	455-7561

Senator MCGEE. Publicity on these things generally is more devastating than keeping it secret. For that reason I think we ought to cooperate as much as we can to give them some free plugs.

Senator HARTKE. I would like to make a comment on the blackout, and then ask a question.

I do think that the so-called fear of panic which occurred, or could have occurred, was alleviated to a great extent by the fine coverage that the radio and television people did do under the circumstances in not pointing up those things which would lead to panic but more or less keeping a running commentary as they moved along of some of

the human incidents which were occurring. It could have been a lot worse. I think they are to be complimented for that, although we often give them their fair share of criticism. Maybe it is fair to give them an occasional bouquet when they do do a good job.

I might say in regard to that: On auxiliary power, is it a requirement that a radio or television station have auxiliary power, or is this a voluntary item as far as they are concerned?

Mr. HENRY. It is voluntary. As I say, approximately 30 to 40 percent of our AM radio licensees have auxiliary power. Some is privately owned and some is the property of the United States which the FCC administers.

Senator HARTKE. In regard to that the Defense Department makes no requirement of this, of any key stations, or a substantial listing?

Mr. HENRY. They are all part of the emergency broadcast system. There are a number of backup networks and facilities. But there is no absolute requirement from any source that all radio stations have auxiliary power.

Senator HARTKE. This seems rather remarkable to me, that we have been led to believe that conelrad as an organization, at the time it was in existence, could give us real information in case of an alert, and this was set aside because as I understand it they switched over and provided a method whereby you transmit over one frequency. Is that true?

Mr. HENRY. Yes. That has been canceled.

Senator HARTKE. Pardon me?

Mr. HENRY. That particular conelrad provision has been canceled.

Senator HARTKE. I understand. But I understand it has been supplemented with this new provision.

Mr. HENRY. That is right.

Senator HARTKE. No requirement at all of an auxiliary power for these emergency transmitting stations, is that true? No investigation, no concern as to whether they are in operating condition was ever expressed before?

Mr. HENRY. Of course there is a concern that it operate properly and that it be there. Mr. Miller, of our Office of Emergency Communications, is here and can supplement anything I say, or correct me. But it is not by rule of the Commission.

Senator HARTKE. I am not really interested in going into that in depth. If he would submit a report or whatever material he has to the committee.

(The report referred to follows:)

CONELRAD AND EMERGENCY AUXILIARY POWER

Control of electromagnetic radiation was applicable to all Government and non-Government (broadcast, common carrier, safety, and special radio services) radio transmissions under the provisions of Executive Order 10312.

The primary responsibilities placed upon the FCC by section 1 of that order was as follows:

"SECTION 1. The authority vested in the President by section 606(c) of the Communications Act of 1934, as amended, is hereby delegated to the Federal Communications Commission to the extent necessary for preparing and putting into effect plans with respect to radio stations as defined in section 5 hereof, except those owned and operated by any department or agency of the United States Government, *to minimize the use of the electromagnetic radiations of such stations, in event of attack or of imminent threat thereof, as an aid to*

the navigation of hostile aircraft, guided missiles, and other devices capable of direct attack upon the United States. The authority so delegated to the Commission shall be exercised subject to the following limitations:

"(a) Nothing in this order shall be construed as authorizing the Commission to exercise any authority with respect to the content of station programs.

"(b) Nothing in this order shall be construed to authorize the Commission to take over and use any radio station or to remove the apparatus and equipment of any radio station.

"(c) The plans of the Commission for exercising its authority under this order shall not become effective until they have been concurred in by the Secretary of Defense and the Chairman of the National Security Resources Board." [Emphasis added.]

Conelrad for the broadcast services resulted in a plan compromising between two diametrically opposed requirements:

(*a*) The USAF requirement (as executive agent for the DOD) that broadcast stations be silenced to deny navigational aid to attacking enemy forces, and

(*b*) The civil defense requirement that broadcast stations remain on the air to broadcast information and instructions to the general public.

Briefly, the conelrad plan for the broadcast services provided for only standard broadcast stations to remain in operation on 640 kilocycles and 1240 kilocycles. FM and television broadcast stations would remain silent. Standard broadcast stations would, upon receipt of the alert, shift carrier frequency to either 640 kilocycles or 1240 kilocycles and operate in clusters associated with their community.

Denial of navigational aid was achieved principally through varying degrees of limiting cochannel interference-short transmissions. Local program coverage was very limited in geographical area (many voices—much aural interference) with State, regional, and national coverage providing progressively improved service (national programing, one voice—no aural interference). The electrical interference to enemy forces remained constant.

There were no funds available for providing emergency auxiliary power for conelrad broadcast facilities. The principal DOD requirement at that time (1948–63) was to silence radio transmitters to deny navigational aid to enemy forces.

With the advent of the missile area, the FCC requested the DOD to reevaluate their continued requirements for conelrad on February 13, 1961. By letter dated April 23, 1962, the FCC was advised:

"Effective now, there is no longer a requirement to minimize the use of electromagnetic radiations of non-Government transmitters as navigational aids to an enemy, with the exception that it does remain necessary to continue to deny to an enemy the use of our accurate aeronautical navigation systems and the long- and short-range navigation systems (loran and shoran)."

Conelrad for the broadcast services was deleted by formal Commission action July 3, 1963.

NEW EMERGENCY BROADCAST SYSTEM

Conelrad was superseded by a new and broader emergency broadcast system as provided by section 3(b) of Executive Order 11092. It is based upon all known requirements for emergency communications with the general public, and contains the approved policy guidelines for the development of detailed operational plans for workable EBS plans, systems, and procedures to fulfill detailed national, regional, State, and local emergency broadcast requirements. The basic EBS plan was approved by the FCC on December 4, 1963, and concurred in by the DOD(OCD) and the OEP on December 12 and 13, 1963, respectively.

Detailed State EBS operational plans have been prepared for the 50 States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands. These were prepared as a joint cooperative effort among the broadcast industry, Government, and State and local authorities within each State and territory. These were approved as interim plans by the FCC on October 26, 1965.

Meetings of State industry advisory committees have been held throughout the country for the past several months, looking toward clearing up all obvious deficiencies, and making further voluntary improvements in technical arrangements and programing procedures for the detailed State EBS operational plans.

The detailed State EBS plans contain the following:

(*a*) Subdivision of each State into geographical operational areas.

(*b*) Emergency local program origination points and program circuits and

program distribution arrangements for all EBS stations within each operational area within each State.

(*c*) Emergency State program origination points and program distribution arrangements for all EBS stations within each State.

(*d*) Detailed interconnection arrangements for receipt of presidential message, national programing, and news by means of the combined facilities of the commercial radio networks (ABC, CBS, MBS, NBC, Yankee, and Intermountain) and television aural networks (ABC–TV, CBS–TV, NBC–TV).

Copies of the basic EBS plan have been forwarded to every standard, FM, and television broadcast station. Every standard, FM, and television broadcast station has been forwarded a copy of the detailed EBS operational plan for their State. The responsibilities of the broadcaster, emergency program sources, and detailed technical arrangements are contained in these plans. The Commission and the industry has continually encouraged every broadcaster to actively participate in the development and refinement of all of these plans.

The Department of Defense (Office of Civil Defense) radio station protection program is proceeding in cooperation with the FCC. Standard broadcast stations holding a valid national defense emergency authorization (NDEA) and participating in the detailed State EBS plans are selected by DOD(OCD) for contracts to install, at Federal expense, radiological fallout shelters, emergency power generating equipment, emergency programing equipment for shelters, and radio communications circuits between the shelter and a local emergency operating center where State or local authorities are to be located. Five hundred and forty-one stations are presently under contract. The DOD(OCD) expects to terminate the program in fiscal year 1967 with a total of 658 hardened stations.

A special NIAC working group under the chairmanship of Mr. Lester G. Spencer, radio station WKBV, Richmond, Ind., was appointed on June 30, 1965, for the purpose of developing detailed guidance for the voluntary use of State EBS systems and procedures in peacetime State and local emergencies. This detailed work is proceeding.

Senator HARTKE. I was equally shocked to find, and this doesn't involve you, that there are no auxiliary requirements for airports of the United States, for runway lights, radio and radar transmission, and for obstruction lights.

I am glad to see that the FAA is at least taking action in this field.

Let me ask a question which I think is basic to the matter at hand.

What you are dealing with here is a little bit different than the ordinary case of privacy in view of the fact that you are dealing with a common carrier, isn't that true?

Mr. HENRY. Yes.

Senator HARTKE. Instead of dealing with it as a matter of radio communication and other items in which you have a set and which you can turn off, here you are dealing with all the elements of a common carrier situation. Isn't that true?

Mr. HENRY. Yes. The service is provided by a common carrier.

Senator HARTKE. And it is a monopoly, isn't that true?

Mr. HENRY. The telephone service generally speaking is a monopoly.

Senator HARTKE. In other words you have a common carrier with monopoly control as far as the service is concerned, for which the individual makes a contribution and subscription or payment for his service.

Mr. HENRY. That is right.

Senator HARTKE. In this field it seems to me that the questions really of constitutionality which apply to distribution of literature, even though I think that the *Scott* case would probably cover the situation, even so, the question of constitutionality would not under such circumstances present any great difficulty whatsoever, isn't that true?

Mr. HENRY. I don't think so, Senator Hartke. I think the distinction is not sufficient to eliminate all of the usual constitutional, the usual constitutional questions involving free speech.

Senator HARTKE. Free speech?

Mr. HENRY. Yes.

Senator HARTKE. Wait a minute. There is no requirement, in other words, as far as freedom of speech is concerned, in the field in which there is a monopoly situation of a common carrier. There has been a well-recognized line of authority that in common carrier monopoly situations that these items are subject, if they cross State lines, to Federal control. Isn't that right?

Mr. HENRY. Yes, that is right.

Senator HARTKE. So this question you raise imposing suggestions on what I call mythology ideas relating to individual rights allegedly subject to constitutional restrictions in the field of common carriers are just not applicable. You can say they are, but I do not think they are. I think you have only a question of public policy here and that is whether or not the subscriber has a right to demand that his rights as a part of a payment to a common carrier who has a monopoly be respected.

The only question is, whether it is after the fact or before the fact. I see no hesitancy to move in this field of operation. I personally think sometimes you move too far in regulation, but in this one field I wonder why you have become so hesitant all of a sudden.

Mr. HENRY. We are simply raising constitutional points that we think are valid. That is to say, taking the *Talley* case, which related to handbills, which apparently outlawed the California statute which prohibited any distribution of any handbills under any circumstances. There we are talking about——

Senator HARTKE. Let's come back to the *Talley* case. It can be distinguished on a number of grounds. You didn't have a common carrier there, did you?

Mr. HENRY. No.

Senator HARTKE. You didn't have a monopoly situation?

Mr. HENRY. Right. You did not.

Senator HARTKE. You talk about freedom of communication and——

Mr. HENRY. Except that the common carrier facilities by definition are open to all. If you put the prohibition on the common carrier you are in effect prohibiting all users of that common carrier.

Senator HARTKE. There isn't any question but what you can do that.

Mr. HENRY. Our conclusion is that you can, if you frame it properly and develop the appropriate legislative history. We agree with you to that extent.

Senator PASTORE. Do you have a question arising? It may be shaded a little differently than these other instances given here. I do think you touch on the question of freedom of speech. It all depends if we are talking about the defamatory statements. If a person picks up the telephone and makes the call, is he committing a willing and independent act? If so, he has a perfect right to do it. On their part of a person who uses the service, that is a willing act, because they have hired the service.

The only trouble, Mr. Hartke, is when these two people get talking about you and me in a way that defames us or scandalizes us without

just reason. The question here is what rights do I have? What rights do you have, being a victim of this kind of conversation.

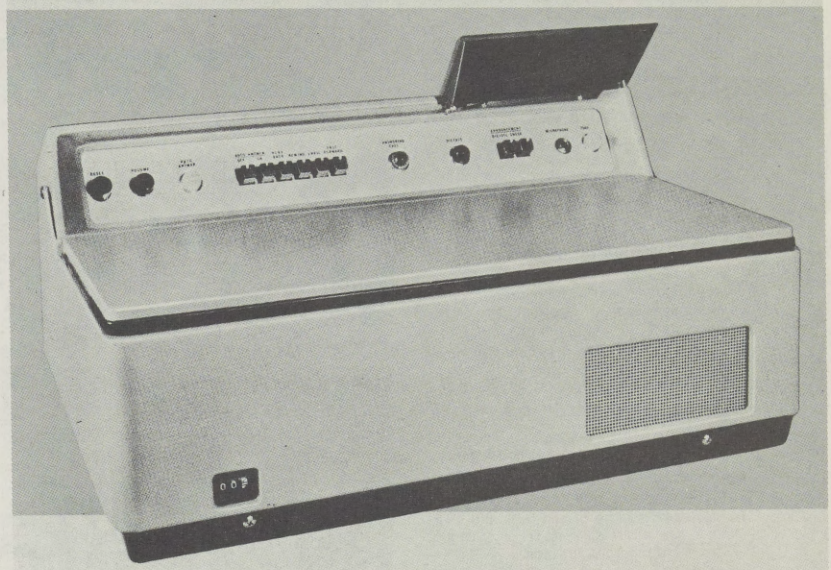
I want to incorporate in the record the appendixes to Chairman Henry's statement and a few articles from trade journals concerning communications: one that appeared in the Radio–TV Daily, November 12, 1965; Broadcasting Magazine, November 15, 1965; Television Digest, November 15, 1965; press release from the National Association of Broadcasters, November 10, 1965; and one that appeared in the Washington Star on November 10, 1965, and certain statements from CBS and NBC.

(The material referred to follows:)

[Appendix A to Chairman Henry's statement on S. 2693 and S. 2713]

Bell System

ELECTRONIC SECRETARY®



- answers your telephone with any message
- records all callers' messages for you
- plays them back at your convenience

...works for you up to 24 hours a day!

answers your telephone any time you wish...

GIVES CALLERS YOUR PERSONAL MESSAGE

- ☐ Replies with any recorded message up to 3 minutes long, in your own voice.
- • Operates automatically, whether you are out or just prefer not to be interrupted.
- • You may tell callers where you are, when you will return — give any information.
- • You may change this message quickly.
- • Your callers always get an answer.

TAKES MESSAGES FOR YOU

- ☐ Records up to 2 hours of messages.
- • You never miss a call.
- • Special feature continuously assures caller that recorder is operating.
- • You may "listen in" over loudspeaker and break in to answer personally any emergency calls.
- • Stops automatically when caller's message ends.

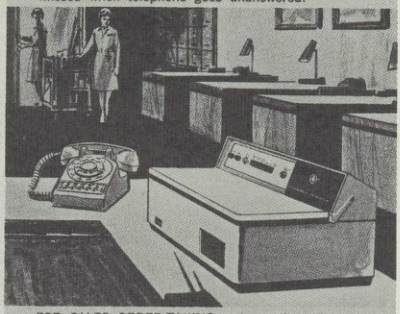
PLAYS BACK THEIR MESSAGES FOR YOU

- ☐ You can play back messages immediately upon your return or at your convenience.
- • Indicator tells how much has been recorded in your absence.
- • Messages may be played over and over to insure accuracy in case of question — all are recorded on tape.
- • Optional foot-control switch and headset permit easy transcribing.

OTHER "PLUS" BENEFITS

- ☐ You may use your phone in the regular way when you prefer.
- ☐ No capital investment — nothing to buy.
- ☐ Rugged, dependable Bell System Equipment — with prompt, reliable maintenance at no extra cost.
- ☐ Compact — only 10 by 17 by 23 inches.

FOR THE SMALL-BUSINESSMAN, may save costs of secretarial help, prevent loss of business that is missed when telephone goes unanswered.



FOR SALES ORDER-TAKING, salesmen's calls and those of special customers may be recorded automatically, accurately, any time of day or night.

FOR THE PROFESSIONAL MAN, reliable, accurate messages mean good relations with patients or clients, proper handling of emergency situations.

Bell System
ELECTRONIC SECRETARY®

helps your telephone work for you twenty-four full hours, every day...

Saves You Time and Effort:

you know your phone is "covered" at all times, your message is being given to callers, their messages are being recorded for you.

Saves You Money:

may save the expense of an office attendant, eliminate the possibility of missing calls and business, make your operation more efficient.

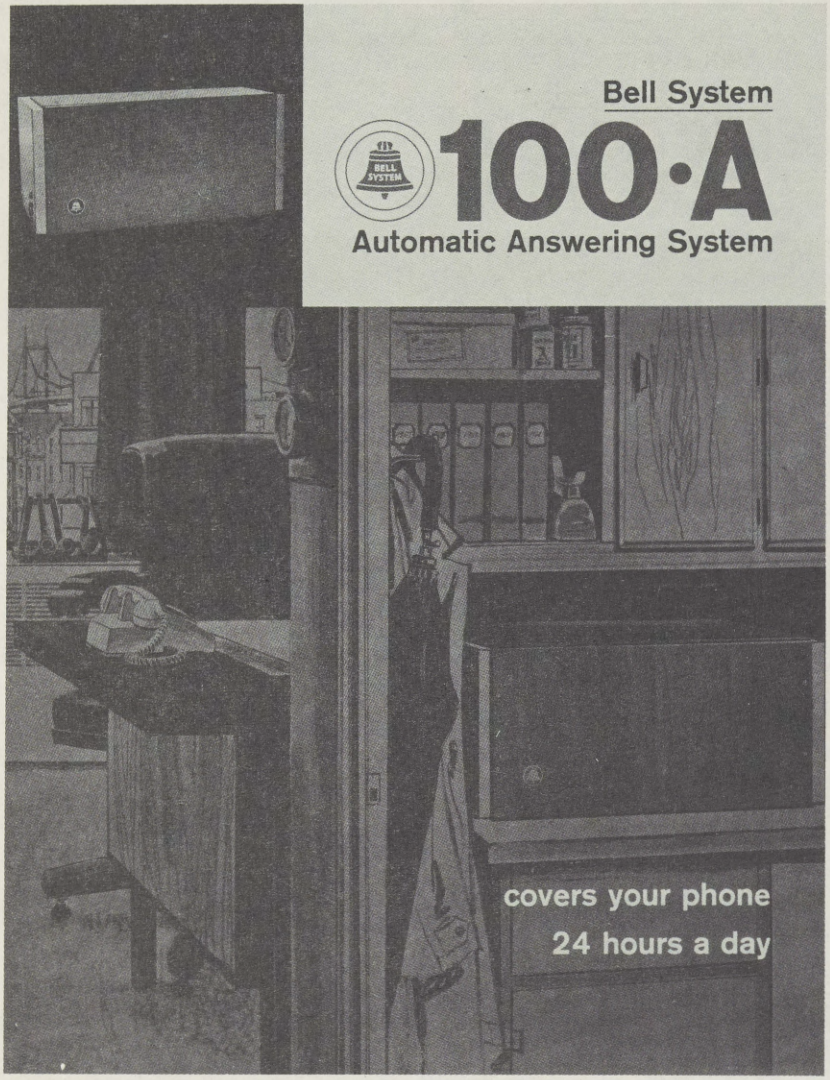
The Ideal "Assistant" for:

professional men and small-businessmen — all businesses wishing to "streamline" salesmen's telephone-ordering and reporting procedures.

BELL TELEPHONE SYSTEM

® Registered trademark of Automatic Electric Company

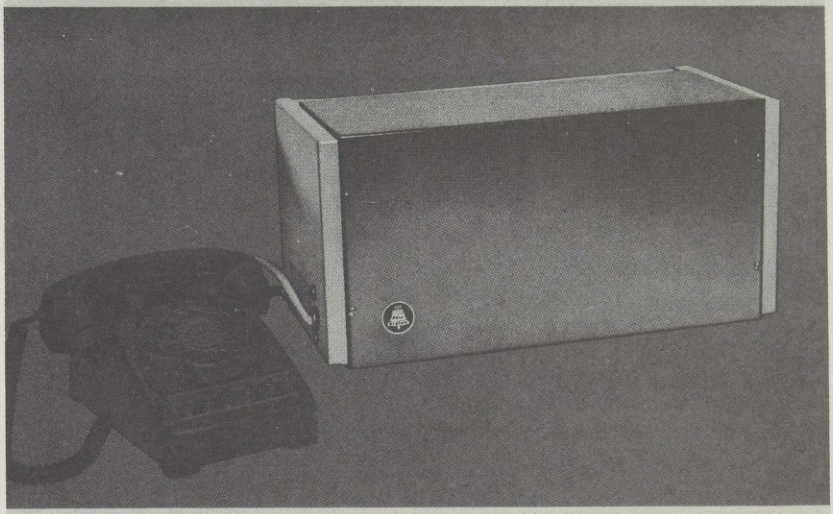
[Appendix B to Chairman Henry's statement on S. 2693 and S. 2713]



Bell System

100·A

AUTOMATIC ANSWERING SYSTEM



answers your telephone for you, automatically
gives the caller any recorded message you wish
mounts out of sight – in a closet, on a wall,
any out-of-the-way place

performs all these valuable services...

ANSWERS FOR YOU ANY TIME YOU WISH

- ☐ Operates automatically, whether you are out or just prefer not to be interrupted.
- Your callers always get an answer.
- It "covers" your phone for you, 24 hours a day if desired.
- You may use your phone in the regular way any time.

GIVES CALLERS ANY MESSAGE YOU WISH

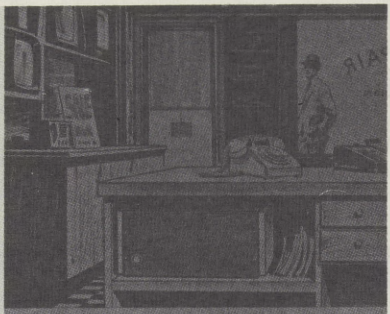
- ☐ Gives any recorded message up to two minutes long.
- You may tell callers where you are, where you will be, when you will return — give them information of any kind.
- Your message may be in your own voice, as a personal touch.
- You may change this message quickly.

REDUCES NEED FOR REPETITIVE ANSWERING

- ☐ Ideal for use where people call for the same information—job assignments, work availability, theatre schedules, stores' specials, etc.
- Frees personnel for other duties.

OTHER "PLUS" BENEFITS

- ☐ May be arranged for remote control.
- ☐ Easy to operate.
- ☐ No capital investment — nothing to buy.
- ☐ Rugged, dependable Bell System Equipment — prompt, reliable maintenance at no extra cost.
- ☐ Compact — measures only 18 by 9 by 8 inches.



FOR THE SMALL BUSINESSMAN, may save costs of secretarial help, prevent loss of business that is missed when telephone goes unanswered.

FOR JOB INFORMATION, can tell callers what they need to know about work availability, job assignments, dispatch of men, material or equipment.

FOR PUBLIC INFORMATION, can give callers such information as theatre feature schedules or deliver any promotional message that may be required.

Bell System

100-A

AUTOMATIC ANSWERING SYSTEM

helps your telephone work for you twenty-four full hours, every day...

Saves You Money:

may save the expense of an office attendant, eliminate the possibility of missing calls and business, make your operation more efficient.

Saves You Time and Effort:

you know your phone is "covered" at all times, your message is being given to all callers, automatically, effortlessly.

BELL TELEPHONE SYSTEM

[App. C to statement of E. William Henry on S. 2693 and S. 2713]

AUTOMATIC ANNOUNCEMENT SERVICES

A. TYPICAL USES OF AUTOMATIC ANNOUNCEMENT SERVICES

Public service

- Time.
- Time and temperature.
- Weather:
  - General.
  - Marine.
  - Aviation.
  - Frost warnings.
  - Airports.
- Current events:
  - News brief "Dial-a-News."
  - Vietnam message for the day.
  - Ski conditions "Dial-a-Ski."
  - Sport scores "Dial-a-Sport."
  - School closings.
  - Status reports on emergency conditions.
  - Satellite information.
- Traffic and road conditions.
- General township information in rural areas.
- Commodity quotations by State governments.
- Income tax information.
- Motor vehicle inspection information.
- Farming conditions.

General business

- Working hours, closings, holidays.
- Labor union negotiations.
- Employee information.
- Management news.
- Wholesale produce and egg prices.
- Daily bargains.
- Sales stimulation messages.
- Product promotion.
- Scheduling of work force.

Entertainment

- Record promotion—"Top Tunes of the Week."
- Theater schedules—"Dial-a-Movie."
- TV program listings.
- Travel talks.
- Parks and recreation information.

Educational

- Foreign language lessons.
- "Dial-a-law."
- Gardening tips.
- Bird watching information.
- Medical news "Tele-Med"
- Interviews.
- Student activities and registration information.
- Household hints.
- Recipes—"Menu of the Day."
- Health tips—"Dial-a-Dietitian," "Dial-a-Heart."

Miscellaneous

- Political messages and announcements.
- Let freedom ring.
- Inspirational—"Dial-a-Prayer."
- Stock market quotations.
- Airline flight information.

Railroad arrivals and departure information.
Location of fires for volunteer fire departments.
Fraternal lodge news.
Social club announcements.

B. TOTAL NUMBER OF BELL SYSTEM INSTALLATIONS

Automatic announcement services, 14,100.
Automatic answering and recording services, 30,300.

C. TOTAL NUMBER OF GENERAL TELEPHONE SYSTEM INSTALLATIONS

Automatic announcement services, 1,454.
Automatic answering and recording services, 4,629.

D. TOTAL NUMBER OF "LET FREEDOM RING" SUBSCRIBERS

(Clearly identifiable as such)

Bell system, 36
General Telephone System, 4

[App. D to Chairman Henry's statement on S. 2693 and S. 2713]

B'NAI B'RITH ANTI-DEFAMATION LEAGUE,
New York, N.Y., Aug. 31, 1965.

FEDERAL COMMUNICATIONS COMMISSION,
Post Office Department Building,
Washington, D.C.

GENTLEMEN: We are writing you because of the alarming increase in the use of anonymous recorded telephone messages for abusive and extremist attacks and libels on individuals and institutions. We believe the widespread use of this new device warrants action by the Commission to require telephone companies to revise their practices and tariff in order to curb this flagrant misuse of the recorded message service.

The use of the anonymous recorded telephone message for such scurrilous attacks was originated less than 3 years ago in Sarasota, Fla., by a Dr. William C. Douglass. While the device has been used by others, Dr. Douglass' network of "stations" as he calls his message outlets (see enclosed text of message of May 26, 1965) is perhaps the most notorious and most extensive.

Called "Let Freedom Ring," these messages can be heard in over 30 cities from coast to coast with at least one city, Detroit, having 10 such stations. Outlets each present 1- to 2-minute messages for an entire week to callers who dial a widely advertised telephone number. The texts of the messages are prepared by Dr. Douglass who supplies script to his subscribers at a small cost. The subscriber makes his own arrangements with his local telephone company for installing the necessary recording equipment and telephone connections.

Dr. Douglass explains his operation in his prospectus as follows:

"Let Freedom Ring is a nonprofit corporation established to disseminate anti-Communist, anti-Socialist, pro-American broadcasts via a telephone tape recording. Your 'customer' dials a number (just like time and weather) and gets 2 minutes of anti-Communist dynamite.

"Let Freedom Ring brings to your area a hard-hitting, often shocking program that is 'on the air' 24 hours a day. You will be amazed at the frantic reaction that you will get from your enemies—they will hate it!"

Let Freedom Ring scripts are lurid visions of a Communist conspiracy allegedly lurking behind civil rights, the United Nations, the U.S. Supreme Court, the last three U.S. Presidents, the State Department, the press, the National Council of Churches, the American Civil Liberties Union, and others. Excerpts from typical scripts are as follows:

"America will soon be in a position of hopeless military inferiority to the beast of Russia because of deliberate disarmament by traitors in the Johnson administration." (Jan. 26, 1965.)

"Another fact ignored by the press is that the Communist-lining National Council of Churches is openly promoting bloodshed through armed revolution by

Negroes. There is documented proof that Negroes are being armed for open revolution this summer." (May 12, 1964.)

"At the forefront in this vicious campaign against American patriots are the Communist press and the Anti-Defamation League." (April 1965.)

"At the University of Michigan a plan is being developed for the systematic house-to-house search of the entire United States for arms of any kind. The search is to be made by the U.S. Army by blocking off five States at a time, beginning in the western part of the country. The entire civilian population is to be disarmed by the end of 1965." (February 1964.)

"How long will the American people put up with treason right in the White House itself? How long before the American people demand the impeachment of John F. Kennedy?" (October 1962.)

"The Civil Rights Act will * * * turn America into a Fascist state practically overnight * * * No business; no church; no club, public or private, would be free of the evil smell of Bobby Kennedy's marshals and spies." (February 1964.)

We recognize, of course, that most of these telephone messages are received by persons within the State from which the message emanates, and that the Commission's jurisdiction is by statute restricted to interstate communications. However, to the extent that some calls are interstate in character, the FCC has jurisdiction. Equally important, any action taken by the Commission with respect to interstate calls would likely furnish a standard for State and other local regulatory agencies to follow in dealing with intrastate calls.

We recognize, too, that the recorded message telephone service serves many useful purposes, e.g., time and weather reports, religious messages, etc., and these legitimate uses should not be burdened in order to meet the evil posed by unidentified extremists who, hiding behind their cloak of anonymity, misuse the service to spread their seeds of domestic distrust. At the same time, however, we believe it to be essential that, among other protections, some means be made available to persons and groups defamed by these reckless accusers to ascertain the identity of the persons responsible for the message and to obtain the full text of the message so that they can be in a position to seek legal redress if they are so disposed.

Elemental principles of fairness and justice make such a minimal requirement imperative. Under present practice while the telephone number itself is widely publicized, it is technically an unlisted number and the telephone company will not release the name of the subscriber. Furthermore, persons and groups defamed in these broadcasts have great difficulty obtaining the full text of the message. We suggest, therefore, that the telephone company be required to include in its interstate tariff a condition that recorded messages which discuss public issues or which contain defamatory attacks on individuals, groups and institutions must disclose in the message the name and address of the true and actual sponsor. This requirement of full disclosure would leave legitimate users of the service unaffected. A further condition should also be included in the tariff to require the subscriber, at least where individuals, groups or institutions are made the objects of defamatory attacks, to deposit the tape of the message with the telephone company where its content will be available to inquirers upon reasonable request.

As a suggested alternative to the requirement that the identity of the true and actual sponsor be disclosed in the message itself, the telephone company may include in its tariff a provision that the recorded message service will not be furnished to a subscriber unless the true and actual sponsor's name and address is listed with the telephone company and that this information will be made available on request to any inquirer.

Further, we believe that the Commission should, in the public interest, inquire into the civil liability of a telephone company for knowingly and repeatedly carrying a plainly libelous recorded message with a view to requiring the company to amend its tariff relating to "Abuse or Fraudulent Use of Service" to include a provision similar to the one in the Western Union Telegraph Co. tariff.

"Messages containing profane or obscene language will not be accepted. Messages containing defamatory statements will not be accepted if the receiving clerk of the telegraph company knows that the message is spurious or that the sender is acting, not in the protection of any legitimate interest, but in bad faith and for the purpose of traducing another." (Western Union Telegraph Co. tariff—FCC 176, 4th revised—page 15A.)

It is true that the telephone company cannot be held liable if it has no knowledge of the libelous content of the message, and plainly knowledge cannot be imputed to the company from the mere fact that it has made available to the subscriber the facilities for the recording and sending of the message. But, once company officials are informed of the libelous contents of the message, the company, it seems to us, has the clear right to refuse its facilities for the transmission and dissemination of such libelous messages. Consequently, the company cannot escape liability if it fails to exercise this right by continuing to transmit the obviously defamatory message with the knowledge that it is "spurious," or that the subscriber is "acting not in the protection of any legitimate interest but in bad faith and for the purpose of traducing another." (See *O'Brien* v. *Western Union*, 113 F. 2d 539, 543. (1940.)

We submit there are even sounder reasons of public policy to hold the telephone company responsible in such cases than in holding a telegraph company responsible for sending a similar message. The Western Union's message potential for harm is more restricted because the messages are generally sent to a single or very limited number of addresses. In the case of the recorded telephone message, publication is widespread—in some cities messages have a greater daily audience than many a radio news broadcast.

Another basis for a telephone company's right to refuse the use of its facilities for the transmission of libelous messages is the provision of the interstate tariff of telephone companies that "the service is furnished subject to the condition that it will not be used for an unlawful purpose." It is pursuant to this provision that telephone companies have repeatedly barred the use of its services for illegal bookmaking operations. Their right to do so "has been firmly established." *Delaware Sports Service* v. *Diamond State Telephone Co.* 241 F. Supp. 847, 851 (1965).

Under the laws of most States the malicious publication of a libelous statement, in addition to creating civil liability, constitutes a crime—criminal libel—which is punishable by fines and imprisonment. The telephone company is thus unhappily party to the transmission of libelous statements through an illegal use of its facilities.

In conclusion we are of the opinion that the present practice of a telephone company which makes available a service for such anonymous attacks, while at the same time denying to those attacked such information as the identity of the attacker, is plainly unjust and unreasonable, contrary to sound public policy and in violation of 47 U.S.C. 201. We believe that the time has come, therefore, for the Commission in the exercise of its statutory authority to initiate proceedings to require telephone companies to prevent the use of their recorded message service for the dissemination of libelous matter, and further to amend their tariffs to prevent the described misuse of the recorded message service.

In our considered judgment, none of our above plea for relief is an invasion of the free speech principle. ADL regards this principle as a cornerstone of the American constitutional system. But need we state that freedom of speech does not protect every utterance? Obscene, fraudulent and libelous statements are not within the area of constitutionally protected speech. See *Roth* v. *United States*, 354 U.S. 476, 483 (1957). What is here sought—as protection to a democratic society which prizes freedom of speech—is a cessation of reckless, malicious and libelous statements made possible through the abuse of facilities furnished by public utilities.

Respectfully yours,

ARNOLD FORSTER,
General Counsel.

STATEMENT

A recorded woman's voice related the following when 221–6767 was dialed today in Miami, Fla.:

This is Let Freedom Ring.

America has forgiven the Germans twice, and the Japanese once, but for a hundred years northern bigots have been punishing the white southerner who also fought and died in these wars to save our country.

Many people thought that the Civil Rights Act of 1964 was merely another kick in the teeth for the Nation's favorite whipping boy, the white southerner. But

starting in July many of these people are going to find that the toe of the Federal boot does not discriminate as much as they thought. Northern and western ventures may also hit the courtroom floor.

Under the provisions of the Civil Rights Act a convicted rapist applying for a job in a girls' school could file suit against the school if they requested a picture with his application, or inquired as to his country of origin. Under the act, he could claim discrimination on the basis of color, sex, or nationality. Although it sounds fantastic, you must remember that the Communists' objective is complete chaos and the tearing asunder of the very fabric of our society.

The Civil Rights Act has abolished our constitutional rights to trial by jury, and as with the income tax racket, you are considered guilty until proven innocent. You can be criminally indicted if the Government decides that you are even contemplating discrimination against a job applicant.

From the Fort Lauderdale News of March 23, we quote, "If all this sounds like the makings of a police state, it most certainly is. When the Federal Government is empowered to go as far as it intends to go under this act, it makes us wonder how much longer it is going to be before Big Brother in Washington takes over everything in this country." For a copy of the editorial on this legislative nightmare, send a stamped, self-addressed envelope to Big Brother, Box 21, Miami Shores.

New Let Freedom Ring stations this month: Croton, N.Y.; Calumet City, Ill.; Long Beach, Calif.; Jacksonville, Fla.; Montgomery, Ala.; Wichita, Kans.; Port Arthur, Tex.; Pasadena, Calif.; Attleboro, Mass.; Chicago, Ill.; Sacramento, Calif.; Southern Pines, N.C.; Birmingham, Ala.

Thank you for calling Let Freedom Ring. Call Monday for a new message.

[App. E to Chairman Henry's statement on S. 2693 and S. 2713]

BREED, ABBOTT & MORGAN,
New York, N.Y., September 29, 1965.

Re Let Freedom Ring.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C.

GENTLEMEN: At the request of the National Council of the Churches of Christ in the United States of America and as its general counsel, I am writing this letter to express its deepening grave concern with the rapid expansion of the commercially organized use of the Bell Telephone System's automatic announcement service equipment responding to widely disseminated unrecorded telephone numbers and thereby broadcasting, interstate and intrastate, anonymous flagrantly defamatory attacks and libels on individuals and institutions and sowing fear, distrust, strife, and hate through the communities of our land.

This use of the facilities of a system of public communication under the supervision and regulation of your Commission has reached the stage of mass production of mass libel, and is openly boasting of its increasing number of "stations" in our major cities.

The National Council of Churches is a nonprofit membership corporation, incorporated in 1950 under the laws of New York, as "the inclusive cooperative agency of Christian churches in the United States of America to bring churches into further united service for Christ and the world," and "to promote the application of the law of Christ in every relation of life." Its present membership consists of 30 Protestant, Anglican, and Orthodox communions.

Although the national council, its officers and membership, are some of the prime targets of this organized operation, nevertheless in sending this letter it believes that it is also speaking in the interest of all the increasingly numerous other victims, including some of the most distinguished private and public organizations and individuals in our country.

Under date of August 31, 1965, a communication on this subject was sent to you on behalf of the Anti-Defamation League, by its general counsel, Arnold Forster. His letter and its accompanying brief cite libelous charges associating communism and the Anti-Defamation League and present in vivid form and detail the method and device by which these libelous anonymous telephone messages are arranged for and their broadcasting obtained through the telephone company's automatic answering service. The national council's experience confirms what Mr. Forster has said.

A few quotations from typical references to the national council under the anonymous sponsorship Let Freedom Ring will illustrate.

One example is a transcription of a recorded message over telephone number 443–2690 in Danville, Ill., on September 12, 1965, as follows:

"Let freedom ring. The National Council of Churches has from its beginning been under the control of Communists and Communist fellow travelers. Among the NCC's most vicious and anti-Christian spokesmen are Dr. Franklin H. Littell, of the Chicago Theological Seminary. Littell was on the executive committee of the Communist front called the Methodist Federation of Social Action. Rev. Edward Dahlberg, former president of the National Council of Churches, has been supporting Communist causes for 20 years. Dr. Harry Ward, one of the founders of the original organization called the Federal Council of Churches, has been identified under oath as a Communist. But this is only a sample of the NCC's pro-Red leadership.

"Let us quote from hearings of the House Committee on Un-American Activities: 'Of the leadership of the National Council of Churches we have found over 100 persons with records of service to Communist causes. The aggregate affiliations of the leadership is now, according to our latest count, into the thousands.'

"With people like this in positions of power in the National Council of Churches is it any wonder that the NCC promotes literature so filthy that it cannot be sent through the mail, and that they financed a revolutionary training school at which a convicted homosexual acted as instructor.

"If your church belongs to the NCC we suggest that you make your next church pledge with the following restrictive statement: Payable within 1 year after date of withdrawal from the National Council of Churches.

"For more information on this satanic, pseudoreligious organization send 25 cents in coin to Church Dictatorship, in care of Let Freedom Ring, Box 1776, Oakwood, Ill. Let freedom ring."

Another illustration is a recorded message via telephone number 258–3939 in Phoenix, Ariz., on September 5, 1965, as follows:

"Let freedom ring. Liberals scream loudly about separation of church and state when children bow their heads in simple prayer at a public school, but these pseudointellectuals are hypocritically silent about the involvement of the National Council of Churches in politics and foreign policy. The National Council of Churches is not a theological organization, but a tax-exempt political lobby. For instance, the NCC endorses the forcing of workers into labor unions by Federal legislation. Have you wondered why this so-called church organization is spending your tithed money to promote this totalitarian measure. It's very simple. The National Council of Churches has become a paid political arm of Walter Reuther's AFL–CIO and in 1954 (or 1964?) the council received a payoff of $200,000 from that labor organization for its cooperation in union politics. Eight years ago, the American Flag Committee of Philadelphia predicted that the Communists would, in 1965, amalgamate into a powerful political coalition for the advancement of the Communist conquest of America. Right on schedule, the Reuther brothers, the National Council of Churches, and the Communist-directed Negro revolutionary groups have coalesced into a powerful phalanx for the purpose of giving a coup de grace to the United States of America. Dr. Eugene Carson Blake, of the National Council of Churches said, in 1964, and we quote: 'With prudent management, the churches ought to be able to control the whole economy in the predictable future.' Where are the liberal hypocrites who wail about separation of church and state? Why do they remain silent in the face of this unholy alliance of church communism, racial revolutionaries, and Marxist labor leaders? Documentation on the Communist-controlled labor theocracy plan for America is obtainable at the American Opinion Bookstore, 1812 West Camelback, Phoenix, Ariz."

A third illustration is a broadcast from Sarasota, Fla., on May 12, 1964, which contained the following:

"Let freedom ring.

"Another fact ignored by the press is that the Communist-lining National Council of Churches is openly promoting bloodshed through armed revolution by Negroes. There is documented proof that Negroes are being armed for open revolution this summer.

"We urge our listeners to send a dollar donation to Box 645, Sarasota, Fla., for our civil rights packet and we also urge our listeners to purchase a rifle or

pistol for home defense. We are not—we repeat—we are not promoting insurrection as does the National Council of Churches. We are merely urging you to exercise your constitutional and God-given right to protect yourself and your loved ones."

A fourth illustration goes back to December 10, 1963. It contained, *inter alia*:

"Let freedom ring.

"Supreme Court Justice Earl Warren, who wails about hate and extremism, releases Communists from jail faster than the Government can put them in.

"The National Council of Churches, which consistently follows the Communist line, cries bigotry killed the President.

"The U.S. State Department which, immediately after the assassination and without any evidence, declared to the world that Russia and Cuba were not involved."

The expansion in point of victims of this organized dissemination of mass libel is illustrated by the following quotation from the Wall Street Journal of September 24, 1965, concerning the attacks on the Parents-Teachers Association (the national organization):

"The PTA protested that American Telephone & Telegraph Co. is allowing an anonymous rightwing group to play recorded telephone messages in several cities charging the parent-teacher group is Communist-oriented. A.T. & T. replied that it was forbidden by law to reject groups applying for its service or censor messages just because it disagrees with them. It said it was 'taking steps' to make public the sponsor's name."

The Philadelphia Inquirer of last Sunday, September 26, contains a pertinent article of which I enclose a photostatic copy. The article is entitled: "Anti-Defamation Unit Seeks Order to Unveil 'Smear Call' Sources." The final paragraphs of the article narrate how libelous texts are sold for annual use to local groups who are then to arrange for installing the necessary recording equipment with local telephone companies.

These anonymous messages boast of new stations being established monthly. For example, a taperecorded message in Miami, Fla., heard on May 26, 1965, by dialing the unrecorded number 221–6767, closed with stating:

"New Let Freedom Ring stations this month: Croton, N.Y.; Calumet City, Ill.; Long Beach, Calif.; Jacksonville, Fla.; Montgomery, Ala.; Wichita, Kans.; Port Arthur, Tex.; Pasadena, Calif.; Attleboro, Mass.; Chicago, Ill.; Sacramento, Calif.; Southern Pines, N.C.; Birmingham, Ala."

A letter to the National Council of Churches, dated September 16, 1965, from a professor at the Christian Theological Seminary in Chicago states:

"The enclosed is the text of a slanderous attack on the National Council of Churches which is being circulated in this city. Children in the schools are being given a telephone number which they are asked to take home and have their parents call. The number is the one at the bottom of the page. When they dial the number, they hear the recorded message which is enclosed. One of my students, whose child had been given a number at school, called the number, heard the message then phoned me about it. I asked him to get a tape recorder and record the message so it could be transcribed, which he did. The result is enclosed."

The message so transcribed is similar to that on page 2 of this letter.

These defamatory messages and the broadcasting of their scrips by Automatic Announcement Service are far within the law's definition of a publication which is libelous *per se* as tending on its face to expose a person to public contempt, aversion, disgrace and evil opinion, and which in consequence raises on its face *prima facie* presumptions of falsity, malice, and damage. (*Sidney* v. *Macfadden Newspaper Publishing Corp.*, 242 N.Y. 208, 211, 212.)

There is nothing in the 1st or 14th amendments to the Constitution of the United States which protects as "free speech" such libelous publications and mechanized broadcastings. They are not "within the area of constitutionally protected speech." (*Beauharnais* v. *Illinois*, 343 U.S. 250, 266.) Neither amendment immunizes "the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." (*Times Film Corp.* v. *Chicago*, 365 U.S. 43, 48 (1961)). This principle was expressly recognized in *New York Times* v. *Sullivan*, 376 U.S. 254, 268 (1964), but was held, in the case of "expres-

sion critical of the official conduct of public officials," to be inapplicable except upon proof that the utterance was "with knowledge of its falsity or with reckless disregard of whether it was true or false." The court concluded by holding that there was no competent proof of such knowledge or recklessness by the Times.

The anonymity of the unrecorded telephone number is preserved in the message itself. By the wide publicizing of the unlisted numbers and, even more importantly, by the refusal of the telephone company to release the name or identity of the subscriber, complete secrecy as to the sponsorship is protected, while at the same time that very secrecy whets public interest and curiosity. In addition, the broadcast is delivered so rapidly in the space of 2 minutes that persons and groups defamed have the greatest difficulty in knowing of it and authenticating its text until the stab in the back has occurred and its effects are established in the public mind.

Any effort at a civil remedy in any given locality would be frustrated by the fact that unlisted telephone numbers of this character are scattered throughout the United States and widely publicized according to a scheme which insures their repetition in various places and at various successive times. It is scattered like buckshot from a multibarreled shot gun.

Accordingly, we feel that this latest adaptation and enlargement of the well-known method of defamation by anonymous "poison pen" letters is a matter which should receive urgent investigation and remedial attention by the Federal Communications Commission with the purpose of preventing this clandestine and abominable use of the facilities of a public system of communication existing and operating under Federal supervision and regulation for the performance of honest public service.

Obviously, if such practices as "Let Freedom Ring" can take root as accepted in the United States, no one is secure and Government has defaulted in its primary duty of protecting its citizens.

The principle of free speech in no way protects organized anonymous utterances in furtherance of a deliberate plan to defame and destroy the business or reputation of others. The laws of many States classify such practices as criminal libel. See, for example, article 126, New York Penal Law. Since these broadcasts are readings from a written text their defamation is not merely slander but libel. (*Hartmann* v. *Winchell*, 296 N.Y. 296.)

Indeed, the telephone companies themselves have asserted the right to refuse any use of interstate facility which violates the "condition that it will not be used for an unlawful purpose. Their right to do so has been upheld by the courts. (*Delaware Sports Service* v. *Diamond State Telephone Co.*, 241 F. Supp. 847, 851 (1965).)

Among the purposes for which the Federal Communications Commission was created, as declared in title 47, section 151, is "the purpose of promoting safety of life and property through the use of wire and radio communication." The same section declares that the Commission is created to "execute and enforce the provisions of this chapter." Subdivision (i) of section 154 provides:

"The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary for the execution of its functions."

Surely, no one can be sure of "safety of life and property" if this insidious and unlawful method of proliferating fear, distrust, hysteria, strife, and hate to the point that "we also urge our listeners to purchase a rifle or pistol," is allowed to cancerize the public body by the very use of public facilities under public regulation and control for the very "purpose of promoting the safety of life and property."

The word "life" in section 154 means, of course, more than the mere maintenance of physical existence; and the word "property" includes the most precious and yet the most fragile of all assets—reputation.

Representatives of the National Council of Churches, including myself, will be glad to confer with you at such time as you wish.

I am sending a copy of this letter to the Legal Department of the American Telephone & Telegraph Co., at its office, 195 Broadway, New York, N.Y.

Respectfully yours,

CHARLES H. TUTTLE.

[From the Philadelphia Inquirer, Sept. 26, 1965]

ANTI-DEFAMATION UNIT SEEKS ORDER TO UNVEIL "SMEAR CALL" SOURCES

The Anti-Defamation League of B'nai B'rith plans to ask the State public utility commission to adopt new rules to deny anonymity for backers of "Let Freedom Ring," the rightist telephone message service.

The recorded talks regularly smear as "Communist" a wide spectrum of American officialdom. Its targets have included Presidents Eisenhower, Kennedy, and Johnson, and civil rights, poverty, and disarmament programs.

However, the peals of "Let Freedom Ring" don't reveal who is tolling the bell. And ADL thinks that persons with such "defamatory opinions" should be required to identify themselves.

REQUEST TO PUC

Papers being drafted by David Berger, former city solicitor and chairman of ADL's metropolitan Philadelphia advisory board, would ask the PUC to require that:

Recorded messages discussing public affairs or attacking individuals, groups, and institutions must disclose in the message the name and address of the sponsor.

The tape recorded message be deposited with the telephone company and made available to inquirers.

The sponsor as an alternative, list his name and address with the phone company, such information to be available upon request.

SOUGHT FCC CURBS

ADL earlier this month launched a national attack on "Let Freedom Ring" by asking the Federal Communications Commission to set similar rules for interstate phone messages.

In its complaint to the FCC, ADL referred to "abusive and extremist attacks and libels on individuals and institutions."

It called the messages "lurid visions of a Communist conspiracy allegedly lurking behind civil rights, the United Nations, the Supreme Court, the State Department, the press," and other groups, including ADL.

The recordings are available locally through two numbers which have been publicized by word of mouth. Last October the Inquirer revealed that John Birch Society members wrote and recorded the tapes, and also rented the post office box through which listeners ordered transcripts.

Bell Telephone Co. of Pennsylvania officials said then that anyone can use the automatic announcement service "so long as he pays the tariff," and that as a public utility Bell must provide facilities to any applicants.

ASKED RULE CHANGE

The national ADL, asked the FCC to require telephone companies to amend their regulations to oblige them to refuse messages containing defamatory statements, known to be spurious, or when the sender is acting "in bad faith and for the purpose of traducing another."

Plans of the local ADL branch were revealed by Berger and Samuel Lewis Gaber, regional director. Berger termed "Let Freedom Ring" a "rank violation of freedom of speech," and called it "vicious right-wing propaganda."

"Let Freedom Ring" has outlets in more than 30 cities. It was conceived by Dr. William Campbell Douglass, a physician in Sarasota, Fla., who is a Birch member.

TWENTY-FOUR DOLLARS A YEAR

Dr. Douglass sells the service to local groups for $25 for 1 year and $12 thereafter. Subscribers must buy 40 of 52 scripts annually, and are allowed to devote their remaining "broadcasts" to local issues.

The purchaser arranges for installing the necessary recording equipment through local phone companies.

ADL said the "elementary principles of fairness and justice" make it imperative that persons attacked by "these reckless accusers" be able to identify those responsible "so they can seek legal redress."

[App. F to Chairman Henry's statement on S. 2693 and S. 2713]

LIST OF IDENTIFIABLE "LET FREEDOM RING" SUBSCRIBERS—BELL SYSTEM

City	*Telephone No.*
Hudson, N.H	603–889–2551
Dedham, Mass	617–329–2637
Staten Island, N.Y	212–YU7–4343
Yorktown Heights, N.Y	914–WI1–1779
Summit, N.J	201–CR3–0369
Pittsburgh, Pa	412–333–9300
Baltimore, Md	301–377–7460
Birmingham, Ala	205–836–6241
Miami, Fla	305–CA1–6767
Jacksonville, Fla	904–355–2716
Macon, Ga	912–743–6721
Columbus, Miss	601–328–0552
Corinth, Miss	601–287–1577
Burlington, N.C	919–225–5506
Knoxville, Tenn	615–546–4473
Columbus, Ohio	615–263–1881
Canton, Ohio	216–492–4255
Detroit, Mich	313–871–2447
Indianapolis, Ind	317–632–1361
Muncie, Ind	317–289–2433
Bedford, Ind	812–275–5981
Hammond, Ind	219–932–7610
Chicago, Ill	312–463–1786
Decatur, Ill	217–423–9733
Danville, Ill	217–443–2690
Des Moines, Iowa	515–265–1471
Wichita, Kans	316–AM7–3348
Topeka, Kans	913–CE3–4251
Netherlands, Tex	713–RA7–1621
Boulder, Colo	303–404–2213
Phoenix, Ariz	602–258–3939
Seattle, Wash	206–LA5–2727
Woodland Hills, Calif	213–883–2820
San Gabriel, Calif	213–285–2291
Anaheim, Calif	714–635–3391
Fair Oaks, Calif	916–961–7370

STATEMENT BY E. WILLIAM HENRY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, RELATING TO THE BLACKOUT

The FCC initiated an investigation on Wednesday, November 10, into the effect of the electric power failure in the Northeastern States on communication services. The power failure occurred shortly after 5 p.m. on Tuesday, November 9. Commercial electric power was restored in the early morning of Wednesday, November 10. On Wednesday morning the FCC Office of Emergency Communications and the Defense Commissioner began drafting memorandums of inquiry and plans for investigation of the effects of the power failure on communications facilities. By Wednesday evening more than a thousand letters and memorandums had been sent to broadcast stations and the communications industry in the area, and dozens of telephone calls and personal inquiries were made by the staff.

It will be some time before full reports are received from all of the enterprises involved, and before we have had time to make a careful examination and analysis of these reports and of the data which

they contain. Any final conclusions or judgment must await a complete examination of the data. However, on the basis of incomplete and preliminary reports, we can provide some initial information.

The international and overseas record common carriers operating in New York City each lost electric power at their main operating offices and were unable to handle traffic adequately until commercial power was restored. None of the companies had sufficient independent emergency auxiliary power at the time of the electric power failure to provide for near normal operations. Normally, they depend mainly upon electric power being fed from separate points of the common commercial power system within the city. During this emergency, special arrangements were resorted to in order to clear urgent traffic and other key communication services. Temporary emergency auxiliary power systems have been installed at these main operating offices and steps are being taken by the respective carriers to provide for permanent independent emergency auxiliary power sources.

The international and overseas common carrier telephone facilities were largely unaffected, and service continued. These facilities have had independent emergency auxiliary power systems installed for a long time.

Reports from the Bell System and independent telephone companies in the Northeast indicate that telephone services, both public message and private lines, were largely unaffected. The industry generally maintains, on a standby basis, emergency generating equipment in its offices and communications centers. More than 1,500 offices were switched over to emergency auxiliary power equipment. The intercity long-distance network, as well as local exchange services, apparently functioned well during the emergency.

Local calling volumes in New York City were extremely heavy, resulting in some temporary overloading and dial tone delays. Line-load control was used in some instances to assure preference to calls originated by essential agencies and at public places. Communications for private line customers who had emergency power and utilized leased telephone company facilities remained operational.

Public message and private line telegraph services rendered by Western Union in the affected area were disrupted through lack of independent emergency auxiliary power sources at many of the company's offices. Existing emergency auxiliary power generators restored communications capability promptly at Western Union offices in Albany, Boston, Buffalo, and Syracuse, and a few similar cities, but other offices, including New York City, are entirely unprotected in this regard, or depend mainly upon separate power leads from the commercial power system within the city. Restoration of many essential communications services was made by rerouting around affected offices and repeater centers. The company has indicated that it is studying plans to provide sufficient independent emergency auxiliary power to assure maintenance of service at all of its offices.

With regard to the safety and special radio services, the following information has been received:

A number of key aeronautical facilities remained in operation and as a result emergency communications with aircraft in the area were

maintained with difficulty. Widespread aviation teletype outages were encountered. There were no adverse effects on actual ship operations because all ships generate their own power. Marine coast station reports are not yet available. Railroad industry communications fared rather well because there was sufficient emergency auxiliary power and equipment. The urban transit systems were able to continue operations of their radio systems by the use of emergency measures that had been developed for such circumstances. In the trucking industry, remotely located base stations were out of operation but there was no problem with mobile-to-mobile operation. Reports concerning the use of radio by major industrial users (power, water, petroleum, and special industrial) are not yet available. The operations of public safety (police and fire) communications systems were not materially affected since emergency auxiliary generating equipment is normally available.

The emergency organizations of the amateur radio service were operational to perform backup or replacement functions. However, in practically all areas, normal communications were adequate so that the amateur radio facilities were not required.

The power failure dramatically illustrated the public's dependence on broadcast radio in an emergency, and the general availability of portable receivers for reception of news and messages. Radio broadcast stations operating with emergency auxiliary power were generally credited with providing essential news, allaying panic, and providing specific instructions to the public. Detailed information on the actual operation of broadcast stations in the affected area will not be available until results of the questionnaire of November 10 are received, tabulated, and analyzed. However, the following general statements can be made at this time:

Television stations in the blackout area were largely inoperative until commercial power was restored.

Standard broadcast (AM) radio stations provided the main source of communication to the public during the emergency by auxiliary power generating equipment and most of these stations were off the air for very short periods of time (1 to 2 minutes) while they shifted from commercial to auxiliary power. Stations with emergency power were dispersed over the affected area in a manner which assured listenable service to practically all locations affected. The stations utilized their own facilities to gather news of general interest regarding the emergency, issued instructions to the public, and provided the means by which State and local authorities and civil defense officials could communicate directly to the public.

National news services (Associated Press and United Press International) were blacked out in the New York City area and control was shifted to other cities with service continued.

Network facilities for TV originating from New York were out during the blackout. However, television network service was originated from points such as Washington, D.C., Chicago, and Philadelphia.

The radio network facilities lost little or no service during the emergency, since emergency auxiliary power was available.

Much of the emergency power equipment, interconnecting links, and response to the emergency was due to the voluntary effort of the entire

communications industry in cooperation with the FCC in the development of emergency plans, systems, and procedures. The entire communications industry is to be highly commended in the way it reacted to this unexpected emergency and the effect and ingenuity it used to provide an extremely valuable service to the public in this unique situation.

(Attachment to statement follows:)

BELL SYSTEM COMMUNICATIONS DURING HISTORY'S LARGEST POWER FAILURE

The power failure which struck the Northeast on November 9, 1965, blacked out one-eighth of the Nation, affecting 30 million people in an 80,000-square-mile area involving seven States and parts of Canada. This area is served by some 16 million telephones.

Telephone service performed well. Communications were maintained throughout the night and helped to preserve stability and confidence in a serious situation.

This dependability of Bell System service was no accident. The emergency procedures and the equipment capabilities needed to cope with such an emergency were at hand; and trained, competent personnel were there to put them to effective use.

More than 1,380 locations on emergency power

To help insure continuity of communications, the Bell System always maintains, on a standby basis, emergency generating equipment in its offices and communications centers throughout the Nation. The advantage of this practice was demonstrated on November 9 when more than 1,380 Bell System equipment centers were switched over to auxiliary power equipment. The intercity long distance network, as well as local exchange service, functioned well throughout the night. The long lines department of A.T. & T. had 124 locations on emergency power, and long distance service was near normal. Overseas calling on Bell System facilities was also protected and was largely unaffected.

New calling records

Local calling volumes were extremely heavy. The New York Telephone Co. reported that evening dial traffic broke all previous records as some 30 million calls—about double the normal volume—were handled between 5:30 p.m. and midnight. Calls to operators, including information, assistance, and short-haul long distance calls, were more than twice the normal number. Public telephones accounted for a large proportion of this operator-handled traffic, as thousands made their calls in the darkness by dialing the operator.

Unusual volumes of calls created peaks which resulted in temporary overloading and dial tone delays.

Control equipment

Since it is imperative to maintain communications services for public safety and defense agencies, the Bell System has line-load control equipment to insure adequate originating service during emergencies. This equipment, which was used in a number of locations during the blackout, gives first preference to calls originated by essential agencies and public telephones, and allocates the remaining switching capacity equitably among other users. Incoming calls go through in a normal manner.

Network management

Network management controls enable Bell System people to maintain a constant watch over nationwide calling patterns and volumes, in order to insure the most efficient use of the long distance network. During the blackout, network managers took the following action: (1) Gave preference to calls from the affected areas by establishing and augmenting outgoing circuit groups to key cities; (2) changed call-routing patterns across the Nation to protect service in nonaffected areas; and (3) used recorded announcements to inform customers when all circuits were busy, in order to reduce repeated attempts during peakload periods. This network management, together with the regular automatic rerouting capabilities of the Bell System's intercity network, made it possible to handle the large flow of telephone traffic.

Virtually all long distance service was in operation throughout the power failure. Long lines worked with the three television networks and rearranged their networks to permit national programing to originate in Washington, Chicago, or other cities. Use also was made of regular long distance service to extend reports from the troubled area to other network points.

Emergency centers swing into prompt action

Fifteen emergency centers were activated immediately within the darkened regions in order to collect facts on the emergency, the status of all communications services, and actions that should be taken. These centers maintained liaison with Government agencies and power companies, directed necessary security actions, arranged for assistance from Western Electric and other Bell System companies, and coordinated interdepartmental activities in connection with the emergency. They also directed the dispatch of portable power units and arranged for the loan of auxiliary power units to essential customers.

Government services performed well in emergency

Private line services provided for Government agencies, including the military, performed well. No loss of command was experienced in vital military circuits and service remained operational for all Government agencies, including the Strategic Air Command, Defense Communications Agency Status Center, Air Defense Command, Federal Aviation Agency, and U.S. Weather Bureau. Here are some general comments about the above Government services:

Strategic Air Command.—No loss of command and control capabilities. Outages occurred, but performance reasonably good.

Defense Communications Agency Status Center.—Performance generally good. A few outages, but restorations were prompt.

Air Defense Command.—Outages were minor. None interfered with performance of mission.

Federal Aviation Agency.—Well pleased. One station on private line network failed. Ordinary telephone service invaluable.

U.S. Weather Bureau.—Service intact on all backbone telephone and teletype networks. After TWX machines lost power, all essential functions conducted successfully by telephone.

Communications for other private line customers employing emergency power and utilizing Bell System switching facilities, including the complex network for the Power Authority of the State of New York, also remained operational.

Value of human effort

The dedicated effort of Bell System employees was in keeping with telephone tradition. Telephone employees returned to company buildings to offer their service; thousands worked long beyond their regular schedules; and some 6,000 telephone people in the New York company "slept in" on cots available for such emergencies.

More than 14,000 plant and traffic employees were on duty in the blackout area, 52 percent more than the force normally required.

There were many instances of unusual action by telephone people to maintain vital communications services and aid blackout victims; by loaning equipment, by volunteering their services, by checking on patients at home in iron lungs, by sharing food and facilities, and in a host of other ways. Telephone repairmen made the rounds of hospitals and police and fire department locations to offer assistance. In New York, installers, repairmen, and foremen spent the night at 20 hospitals, 80 police stations, and 5 police communication centers to help insure continued service. In other locations telephone personnel visited police, fire, and municipal headquarters to make provision for auxiliary services where needed.

Western Electric responded as usual to emergency requests for auxiliary power equipment and was ready to provide other supplies and equipment where needed. New Jersey Bell rushed 20 portable generators to Manhattan, and in many locations, hospitals, power companies, and transportation centers used telephone company portable generators.

Reactions from public

Comments from the public and press during and following the crisis brought compliments and high praise for the company's efforts and the work done by

individual employees. The performance of the Bell System, in addition to reflecting the service motivation of dedicated and resourceful telephone people, again proved the value of emergency planning, including engineered reliability of plant, standby power units, and employee training.

A basic objective of the Bell System is to be ready to provide dependable service, no matter what the challenge. During history's largest power failure on November 9, 1965, this objective was met.

RADIO: THE BRIGHTEST LIGHT IN THE BLACKOUT

[From Broadcasting, Nov. 15, 1965]

RADIO-TV GET STIFF CHALLENGE, BUT COME THROUGH IN NORTHEAST POWER CRISIS

Radio emerged as the universal emergency medium during the unprecedented power failure that darkened vast areas of seven Northeastern States last Tuesday night (November 9).

Radio stations, running on emergency power, were widely credited with allaying fright and preventing panic by keeping information flowing to millions whose main—and in many cases only—information resource was radio sets run by batteries.

Sindlinger & Co., research organization, estimated that 10.4 million people in the blacked-out areas turned to radio during the power shutdown, which extended over a 12-hour period in New York and some other sections.

The blackout provided an exercise in ingenuity and effort not only for radio stations but also for television and radio networks and for many television stations.

In New York City, the hardest hit population center, television stations were unable to resume operations until after 3 a.m. Wednesday. Their power failed shortly before 5:30 on the previous evening.

Radio stations were back on the air quickly after conversion to emergency power, some of them switching instantly to back up electricity sources.

Shuffling of the television networks' communication centers from their accustomed hub in New York, to Chicago, Washington and the west coast, enabled the rest of the country to pick up network transmissions as usual.

An account of the broadcast business lost—television and radio, network, spot and local—was still in confusion last week. The Television Bureau of Advertising estimated TV might have lost $1 million in billings.

Losses for radio stations throughout the stricken area were placed at approximately $200,000 with New York City accounting for $40,000 of that total.

Newspapers were high in their praise of radio. One New York columnist described it as "king and counselor."

With some 800,000 people trapped in the city's subway system at rush hour, scattered transistor radios were credited with maintaining calm among the jammed passengers who otherwise would have remained ignorant of the cause of their predicament.

New York's Gov. Nelson Rockefeller told broadcasters that "I would like to repeat how indebted we are to all of you—the various commentators on various radio stations. You have done an absolutely splendid job. You have informed people, you have kept in touch with them."

Down East.—The television situation in metropolitan areas of New England was fuzzier than in New York City where a total blackout prevailed through most of the night.

In Boston the power failure occurred at 5:20 p.m. and electricity was not fully restored in the area until 1 a.m. However, parts of the city began to get current again at 9:30 p.m. and the TV stations in the market were back on the air as soon as their emergency power equipment could be cranked up.

WBZ, Boston, said it was back on the air within seconds after the failure with an auxiliary 5-kilowatt transmitter at the studio and resumed normal 50-kilowatt operation in 2 minutes.

WHDM–AM–FM–TV, Boston, reported to Broadcasting that its total TV time loss was 40 seconds and the AM–FM silence was less than 2 minutes, thanks to emergency generating equipment that kicked on automatically.

In the New Haven-Hartford area the situation was apparently still brighter.

A local utility company, United Illuminating, reportedly saw the emergency developing and was able to continue supplying power with auxiliary equipment. WNHC–TV, New Haven, was blacked out at 5:21 but was on the air again within a half hour with emergency power. The station said some parts of its coverage area were not affected by the electric failure. Of the half-million customers served by United Illuminating and Connecticut Light & Power Co. in New Haven and Bridgeport, it was reported that 400,000 were never completely without power. WNHC–TV said it carried network service (ABC–TV), lost it temporarily for an undetermined reason and then got it back again at 9:30 p.m.

WTEV–TV, New Bedford, Mass.-Providence, R.I., reported minor disruption as its auxiliary transmitter kicked on and permitted it to render special network service to the area.

WKNE, Keene, N.H., equipped with Emergency Broadcasting System gear at its transmitter adjacent to its studios, reported it was off less than 2 minutes and on its return fed CBS and Yankee Network service to the blackout area.

Network countermeasures.—Despite the electrical crippling of their New York headquarters the television networks were able to salvage much of their evening schedules. ABC–TV's early evening news was originated from Washington. From 7:30 p.m. ABC–TV's entertainment schedule was fed to unaffected parts of the country from Chicago. Bulletins on the power failure were transmitted throughout the night.

CBS–TV originated its early evening news program from Washington with Walter Cronkite providing audio reports by telephone from New York and with Roger Mudd reporting in the Capital.

CBS–TV postponed its scheduled National Citizenship Test to November 23 and presented a news special on the blackout in its place (10–11 p.m.). CBS had carried an earlier 10-minute report on the power situation at 8:30 p.m., which included a live video feed from New York, made possible by emergency generating equipment. But this, too, failed and the final 3 minutes of the report were audio only. Again at 10:42, the network's New York broadcast center was able to provide some live video. Its entertainment programing was transmitted from Hollywood.

NBC–TV carried its regular schedule from 7:30 and presented two special reports from New York from 11:30 to midnight and from 1 to 1:15 a.m. The network's New York studios were knocked completely out of operation for the duration of the electrical failure, but a special portable vidicon camera, normally used by roving reporters, provided pictures of low-signal strength from New York for the special reports. Amplification of the signal by the New York Telephone Co.—itself operating on diesel-powered emergency equipment—got the picture to Washington for feeding to the network.

The network's "Tonight" show, which normally originates in New York, was a rerun tape sent by messenger to Philadelphia and transmitted from there.

Television networks were unwilling to attempt estimates of their losses. One network said it was a "hopeless accounting problem" especially so soon, since no one had a complete reading of what portion of the New York-New England audience had received a given commercial.

Just how damaging the evening had been for New York City television stations was not immediately known. One network-owned station estimated its total loss for the night was $125,000; another said its lost spot business would be $47,000.

What part of this could be recouped through the placement of make-good announcements was unknown. One official pointed out that his station was still besieged with make-good problems resulting from earlier extraordinary events such as the Pope's visit to New York, the Gemini 5 space shot, and the city's mayoralty campaign, during which some commercials were delayed to accommodate paid political announcements.

Radio flexibility—Radio networks mobilized quickly for emergency operation, switching their control centers from New York to Washington and Chicago.

ABC radio canceled all commercial messages at 6:05 p.m. and at that point began uninterrupted news coverage to affiliates. NBC radio reported no interruption of its normal service and said it added special reports to its normal news offering. The network described a "minimal loss" in billing for the evening.

CBS radio in Washington notified affiliates of the blackout at 5:45 p.m. with a network alert and carried news specials on the crisis through the evening.

Mutual said it carried on operations with no loss of commercials or programing. The power failure occurred at a "no service" period for Mutual and the network was able to transfer program responsibility to its Washington studio. Supporting transmissions came to New York over emergency lines.

Radio Press International, which normally presents its feeds from New York, was able to switch operations to Washington without missing a transmission.

Wire services—New York communications centers of both the Associated Press and United Press International were put out of commission but newsmen continued to operate by candle and flashlight. UPI audio reporters in New York went into the streets for voice reports, feeding them by telephone to Washington and Chicago, where they were transmitted to member stations. The blackout temporarily closed down the UPI audio network.

The AP's broadcast wire had its control point shifted to Chicago and it supplied news to its 2,750 station members from there.

With TV equipment useless to New Yorkers, radio signals and the battery-powered sets which received them were the night's heroes. The city's stations—most of them operating in candlelight and with emergency generators powering their transmitters—got their signals from studio to transmitter by telephone line as they switched from normal programing to public service operation.

Tie-in with Detroit.—WABC, which put its out-of-pocket expenses for the evening, including lost commercials and overtime payments to employees at $15,000, set up a phone circuit with ABC-owned WXYZ in Detroit, from which it got wire service news.

WOR, working with an emergency generator, put an appeal for gasoline to run the equipment since no gas was available from the electrically operated pumps in the city. A New Jersey businessman drove into New York and walked up 24 floors with 7 gallons of gas for the station.

As soon as stations were able to gain communication links with their suburban transmitters they were on the air for the rest of the night with makeshift news operations. Among the area's outlets taking part in the long public service effort—most of them offering 12 hours of reassuring reports and analyses of the situation—were WINS, WHN, WMCA, WCBS, WNBC, and WNEW, all New York, and WFAS White Plains.

Arthur Hull Hayes, president of CBS radio, in a telegram to the Hotel & Motel Association of America, urged that trade group to promote the installation of battery-powered radios in the guest rooms of its members. Mr. Hayes said that hotel and motel guests throughout much of the Northeast were in unfamiliar territory with need for the reassuring service of radio.

WHN in a telegram to Mayor Wagner asked that an emergency plan be developed by the city which would provide for centralization of information sources in time of emergencies.

The Radio Advertising Bureau urged stations and networks to use their influence in promoting the ownership of a transistor radio in every home. Miles David, RAB president, said the need for battery-powered radios had been "made clear again and again in crisis situations all over the country.

"The approximately one-third of the families without transistors are running a real risk by depriving themselves of their only link to the facts in an emergency," he said.

RAB estimated 80 percent of all people hit by the blackout stayed informed with transistor or car radios.

Help from individual stations outside the blacked out area was typified by two reports to Broadcasting:

WCCO Minneapolis-St. Paul turned its 50-kilowatt facility over to emergency broadcasts and advisories for citizens and officials in the affected areas.

WTOP Washington invited long-distance phone calls from listeners in the blackout area. More than 241 placed prepaid and collect calls to report on conditions in their communities and to relay other messages.

FCC TO STATIONS: WHAT IF IT HAPPENS AGAIN?

The FCC is investigating the effects of last week's massive power failure in the Northeast on the ability of broadcast stations to continue communicating with the public.

The Commission has dispatched letters to more than 1,000 radio and television stations, as well as the networks, asking for information on their experiences during the blackout of November 9 and 10.

The Commission wants the information for help in developing emergency communications plans to cope with future disasters. The agency is charged with such emergency preparedness functions.

At the same time, Defense Commissioner Lee Loevinger, who wrote the survey letter, and Chairman E. William Henry said that reports available in Washington indicated that broadcasters did a commendable job during the blackout.

Commissioner Loevinger, in the letter, expressed the Commission's thanks to broadcasters who performed services that were "helpful and in many ways indispensable to the maintenance of public order."

Chairman Henry stressed that the inquiry does not reflect any concern that broadcasters did not perform well. On the contrary, he said: "We feel they did perform well—as we would have expected."

Fast work.—Commissioner Loevinger, with the aid of Kenneth W. Miller, chief of the Commission's office of emergency planning, began drafting the letter Wednesday morning (November 10) and the Commission acted without waiting for instructions from the White House.

The letter asks licensees in the affected areas how long they were able to operate, whether they have emergency auxiliary power sources and, if so, how effective they are.

The letter also asks whether remote control transmitting equipment was affected and what communications—such as telephone, teletype, radio links—remained in operation during the emergency.

The broadcasters, in addition, were asked to express their views on the adequacy of the communications facilities that were available, to report on what assistance they gave State and local authorities and civil defense officials, and to relate their plans for action in future emergencies.

SINDLINGER SURVEY SHOWS RADIO AUDIENCE TRIPLED

Radio almost tripled its normal adult audience in the blacked out areas of the Northeast last Tuesday night on transistor and automobile sets alone.

The magnitude of radio's role, even though plug-in sets were useless in the power failure (see p. 78), was pointed up in estimates provided Thursday (November 11) by Sindlinger & Co., audience research firm of Norwood, Pa.

President A. E. Sindlinger told Broadcasting that interviews indicated 55.4 percent, or an estimated 10,484,000, of the adults in blacked-out homes listened to radio during the night. On an "average" Tuesday night at this time of year, he said, about 20 percent or 3.8 million adults in this area tune in.

In those parts of the Northeast where some power was available and television stations were on the air, about 5,011,000 adults, or a little over one-third of "normal," said they had watched TV. About a fifth of these people indicated their TV sets were delivering only audio, no picture.

The Sindlinger Co., which interviews daily by telephone, added a question on Wednesday to determine approximately how many persons lived in homes affected by the seven-State power failure the night before. The total: about 31,516,000, of whom 18,907,000 are adults (aged 18 and over). Of the adults, 8,973,000 were men and 9,934,000 women.

On an average Tuesday, Mr. Sindlinger said about 21 percent of the men and 18 percent of the women in the blacked out areas listen to radio after 6 p.m. But on blackout Tuesday, 67.9 percent of the men (6,093,000) and 44.2 percent of the women (4,391,000) were radio listeners.

Homes and automobiles were the principal listening places. A total of 75 percent of the adult listeners (7,931,000) said they tuned in at home; 34.4 percent (3,610,000) said they listened in cars, and 20.1 percent said they listened in public places, their offices or at other points outside their homes and cars. The totals exceed 100 percent because many people listened at two or more places.

Among men, 68.4 percent (4,168,000) listened at home, 42.1 percent (2,565,000) in cars, 31.6 percent (1,925,000) in other places. Among women, 85.7 percent (3,763,000) listened at home, 23.8 percent (1,045,000) in cars, 4.3 percent (188,000) in other places.

Sindlinger reported that more adults said they tuned WBZ Boston than any other station—a total estimated at 964,000 adults. Second was WOR New York, with an estimated 838,000, followed by WCBS New York with 780,000, WNEW New York with 750,000, WNBC New York with 730,000, WHN New York with 700,000 and numerous other stations with lesser totals.

[From Radio-Television Daily, Nov. 12, 1965]

RADIO ELECTRIFIES BLACKED OUT EAST

"Broadcasting by Candlelight" was the theme of Tuesday night's citywide all-station radio "special," with all New York outlets affected scuttling their regular programing and their commercials to keep the metropolitan area informed of developments during the 12-hour blackout resulting from a nine-State power failure.

Newsmen, disk jockeys, salesmen and others on extra duty—some existing only on food provided by generous transistor-listening fans—huddled around candles, reporting to the citizenry as they received word from out-of-town sources and from their own reporters around the darkened town.

ABC radio suspended all regular programing and, as of 6:45 p.m., all commercials, and originated its regular evening newscasts from Chicago. Anchormen there provided running commentaries on the situation via telephone. By 6:45 a portable auxiliary generator allowed live reports through rerouted phone lines. An ABC boost was the voluntary reportorial aid offered by Sen. Vance Hartke (Democrat, of Indiana), a member of the power-regulating Senate Commerce Committee.

CBS radio opened lines to Chicago, Philadelphia, and Washington. At 5:54 p.m., CBS in Washington notified affiliates via Net Alert that a New York bulletin was upcoming. In all there were 15 Net Alert reports.

NBC set up lines to Washington and Chicago. Commercial cancellations, according to a network spokesman, were "minimal."

The Mutual Broadcasting System, which has no New York station, maintained full operations with no loss of regular programing or commercials.

Three-quarters of the non-U.S. world was tuned in on the difficulties by means of Radio New York Worldwide, the shortwave operation emanating from WRUL here. WRUL went off when the power failed at its Massachusetts transmitter at 5:45 p.m., but was back on at 7:15 with auxiliary power through the night. The station also prepared a newsletter for distribution to hotels in the city.

All FM stations in the city were knocked off the air.

WNBC was off the air for a few minutes after the lights went out at 5:27 p.m. Major newsmen were on hand, along with NBC operations and news manager Russ Tornabene. WCBS took 2 minutes, but its week-old auxiliary transmitter allowed it to operate at its full 50-kilowatt power. Its complete coverage ended at 3:33 Wednesday morning. WABC took 15 minutes to get back on, then provided full coverage until morning.

At the independents, things were much the same. WADO, usually 16 hours Spanish-language a day, went all-Spanish all night with special reports. WOR had Lester Smith out in a mobile unit, and staff members going up the elevator in a next door building and crossing a display sign catwalk to get to the studios. A New Jersey couple drove into New York and walked up 24 flights to provide WOR's AM operation with 7 gallons of generator-perking gasoline.

WMCA took credit for being the first back on the air after the power failure hit—a matter of seconds. Its crew walked up 13 flights to provide continuous coverage. The blackout hit while 40 high schoolers were touring the studios, and a dj Gary Stevens called all their homes and arranged for private transportation home for all 40.

EERIEST NOTE

The eeriest note of the blackout was sounded on Long John Nebel's regular midnight to 5 a.m., stand on WNBC. Nebel accepted calls from listeners on their impressions of the situation. One quoted from "Gift of Prophecy," by Ruth Montgomery, published in August. The book, on seer Jean Dixon, quotes her as follows: "I saw a silver ball like the sputnik rise over Russia and going into a power missile, which traveled around the globe to the left. Suddenly it switched course and traveled in the opposite direction. Beneath it America was all aglow, but as the missile turned, the lights of our country went out, leaving us in utter darkness." Miss Dixon, who laid the blackout to a "secret type" of Russian missile, predicted in January 1963 and again in November that tragedy would befall President Kennedy, and later that President Johnson would undergo successful surgery.

FRANKEL'S CROSS-COUNTRY "FEED"

Erwin Frankel, who hosts an evening program of "Music From Around the World" on WABC–FM, New York, not only came through with the blackout's first remote report, but provided comment on the situation on over half a dozen stations across the country. He was at his Greenwich Village apartment when the power failed, and set up a makeshift news bureau, calling on neighbors to serve as his news staff. He was on the air at 5:37 p.m. with on-street interviews—but on WJRZ, Newark, N.J., not WABC, which was not yet back on. He also phoned over 20 nonnetwork stations across the country and was put on the air by almost half of them, reporting on the blackout. The stations included WJRZ; WABC; WGBS, Miami; KSFO, San Francisco; KHOW, Denver; WDGY, Minneapolis-St. Paul. None of them asked his affiliation or checked his credentials before putting him on the air.

GEORGE FRIEDMAN

All-Spanish WHOM went off the air at 2 a.m., as usual. It monitored networks and other stations for developments. WPOW, which has no news staff as such, signed off at 8 p.m.; for two and a half hours it interspersed blackout reports and recorded music. WWRL was on all night, monitoring nets and stations and receiving reports from sister station WOL, Washington.

WNEW used a battery-operated remote amplifier generally reserved for football game coverage. A "roundtable" newsman setup held the fort. The station fed reports to out-of-town stations that called in for information. WNEW received a call from Australia saying that Sydneyites feared New York was "in chaos just short of martial law."

All-news WINS received updated reports from its Washington bureau and other group W/Westinghouse stations.

WPAT, out of Paterson, N.J., and WVNJ, from Newark, continued with the usual recorded music, spotted with bulletins.

WQXR was without emergency equipment until 1 a.m. signoff. City-owned WNYC received FCC permission to stay on past its 10 p.m. signoff time and remained on the air until 1:30 a.m. WBNX, WEVD, and WLIB had signed off before the blackout.

MEANWHILE, ON TV

The blackout cost networks a yet unaccountable but "substantial" income, probably in the millions. An NBC spokesman said that network's losses would run into "several hundreds of thousands" but that no estimate come "anywhere near the facts" at this early date.

A CBS spokesman agreed the losses to it would be "substantial" but said no realistic accounting would be possible until full reports were received from affiliates. At ABC it was explained weeks may be necessary to reach a satisfactory accounting.

As to programing, all three networks asserted there were no notable interruptions in prime-time shows, although news programs originating in New York were drastically altered. However, both CBS and NBC put both pictures and voice reports on the blackout on their networks for varying periods during the evening.

CBS suffered no interruption of network service, according to spokesmen. The entertainment schedule was fed out of Hollywood. The regular CBS evening news with Walter Cronkite was supplanted by a news program originating in Washington. Cronkite, who remained in the New York offices, was represented by an audio report on the blackout by phone.

Again at 8:30 the Red Skelton show was interrupted for a news special from New York. By means of emergency power the newsroom in New York was able to broadcast a picture for 7 minutes, relying on audio for 3 minutes when the phone lines went out. On this broadcast Cronkite, Harry Reasoner and Mike Wallace reported on the New York scene during the blackout.

The "National Citizenship Test," scheduled on CBS from 10 to 11 p.m., was postponed to November 23, and replaced by a news special report from Washington with Roger Mudd in command.

Blackout reports, strictly audio, were included from Cronkite, Reasoner and Wallace, and at 10:42 p.m. the New York scene went onto video again with Cronkite on camera at CBS and Wallace interviewing stranded passengers of the Long Island Railroad at Penn Station. However, the land lines conked out again.

NBC fed its network from Los Angeles (Burbank). Peter Hackes in Washington, Floyd Kalber in Chicago, and Roy Neal in Los Angeles did a three-prong anchor job on a reassembled "Huntley-Brinkley Report." Brinkley had flown to New York Tuesday to take the place of vacationing Chet Huntley and was unable to participate until 7:25 p.m. when he phoned a report on the New York scene to Washington.

The "Tonight Show" could not be aired, and a tape of the September 14 show was rushed to Philadelphia by messenger and broadcast from there.—PAUL V. BECKLEY

[From the Television Digest, Nov. 15, 1965]

RADIO SHINES IN BLACKOUT

Radio did itself proud in the big blackout of 1965. Clearly, it will remain the Nation's emergency service until perfection of a pocket, transistorized TV set. Radio stations switched quickly to emergency power, and their calm, good-humored reports unquestionably were a major factor in averting panic. Highlights:

L.B.J. first heard of power failure on car radio in Texas.

New York Mayor-elect Lindsay said he didn't want to be critical of Mayor Wagner, "but I would have been on the radio the whole time".

Senator Magnuson, Democrat of Washington, chairman of the Commerce Committee, asked FCC for a report on performance of stations and common carriers.

Representative Rogers, Democrat of Texas, chairman of Communications and Power Subcommittee, called for investigation of power facilities, undoubtedly will touch on communications, too.

New York Governor Rockefeller said, and was quoted in full-page ABC ad: "I would like to repeat how indebted we are to all of you—the various commentators on various radio stations."

Networks used radio to assure non-blacked-out areas that TV programs would continue from Hollywood.

FCC Chairman Henry said stations "performed admirably".

Many TV stations in partial-powered areas provided yeoman service, using standby generators.

New York Times Columnist Arthur Krock berated FCC for its "crusading inquiry" of A. T. & T., saying the phone company performed beautifully because it has been least controlled by the Federal Government.

Both TV and radio networks went all out with specials analyzing what happened—even before power was restored.

Pentagon asserted military communications were little affected.

TV's loss from untelecast commercials was estimated at $1 million, radio's at considerably less.

New York Times' Jack Gould summarized: "The sound medium, so often overshadowed by the more glamorous and dramatic instrument of TV, proved resourceful in patching together emergency circuits. The tireless commentators of the major stations injected a note of relaxed humor and congenial camaraderie that undoubtedly contributed to the city's calmness."

[News release from National Association of Broadcasters, Washington, D.C., Nov. 10, 1965]

WASILEWSKI PRAISES BROADCASTERS' ROLE DURING NORTHEAST POWER EMERGENCY

WASHINGTON, November 10.—Vincent T. Wasilewski, president of the National Association of Broadcasters, today released the following statement on broadcasters' performance during the electric power failure in the Northeastern United States:

"Although we do not yet have full knowledge of the number of radio and television stations able to remain on the air in the blackout area, it is obvious that the broadcasting industry performed magnificently during yesterday's power emergency.

"Radio, in particular, played a key role in keeping a stunned and confused public fully informed, demonstrating once again its tremendous power and reach in its service to the public.

"In countless instances, transistor radios, were, for the millions caught in the blackout area, their only real link with reality. Using emergency power, radio stations relayed information continuously, cautioned the public to remain calm, and generally are credited with helping to avoid panic.

"The radio-TV networks switched their main operations outside the stricken area and radio and television stations in other parts of the Nation gave listeners and viewers up-to-the-minute accounts of the emergency.

"The overall performance by the industry was one in which all of us in broadcasting have a deep sense of pride."

[From the Washington (D.C.) Evening Star, Nov. 10, 1965]

IMPROVISATIONS KEEP NEWS FLOWING, BUT TV TUBES GO BLACK IN WIDE AREA

NEW YORK.—In one shuddering instant, the hub of the Nation's communications industry lost power, faltered, but caught itself and began talking again.

Throughout the Northeast of the Nation—where more than 1 out of 10 Americans live—television tubes loaded with children's programs and late afternoon movies went black. Some radio stations fell silent.

Newspapers quickly searched out alternative presses to put out abbreviated editions.

The New York Times printed about half a million 10-page papers on the presses of the Newark Evening News in nearby New Jersey. The city's other two morning papers did not appear.

One of the three afternoon papers, the World-Telegram and Sun, met its early edition deadlines by using printing facilities in New Jersey, but moved the production operation back into its Manhattan plant later in the day. The "Telly" printed only 16 pages, however, about one-third of the average size of the paper on a normal Wednesday.

The evening Journal-American got out on time, but the Post was expected to be about 3 hours late with its first edition.

The Associated Press made emergency shifts in its vast network of wires, and kept the news, even of the blackout itself flowing without interruption.

Advertising losses from all media ran into the millions. Television was the first to feel it. At NBC–TV's headquarters in Manhattan's Rockefeller Center, the awful moment came at 5:16 p.m. e.s.t., when power levels fell too low to telecast.

A movie, "Buck Privates Came Home" being telecast locally over WNBC–TV, stopped short.

A couple of blocks away at WCBS–TV, a scheduled spy movie called "The 49th Man," suffered a similar fate.

Both WNBC and WCBS—flagship radio stations of their respective networks—were luckier. Automatic systems switched them to auxiliary power and broadcasting of local news and music went on. "We didn't miss a lick," one official said.

Not as fortunate was WABC—keystone station of the American Broadcasting Co. It dropped off the air for 20 minutes beginning at 5:28 p.m.—until it could telephone its programing to its transmitter in New Jersey.

Television network programing to the rest of the Nation continued without interruption. News shows were handled by staffs in Washington and Chicago.

For an instant at the moment of darkness the vast apparatus of the Associated Press, the world's largest news-gathering organization, faltered.

At its headquarters at 50 Rockefeller Plaza the lights went out, telephone lines died and banks of teletype machines fell silent.

The AP supplies news on a cooperative basis to approximately 1,200 daily newspapers and 2,400 broadcast stations in the United States besides sending and receiving news from more than 100 foreign countries.

A quick series of emergency measures kept the news and photographs flowing without interruption.

Outgoing phone calls were impossible, but incoming calls from AP staffers and member newspapers quickly apprised the New York staff of the extent of the blackout.

By the flicker of scores of candles and the unsteady beams of flashlights, New York writers began pounding out the story and feeding it by unaffected direct telephone extensions to the Washington AP bureau, which rolled it out on teletype to the rest of the Nation.

Washington AP also took over monitoring the wirephoto network, normally a New York function, and the only news media lacking pictures were those within the blackout area unable to receive them.

The Los Angeles AP bureau took over transmission of pictures to Europe via a relay through Montreal. Pacific transmission also continued, but out of San Francisco instead of New York.

The Chicago bureau took over filing of the AP's national broadcast news wires which normally are filed from New York with other bureaus sending regional news at certain periods each hour. Some New York radio stations which had emergency power continued receiving AP copy from Chicago.

Similar innovations kept the news flowing to AP members around the world.

United Press International had emergency generators which provided dim but sufficient power for lights but, like the AP, was unable to transmit news from its New York headquarters.

In Boston, the three morning newspapers, the Herald, the Globe, and the Record, retrieved power and expected to publish. Radio and television stations switched to emergency power supplies.

The Providence, R.I., Journal regained power at 8 p.m. and expected to publish a full edition.

The power loss did not affect northern New Hampshire, Vermont, and Maine, where there are a number of morning newspapers.

[For release from CBS Radio, New York, N.Y., Nov. 10, 1965]

STATEMENT BY LEE HANNA

Following is a statement by Lee Hanna, director of radio news, CBS News, in response to countless gratuitous phone calls and other messages today from listeners, government and industry leaders commending CBS News for emergency coverage broadcast on the CBS Radio Network throughout the night and morning of November 9 and 10:

"It substracts nothing from the job that was done throughout last night to state the fact that the coverage was not unusual. We used the same people and technical facilities that we use 15 times each day in reporting the news on CBS Radio. Last night's coverage was an extension of our usual pursuit of the news; a dramatic demonstration of radio's inherent speed and mobility. It once again proved that no medium can cover a complicated, fast-breaking news story as well as radio. And it again demonstrated the effectiveness of the portable radio. People fortunate to have transistor radios carried them around like flashlights.

"People depend on radio all the time, but the medium has become so much a part of their lives that they often do not notice it. Only in an emergency, such as last night's vast power blackout, does the public really become conscious of radio. They fall back on it like turning to an old friend.

"We did a job that we are always prepared to do. The immediate hard news aspects of the story were covered and explained, and then quickly we attempted to learn the causes and consequences of the crisis."

[From CBS News, New York, N.Y., Nov. 10, 1965]

CBS NEWS COVERAGE OF "BLACKOUT"

The story of the electrical power failure that hit the Northeast late yesterday afternoon and lasted throughout most of the night in some areas was reported extensively by CBS News on the CBS Television Network and CBS Radio Network.

On television, CBS News broadcast two special reports—an hour-long report at 10 p.m., e.s.t., and a 10-minute report at 8:30 p.m., e.s.t., in addition to coverage of the blackout that was presented on last night's "CBS Evening News With Walter Cronkite" and today's "CBS Morning News With Mike Wallace."

On radio, reports were broadcast throughout Tuesday night (Nov. 9) into Wednesday morning. Fifteen special reports were broadcast between 5:54 p.m., e.s.t., and 4:13 a.m., e.s.t. Coverage of the blackout crisis resumed this morning

on the "World News Roundup" and other regularly scheduled news broadcasts on the CBS Radio Network.

All CBS news broadcasts on the CBS Television Network last night went to those affiliates that were not in the blackout areas.

"CBS Evening News With Walter Cronkite" was broadcast from Washington, where CBS News Correspondent Roger Mudd anchored, with audio reports from New York on the situation in the Northeast by CBS News Correspondents Walter Cronkite and Harry Reasoner. The 8:30 p.m., e.s.t., special report was fed on landlines from New York City, with video lasting for approximately 7 of the report's 10 minutes, as Cronkite and Reasoner and CBS News Correspondent Mike Wallace reported. The network received only audio during the concluding moments of the special period.

The 10 p.m., e.s.t., CBS News special report was broadcast from Washington with Roger Mudd once again anchoring from there, but with voice reports from New York by Cronkite, Reasoner, and Wallace.

By 10:42 p.m., e.s.t., video lines out of New York were again open so that Cronkite could be seen on camera, and a film report by Mike Wallace from New York's Long Island Railroad station in Pennsylvania Station was shown.

Heard from Washington on the special report were CBS News Correspondents Eric Sevareid, Marvin Kalb, George Herman, Stanley Levey, and Neil Strawser. Special Presidential Assistant Joseph Carlifano was interviewed on the special broadcast.

CBS News Correspondent Martin Agronsky was seen at the new Rayburn Office Building in Washington with Congressmen and their wives who had come to one of the remote locations for "The National Citizenship Test." The test was to have been broadcast last night but was preempted for the hour-long CBS News special report on the blackout emergency. The test has been rescheduled for broadcast on Tuesday, November 23 (10–11 p.m., e.s.t.).

Today's "CBS Morning News With Mike Wallace" had a series of reports from the Northeastern United States, with CBS News Correspondent Alexander Kendrick reporting from the Niagara power complex; CBS News Reporter Peter Burns talking to passengers who stayed aboard an elevated subway almost all night; CBS News Reporter Josh Darsa reporting on a New York hotel, typical of many which opened lobbies and ballrooms to persons unable to reach their homes, and CBS News Correspondent George Herman reporting on most recent Washington developments in connection with investigations into the power failure.

On radio CBS News Correspondents Douglas Edwards, Reid Collins, Mike Wallace, and Allan Jackson handled the anchor duties from New York.

Immediately after New York went dark at 5:27 p.m., Tuesday, CBS News established open lines to Chicago, Philadelphia, and Washington seeking information to substitute for the silenced news tickers in New York. At 5:54 p.m., e.s.t., CBS Radio in Washington notified affiliated stations via Netalert and the first bulletin from New York was broadcast. At 6 p.m., e.s.t., Douglas Edwards anchored a special broadcast which reported that New York, Boston, Buffalo, Toronto, and other major cities were in darkness. Correspondents George Herman and Marvin Kalb in Washington covered the military and civil defense aspects of the story. Reporter Ike Pappas reported the situation on the streets of Manhattan.

From 6:18 to 6:44 p.m., e.s.t., the CBS Radio Network broadcast a netalert special with Edwards in the anchor chair. At 6:45 p.m., the network broadcast "Lowell Thomas and the News," and at 7 p.m., "The World Tonight." Both broadcasts carried up-to-the-minute details on the crisis.

From 7:15 to 7:44 p.m., e.s.t., the CBS Radio Network broadcast another special with Edwards, Mike Wallace, Reid Collins, and Steve Rowan participating. Wallace, Collins, and Rowan reported on the situation and public reaction from Times Square, Grand Central Station, Pennsylvania Station, and other critical points in Manhattan.

At 8 p.m., e.s.t., Wallace anchored a special which included reports from Neil Strawser in Washington, Robert Pierpoint at the Texas White House, Ike Pappas at Bellevue Hospital, Reid Collins in Midtown Manhattan, and Del Hill at WSNO Radio, Barre, Vt.

The 9 p.m. radio special, with Edwards as anchorman, carried reports from Ken West of WEEI radio, Boston, Pierpoint in Austin, Tex., Ralph Arrington of CFRB radio in Toronto, and George Harrison in Greenwich, Conn.

Collins anchored the 10 p.m. radio special, with reports by Correspondent Steve Rowan at Consolidated Edison headquarters in New York, Bruce Morton

in Austin, Tex., Martin Weldon in Times Square, and Ike Pappas at New York City Police headquarters, as well as Neil Strawser in Washington and Douglas Edwards in New York.

At 11 p.m., e.s.t., Anchorman Collins, Rowan at Con Ed, Warren Doremus at WHEC radio, Rochester, N.Y., Bob Stanley, WROW radio at Albany, N.Y., and Correspondent Dallas Townsend at Pennsylvania Station in Newark, N.J., provided further reports.

[From the CBS Radio Network News, Nov. 10, 1965]

CBS RADIO NETWORK ALIVE ALL NIGHT COVERING MASSIVE POWER BLACKOUT WITH 15 CBS NEWS SPECIAL REPORTS ON ALL ASPECTS OF THE EMERGENCY

EDWARDS, COLLINS, WALLACE, JACKSON ANCHOR CRISIS COVERAGE—ENTIRE CBS NEWS CORPS AND CBS RADIO AFFILIATES JOIN IN EFFORT

The CBS Radio Network was on the air throughout Tuesday night (November 9) into Wednesday morning broadcasting complete CBS news coverage of the massive electrical blackout that gripped much of Northeastern United States.

The emergency was covered from every conceivable aspect in 15 special reports from 5:54 p.m., e.s.t., to 4:13 a.m., e.s.t. CBS News Correspondents Douglas Edwards, Reid Collins, Mike Wallace, and Allan Jackson handled the anchor duties from New York.

Immediately after the city of New York blackened at 5:27 p.m., CBS News, calling on all its resources, established open lines to Chicago, Philadelphia, and Washington seeking information to substitute for the silenced news tickers in New York. At 5:54 p.m., CBS Radio in Washington notified affiliated stations via Netalert and the first bulletin from New York was broadcast. At 6 p.m., Douglas Edwards anchored a special broadcast which reported that New York, Boston, Buffalo, Toronto, and other major cities were in darkness. Correspondents George Herman and Marvin Kalb in Washington covered the military and civil defense aspects of the story. Reporter Ike Pappas reported the situation on the streets of Manhattan.

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From 7:15 to 7:44 p.m., the network broadcast another special with Edwards, Mike Wallace, Bill Leonard, Reid Collins, and Steve Rowan participating. Wallace, Leonard, Collins, and Rowan reported on the situation and public reaction from Times Square, Grand Central Station, Pennsylvania Station, and other critical points in Manhattan.

At 8 p.m., Wallace anchored a special which included reports from Neil Strawser in Washington, Robert Pierpoint at the Texas White House, Ike Pappas at Bellevue Hospital, Collins in midtown Manhattan, and Del Hill from WSNO radio, Barrie, Vt.

The 9 p.m., special with Edwards as anchorman, carried reports from Jim Westover of WEEI radio, Boston, Pierpoint in Austin, Tex., Ralph Arrington of CFRB radio, Toronto, Bill Leonard in New York, and George Harrison in Greenwich, Conn.

Collins anchored the 10 p.m., special on the CBS Radio Network. Correspondent Steve Rowan at Consolidated Edison headquarters in New York, Bruce Morton in Austin, Tex.; Martin Weldon in Times Square, Ike Pappas at New York City Police headquarters, Neil Strawser in Washington, and Douglas Edwards in New York covered all aspects of the unfolding, albeit enigmatic story.

At 11 p.m., Anchorman Collins, Rowan at Con Ed; Warren Doremus, WHEC radio, Rochester, N.Y., Bob Stanley, WROW radio, Albany, N.Y., and Correspondent Dallas Townsend at Pennsylvania Station in Newark, N.J., continued to pursue the reasons for and consequences of the blackout.

At midnight, the special included reports from Rowan, Morton, and Harry Reasoner, plus a roundtable discussion in Washington among Correspondents George Herman, Stanley Levey, and Hughes Rudd. Rudd was speaking live from Moscow.

The 1 a.m. CBS Radio special carried reports from Art Smith in Boston, Maurie Robinson on the streets of Manhattan where thousands still were attempting to get home, Bill Plante in New York, and Marvin Kalb in Washington.

At 2 a.m., Edwards, Morton, Reporter John Meyer in Washington, Art Smith, Peter Burns, and Maurie Robinson in New York reported the crisis easing, but continued to probe for answers to still unsolved questions.

At 3 a.m., Collins, Gary Sheppard of WCAU, Philadelphia; Jerry Waters in Washington, and Maurie Robinson in New York again brought the story into focus.

The final special was broadcast at 4 a.m. Correspondent Allan Jackson was in the anchor chair. Rowan, Robinson, Pappas at Grand Central, and John Meyer in Washington began to wrap up the story as the natural and electrical dawn approached.

In addition to hard news reports from the affected areas, CBS Radio carried actuality reports from police commissioners, officials of power companies and agencies, and other leaders of government and industry.

CBS News radio coverage was supervised by Lee Hanna, director of Radio News, CBS News.

[From the NBC News, Nov. 10, 1965]

HOW NBC NEWS IN NEW YORK PROVIDED NATION WITH COVERAGE OF THE BIG POWER BLACKOUT IN NORTHEAST UNITED STATES

It was like the late 1940's. NBC News produced a television special last night from its New York studios under conditions reminiscent of the early days of the television industry. An engineer on a phone to Washington, D.C., heard the words "cue McGee" at the other end of the line, pointed a finger at NBC News Correspondent Frank McGee and McGee started a report on conditions in New York without electricity, reading his notes by the light of a kerosene lamp, hand-held battery lamps and one candle.

"New York," meaning the New York studios and transmitting equipment of the NBC Television Network, was knocked completely out of the network last night (November 9) from 5:28 p.m. until 5:05 a.m. this morning. The cause was the power failure that crippled the Northeastern United States.

Despite the power failure, NBC News telecast two special reports from New York City last night, from 11:30 p.m. to 12 midnight, and from 1 to 1:15 a.m. (all times are e.s.t.). WNBC–TV, New York, NBC owned, resumed broadcasting with special reports at 5:05 a.m. NBC–TV presented the "Today" show from 7 to 9 a.m., devoting the entire program to reports on the power failure. WNBC–TV broadcast a special report from 11 a.m. to 12 noon and the network telecast a special report from 1 to 1:30 p.m.

WNBC, NBC-owned radio station in New York, resumed broadcasting with battery power a few minutes after the power failure began. The announcers read hastily written copy by the aid of flashlights. NBC News Correspondent Merrill Mueller and Morgan Beatty took over from Staff Announcer Ray Barrett shortly after the station went back on the air and were later spelled by Jim Hartz, Robert MacNeil, Ed Gough, Ben Grauer, Edwin Newman, and Ken Brodney.

Besides radio, there was nothing but the telephone. New York, key point for the NBC television and radio networks, had no broadcasting facilities. Correspondent Peter Hackes in Washington, Floyd Kalber in Chicago, and Roy Neal in Los Angeles stepped in to anchor a hastily rewritten "Huntley-Brinkley Report." Brinkley, ironically, had flown to New York earlier in the day to take vacationing Chet Huntley's place and was unable to appear on the program. At 7:25 p.m., Brinkley phoned a report to Washington which was immediately replayed on the "Huntley-Brinkley Report."

Brinkley made his telephone report from a candlelit desk. He was able to look out a window and validate the fact that New York City was without street lights and traffic lights. Near the end of his report, which lasted 3 minutes and 13 seconds, he paused momentarily, then said, "Yes," and resumed talking where he had left off. When he hung up, he was asked what the interruption was. "Someone broke in and asked me if this phone was working" was his reply.

NBC News' New York newsroom operated throughout the night by the light of one 40–watt bulb, powered by batteries normally used to run film cameras in the field, plus candles. Nine camera crews and 15 reporters were out on the streets, gathering information and phoning it in. Writers compiled stories for the radio announcers and for the television special which would be broadcast as soon as

electricity was restored. Gradually it became apparent power was not coming back for a long while and plans were made to "get a picture" out of New York and to the rest of the NBC–TV network by auxiliary power.

"The Tonight Show Starring Johnny Carson" could not be taped in New York or broadcast from there, so a tape of the show of September 14 was rushed to Philadelphia by messenger and broadcast from there.

At 11:30 p.m. NBC News in Washington began a special network telecast on the power failure, switching to New York at 11:33 to hear from McGee, Correspondents Gabe Pressman and Jim Hartz and Reporters Patrick Trese, Wallace Westfeldt, and Bill Wordham. Chet Hagan, producer of NBC News' "Instant Specials," produced this broadcast. The associate producer was George F. Murray, normally director of the "Frank McGee Report," and the director was Walter Kravetz, normally a director on the "Huntley-Brinkley Report."

A telephone in the studio substituted for a regular control room. The camera used was a Vidicon, designed for use at political conventions by a roving reporter carrying it on his shoulder. This camera generates a signal of limited power, but the New York Telephone Co. was able to amplify it enough to transmit it to Washington. (The telephone company itself was operating on diesel-powered emergency equipment.)

A tiny monitor on the Vidicon revealed that the camera was transmitting McGee's picture, but only when engineers in Washington confirmed it by telephone, did anyone know whether New York was reaching the rest of the country. McGee wore an earphone, but without electrical power it was useless. Studio personnel used hand signals they had not used in years and passed scribbled notes from person to person until they reached McGee, to tell him when to pass the single microphone to another reporter and how much time he had remaining to finish the report.

"Well, I hope they saw us," said McGee as the broadcast concluded shortly before midnight. Within minutes he and the others knew that they had gotten through with some degree of success. A viewer telephoned from Mentor, Ohio, to report that McGee and his colleagues had come through "clear as a bell" on his television set.

A second network telecast, using the same procedure, was presented from 1 to 1:15 a.m. Patrick Trese, Bill Wordham, and Wallace Westfeldt joined McGee for the broadcast.

There were no further telecasts from New York until 5:05 a.m. when WNBC–TV resumed broadcasting locally. The station broadcast a total of 90 minutes of special news coverage of the power failure that had pluged the Northeast section of the country into darkness, from 5:05 to 5:30 a.m. and from 5:55 to 7 a.m.

[From the NBC News, Nov. 11, 1965]

NBC NEWS SIDELIGHTS ON THE NEW YORK BLACKOUT: HOW CAMERAMAN BROUGHT LIGHT FOR A HOSPITAL OPERATION: HOW NEWSFILM WAS PROCESSED IN NEW JERSEY GARAGE

Alan Angrist, free-lance film photographer covering the New York power failure for NBC News Tuesday night (November 9) found himself providing light for an emergency operation performed at Queens General Hospital.

Angrist had gone to the hospital to film a report on the use of emergency power. When he arrived at an emergency operating room, he found doctors using flashlights for light while they operated on a man with a stomach injury. The hospital's auxiliary power was being used to power pumps for patients in oxygen tents.

The doctors performing the operation asked Angrist to set up his "Frezzy" (Frezzo-lite) a powerful battery-powered light used by photographers in the field. With this stronger source of light, the doctors finished the operation while Angrist filmed it.

Earlier in the evening Angrist filmed the exodus of the audience from a Queens movie theater. Because people were confused in the darkness, the management of the theater had driven an automobile up on the sidewalk so its headlights illuminated the theater lobby. Angrist obtained films of the audience exiting by means of this novel light source.

When the blackout occurred Tuesday night at 5:28 p.m., a number of NBC News cameramen who were on their way home returned to work, filming scenes

of the rush-hour crowds caught on the streets. There was no way to process the film, however, until the film department of NBC News located a New Jersey man who has a film-processing machine in his garage. Throughout the night he developed film for NBC News.

[From the NBC News, Nov. 10, 1965]

NBC NEWS PRESENTS TWO TV SPECIALS ON BLACKOUT

NBC News television coverage of the Northeast's power failure continued today (November 10) with a full-hour special telecast on station WNBC–TV in New York and a half-hour news special on the NBC television network. NBC News correspondent, Edwin Newman, was anchorman for both programs.

The WNBC–TV telecast, "The Big Blackout," was presented from 11 a.m. to 12 noon e.s.t. NBC newsman, Gable Pressman, presented an audio report from Governor Rockefeller's New York office, where the Governor was meeting with New York mayor-elect, John Lindsay, and discussing the power blackout.

Guests on the program were Tom Duncan, vice president of engineering for the Consolidated Edison Co., who explained why the power failed; Harold McLaughlin, assistant general superintendent of the transit authority in charge of subways, who told how trapped commuters were rescued; and Harry Raybin, of the New York City Health Department's Poison Control Center, who discussed food spoilage. The program also included a report from NBC News correspondent, Robert Abernethy, in Washington, D.C., and film coverage from around New York during the blackout.

The NBC television network's special report, "Blackout Aftermath," was telecast from 1 to 1:30 p.m. e.s.t. The telecast opened with a summary of the cause and results of the massive power failure by Edwin Newman. From the Robert Moses power station at Niagara Falls, N.Y., NBC newsman, Sheldon Turcott, of Toronto, explained how the breakdown began in that area and spread throughout the Northeast.

There were also filmed interviews with William Latham, resident engineer for the New York Power Authority, and Charles Hopping, information officer for Consolidated Edison.

From Washington, NBC news correspondent, Robert Abernethy, reported the reactions of Members of Congress to the power failure, and Correspondent Peter Hackes evaluated the crisis in terms of national defense. The program also included a statement by Senator George Aiken (Republican, of Vermont), who said that the power failure indicated more competition was needed in the field of power, and an excerpt of the earlier "Today" interview with Assistant Secretary of the Interior Kenneth Holum.

A film report of the aftermath in Boston, narrated by Jack Chase of station WBZ, completed the telecast.

NOVEMBER 12, 1965.

NEIL MACNAUGHTON, *FCC, Washington:*

Per request, following is interim NBC blackout report, pegged to 11 questions:

Re NBC television and radio networks

1. Commercial electric power required for the operation of studio or transmitter equipment began to fail in the New York area at 5:15 p.m., New York time, November 9, and failed completely at 5:28 p.m. It was restored approximately 3:25 a.m., New York time, November 10.

Re NBC television network only

2. At the time of the power failure, the NBC television network was carrying NBC News Service originating in New York. The network service resumed at 6:30 p.m., New York time, and continued until 1:10 a.m., November 10. Wednesday morning service, November 10, was normal starting at 7 a.m.

Service to the network was lost from New York throughout the evening except for three or four instances of special inserts which were made by using portable battery-operated cameras. The times of these inserts were 11:26–11:28 p.m., 11:35–11:55 p.m., 12:45–12:47 a.m., and 1:00–1:05 a.m.

During the evening network outages were caused by A.T. & T. power loss in New York as follows:

8:34 p.m. to 9:26 p.m.—Top side of round robin: New York, New England, as far as Cleveland—11:15 p.m.–11:18 p.m.—3 minutes, entire network; 12:45 a.m.–12:46 a.m.—1 minute, entire network.

3. The network was primarily serviced during the evening hours from Burbank, Calif., with a special line being purchased into Washington, D.C. Special originations came from Washington, Chicago, Burbank, and Philadelphia, along with the few instances from New York as previously itemized.

4. Yes.

5–7. NBC does not have any regularly installed auxiliary power source for television.

Re NBC radio network only

2. The NBC radio network was out of service from 5:28 p.m., New York time, November 9, to 6:20 p.m. The network continued its broadcasting operations from 6:20 p.m. until 2:05 a.m., November 10, and commenced its regular broadcasting operations at 7 a.m., New York Time, November 10.

3. The network was primarily serviced during the evening hours by originations alternating on the half-hour from Washington, D.C., and Chicago, Ill.

4. Yes.

5–7. WNBC–AM, which broadcast on its local transmitter, was serviced with battery-operated field amplifiers at Radio City and auxiliary power at Empire State and High Island, which permitted operation at sharply reduced power of 5 kilowatts. Such equipment can operate for an unlimited time. The station also carried the NBC radio network at various times during the evening.

Re television and radio networks

8–11. Regular telephone service remained operative during the power failure but on an impaired basis because of overloaded circuits. The inadequacy in emergency power sources available in the New York City area, when a determination can be made as to the reason for the power failure and the likelihood of recurrence, can then be reviewed to enable the development of adequate emergency auxiliary power sources to the extent required.

Starting 5:40 p.m., November 9, WNBC–AM broadcast throughout the night reports on the blackout, carrying from 6:20 p.m. to midnight the radio network's report on the blackout as well as hourly and world news report. Included within these reports were frequent announcements by, or reports of advice from, State and local authorities and others including Con Edison.

Upon the resumption of service by WNBC–TV in New York City at 5:05 a.m., November 10, a news report was carried and a special program was broadcast on the blackout from 6 to 7 a.m.

The station carried the "Today" show (7–9 a.m.), which was entirely directed to the blackout with news and comment. The station broadcast (11–12 noon) an interview program by Edwin Newman during which various State and local authorities presented advice concerning the blackout, its results and other information concerned with health, public safety, transportation, and the steps required of the public to minimize the risk of recurrence. A special network program on the aftermath of the blackout was carried by the station from 1 to 1:30 p.m., on November 10, and the station broadcast a special program (6–7 p.m.) on the blackout.

Regards,

RUSS TORNABENE, *NBC, New York.*

Senator PASTORE. Any further statements? If not, we want to thank you very much, Bill. It has been, I think, an illuminating morning. We have covered quite a complex field of problems. This is only the first hearing. We intend to pursue it further, especially these specific areas that we talked about, when we return in January.

In the meantime I do hope that you will have your legal staff look at these two bills and give us your suggestion as to how they should be drafted to meet any of these constitutional problems that have been raised.

Mr. HENRY. We will do that, and we will look into the other matters that you have raised.

Senator McGee. No point in asking you what you will be doing between now and New Year's.

Mr. Henry. Working hard.

Senator Pastore. Is Mr. Thayer here? Mr. Thayer, it is 5 minutes to 12. We could run until 12:30, or we could recess now and come back at 2 o'clock. What would meet your pleasure?

Do you have a prepared statement?

Mr. Thayer. Yes, sir.

Senator Pastore. Why don't we have you give your statement, then when it comes to the questioning, we will come back at 2 o'clock, which will give us a chance to think it over.

I want to say, Mr. Thayer, how pleased we are for your cooperation and your accepting our invitation to come here today. I hope that some good will come out of this.

STATEMENT OF GORDON N. THAYER, VICE PRESIDENT OF AMERICAN TELEPHONE & TELEGRAPH CO., FOR BELL SYSTEM TELEPHONE OPERATING COMPANIES

Mr. Thayer. I hope so, too, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Gordon Thayer. I am vice president of the American Telephone & Telegraph Co., and I appear on behalf of the Bell System telephone operating companies.

We are concerned about the recent widespread criticism of certain messages on automatic announcement services provided to the public by Bell System Companies and we deplore the use of our facilities for the dissemination of disparaging remarks. We are aware that much of the criticism has been prompted by the anonymity of the sponsors of such messages and have taken steps which we believe will fulfill this need for identification.

I would like to describe the steps taken by the Bell System companies and comment on the proposed bills. However, before doing this it may be helpful if I refer very briefly to the types of announcement services we furnish and the kinds of use customers put them to.

What we are talking about basically is a relatively simple service furnished through a compact, electronic device like the demonstration model installed here in this hearing room. The equipment is located on the customer's premises and contains all of the controls required for its operation. The customer can record at will a message of up to 2 minutes in length on a self-contained recording tape. This message can subsequently be erased and another one recorded whenever the customer desires. When set to receive incoming calls, the device responds to the usual ringing impulse and automatically plays out whatever announcement has been recorded.

Actually, there are several types of devices which are used in the provision of announcement services. Also, there are types which, in addition to providing the announcement feature, can be used to record incoming messages when desired. Most of these are designed for relatively small volumes of calls, as are the "announcement only" devices. There are also considerably more elaborate systems designed for handling heavy volumes of traffic such as are involved in furnishing time and weather information services in metropolitan areas.

In addition to these services furnished by the Bell companies, customers may connect their own automatic answering or announcement equipment to our lines either acoustically or inductively. If a customer desires electrical connection of his equipment, this can be accomplished through a "'recorder-coupler" device furnished by the telephone company.

All of these services are covered in the general exchange tariffs of the Bell System companies which are on file and in effect with the various State or local regulatory authorities having jurisdiction over such services.

Announcement services are used by customers for a wide variety of purposes. For example, business customers use them for the scheduling of work forces, product promotion, employee information, and so on. Airlines give out flight information to the public. State and local governments use them to announce such things as current items of interest, farming conditions, school closings, status reports on emergencies. Automobile associations give information on road conditions. Labor unions have used them extensively. Such applications as "Dial-a-Prayer," "Dial-a-Movie," "Menu of the Day," "Dial-a-News," "Dial-a-Sport" have come into widespread use.

Announcement services have also been used increasingly to convey opinions or points of view on a variety of subjects. As with the factual and inspirational announcements, the sponsors of opinion-type messages have generally wanted their identity to be known and have included it in their messages. Recently, however, cases have been brought to our attention where listeners have been unable to ascertain the identity of the subscriber to the service.

In August of this year we undertook to develop a policy which would deal with the relatively small number of such announcements and yet not work a hardship on the vast majority of announcement service subscribers. To give you some quantitative measure of this, there are in the Bell System upward of 15,000 announcement and "answering-only" services being provided. In addition, there are some 30,000 answering and recording services being furnished which can be used for "answering-only." There are also the customer-provided devices referred to earlier, but we really have no means of knowing how many of these there are. We don't supply them, so we don't know them.

Based on the best estimate our associated companies have been able to make, only a very small fraction of these various services are of the sort which have given rise to the public's and this committee's concern.

I might say at this point that over the years we have consistently taken the position that we should not assume a censorship obligation in the furnishing of our services. We fell that it is not for us to determine what constitutes libel, but rather that this is an area for judicial process. The public interest requires that the carriers should continue to devote their efforts to rendering communications service, with the remedies against the user or subscriber for dissemination of libel left to the courts. I realize that the bills before this committee do not propose censorship of any character. However, it is a matter of such vital concern that I felt I should take this opportunity to make our position entirely clear.

As to the current situation, in August we felt that by a relatively simple change in practice we could reasonably meet the problems, namely:

Automatic announcement services should continue to be available to anyone who abides by the companies' established regulations.

However, automatic announcement services should no longer be furnished on a "nonpublished" basis, under which the subscriber's name is not given out.

Applicants for automatic announcement services should be made fully aware that we will, upon request, give out the name of the subscriber to the service and his address.

At that time we felt these changes would essentially fulfill the need for identification which apparently was the cause of the problem. When people call a public announcement service in response to an expressed or implied invitation to do so—and such an invitation is inherent in the nature of the service—we feel they are entitled to know the name of the subscriber to the service.

Tariff or practice changes have been made in all of the associated companies to implement this policy.

Subsequently, it became evident that there was a further area of public concern. While the companies' willingness to disclose the sponsor's identity went a long way to meet the problem, such identification does not prevent the message itself from being transmitted anonymously.

In view of the public interest in this matter we concluded last month that certain further tariff changes desirable and appropriate. The substance of these changes, which all of our companies are in the process of incorporating, is essentially as follows:

Use of telephone company facilities for public announcements are subject to the following conditions:

1. For purposes of identification, subscribers to telephone service who transmit recorded public announcements over facilities provided by the company must include in the recorded message the name of the organization or individual responsible for the service and the address at which the service is provided.

2. Subscribers transmitting factual public announcements such as time, weather, stock market quotations, airline schedules and similar information are excluded from the preceding condition.

3. Failure to comply with the provisions of this tariff shall be cause for termination of the service.

All of these changes have been or will in the near future be filed with the various State and local regulatory authorities.

Senator PASTORE. May I interrupt? If this is included in your tariff, that tariff is filed with the——

Mr. THAYER. With the State commissions in general, except for Texas.

Senator PASTORE. There is no way that you can avoid that once you have filed it under the tariff?

Mr. THAYER. That is correct, sir.

Senator PASTORE. It becomes a binding obligation.

Mr. THAYER. Yes. We have to enforce our tariffs.

Senator PASTORE. In other words, if you became lax and neglectful, once you have included this in your tariff, you would be responsible to the State?

Mr. THAYER. To the State, yes, sir.

We believe that these changes in our tariffs and practices will fulfill our obligation to the public in identifying those responsible for recorded messages transmitted over our facilities.

A suggestion which has been made, though not in either of the pending bills, is that a copy of each message played out over an announcement service be retained and made available by the telephone companies. We do not believe that such retention is necessary, since any listener may himself transcribe and retain the message at will. Furthermore, as I mentioned before, there are nearly 50,000 announcement services in operation in the Bell System which are capable of playing out such announcements and texts of messages are changed frequently. By far the majority of these announcements are not of the criticized anonymous type. Selective retention of only particular types of announcements would in itself be a form of censorship, involving constant monitoring and selection. A tariff requirement that the subscribers supply the text would be impractical to enforce and would impose undue hardship on the great majority whose use of the service is not objectionable. On balance, it seems clear that the problems involved in any such retention of message texts by the telephone companies far outweigh any public interest possibly derivable therefrom.

Senator MCGEE. I mention, Mr. Chairman, the record ought to show at that point that there is a third bill pending on the House side.

Mr. THAYER. I am familiar with it.

Senator MCGEE. By Congressman Rosenthal, that makes this requirement, namely, of transcriptions being kept, and your remarks are pertinent to that condition.

Mr. THAYER. Yes, I am aware of that. Thank you.

To summarize, our overall position is that as a common carrier we have a responsibility to provide this very necessary service to our customers. To take any further restrictive steps would discriminate against the vast majority of customers whose use of this service is not the criticized anonymous type. We believe that the above changes will allow us to continue to offer an obviously necessary service to our subscribers and yet protect the public from the anonymous recorded message.

As is evident from the steps we have taken, we are entirely in accord with the objectives of the McGee bill—S. 2693—and the Javits bill—S. 2713. I believe that the regulations we are implementing generally satisfy the requirements of the Javits bill. There is a slight difference in that under this bill, identification of an individual would be required in all cases on the message, whereas under our practice either an organization or an individual could be identified and thus not impose what might be considered an unreasonable requirement on a majority of the users.

To illustrate, it seems out of order to ask Pan American to identify a person when they are giving out flight schedules, for instance.

As to the McGee bill—S. 2693—we have a major point of concern in that it would hold the telephone companies criminally liable if an announcement service customer did not identify himself. If the

carriers were to be held legally accountable they would have no choice but to resort to constant monitoring of many thousands of messages, with the attendant great expense inevitably saddled on the subscribers. Otherwise we feel it is perfectly all right.

Should it be felt necessary to impose criminal liability for failure to identify, the liability should be on the customer who so fails, not on the carrier.

Both bills also require maintenance of a public file of those transmitting recorded messages. We believe this to be an unnecessary burden in view of the other steps we are taking.

There is one further comment I would like to make on both bills, namely that they would apply to all subscribers transmitting any recorded message. As I have mentioned before, the majority of these subscribers are not among the type being objected to. In cases such as airline schedules, weather, and so forth, the inclusion of an individual's name and address in the message might actually be confusing to the calling party.

In conclusion, the Bell System is aware of the problems caused by anonymous recorded announcements transmitted over its facilities and is entirely sympathetic with the efforts being made to deal with these problems. We believe that the steps we have taken will meet the situation and that, in essence, they will have the same effect as the proposed legislation. In view of this, we respectfully suggest that it would be appropriate to wait a while to see if these steps meet the desired objectives before concluding that the proposed legislation is necessary.

I thank the committee for its courtesy in extending this opportunity to present our views.

I will be glad to answer any questions.

Senator PASTORE. Mr. Thayer, this tariff that you are filing, do you file with various States?

Mr. THAYER. Yes, sir.

Senator PASTORE. Do you file a tariff with the FCC?

Mr. THAYER. Yes. We have discussed with the FCC the possibility of including such restrictions in their tariffs, and have come to no conclusion. If it is in all the State tariffs it hardly seems necessary to put it in the FCC tariffs.

Senator PASTORE. Excepting the fact that insofar as redress is concerned, the party who is injured would have to go to the calling State.

Mr. THAYER. That is true.

Senator PASTORE. In other words, if you pick up your telephone in Atlanta, Ga., and made a call to New York, and it was defamatory of somebody who lived in New York, his redress would have to be in Atlanta, Ga., wouldn't it?

Mr. THAYER. I suppose it would, sir. I am not a lawyer.

Senator PASTORE. I think, myself, that you ought to give that very, very serious thought. I am very much impressed with the fact that you say that you are trying to do by tariff regulation what this regulation proposes to do. Chances are it will give you much more flexibility than if we wrote a rigid law. That may be true.

But I think serious consideration ought to be given to filing this tariff or this condition in the tariff, filing it with the FCC as well as on your intrastate calls.

Mr. THAYER. We would not propose to file the tariffs, the prices for the equipment in the interstate tariffs, because those are properly filed with the State tariffs. However, we can include restrictions on the use of this service in interstate——

Senator PASTORE. Who owns this equipment? Does the individual himself own the equipment?

Mr. THAYER. In the cases where we provide it, we own the equipment and it is put out on a rental basis. I think as Chairman Henry said, it is about $25 a month. There are cases, however, where the customer owns it and acoustically or inductively couples it. We have no knowledge of these. We don't know how many such cases there are.

Senator PASTORE. In other words, he only pays when he picks up the phone and makes the call and it is put in use?

Mr. THAYER. He doesn't pay anything to us for providing the service, except his regular telephone bill.

Senator PASTORE. The telephone call itself.

Mr. THAYER. The caller presumably would pay for the telephone call and not for the recorded announcement.

Senator PASTORE. I want to get into this obscenity thing but I don't want to do it now. I will ask Mr. McGee if he has any questions at this moment.

Why don't we recess until 2 o'clock?

Mr. THAYER. Fine.

(Whereupon, the subcommittee recessed at 12:14 p.m., to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator PASTORE. I have only one question to ask you, Mr. Thayer, and then I will turn it over to Mr. McGee.

As I understand the statement, and I am speaking now from recollection, I think you said that in the event a subscriber failed to identify himself, you would discontinue service. That is about the only redress insofar as the telephone company has against the subscriber?

Mr. THAYER. That is correct, Mr. Chairman.

Senator PASTORE. In other words the complaint would have to come to you that they were not revealing their identity?

Mr. THAYER. Yes. In general we would not propose to try to monitor and police this service. On receiving a complaint we would investigate, verify the fact that the subscriber was not verifying himself on the tape, and then discuss it with the subscriber, advise him of the requirement of the tariff, and if he refused to comply, take steps to discontinue the service.

This might be, in the case of a subscriber who is using equipment rented from us, we would simply insist that he release that equipment. He might still use his normal telephone service.

Senator PASTORE. I am one of those who feels, and I have felt for a long time, that it is not wise to legislate unless you have to. I think the position that you have taken here is that you don't think this legislation is necessary in view of the procedures that you have adopted.

What would really be your feeling if this law were drafted in such a way that it would make it a criminal offense on the part of any subscriber to malign or defame anyone without revealing his identity?

Mr. THAYER. I don't know that that would help us or hinder us. We would still be going ahead in the same way that we outlined in our tariffs to enforce the tariffs. The question as to whether you folks think it would be desirable to have a criminal liability on top of that I think is up to you.

Senator PASTORE. What would be your feeling as to objections?

Mr. THAYER. I don't think I would have any objections.

Senator PASTORE. In other words, your objection actually is in making the telephone company responsible because it then places the telephone company in the position of monitoring all these other instruments?

Mr. THAYER. Yes, sir. I think it would be almost an impossible task for us to perform. In many cases the subscriber doesn't even rent the equipment from us. We have no knowledge that he has the equipment. It would be a very difficult thing for us to monitor.

The fact that the message can be changed so frequently adds to the complexity of any policing on our part.

Senator PASTORE. I understand.

Mr. McGee?

Senator MCGEE. I want to be sure that I understand your procedures, Mr. Thayer.

In your proposal you could not understandably act unless you received the complaint?

Mr. THAYER. That is correct.

Senator MCGEE. You would propose that upon receiving such complaint you would have a look at it.

Mr. THAYER. Yes.

Senator MCGEE. And then decide what?

Mr. THAYER. We would monitor the program, the recording, and make sure that the complainant had justification for his complaint. Obviously we would have to do that. This would be turned over to the manager of the local office, who would consult with his legal department when he verified the fact that this was going on.

Then the next step would be to talk to the subscriber who was violating the tariff, try to persuade him to cease and desist. If that failed, then we would terminate the service.

Senator MCGEE. All of this would assume that you have first determined that he was guilty?

Mr. THAYER. Yes, we would have to verify. We could hardly move in and disconnect the subscriber's service on the say-so of some third party.

Senator MCGEE. You would, speaking in your role, you would be willing to take that responsibility of making a determination of guilt?

Mr. THAYER. Yes. It is a rather simple determination. If the tariff requires that he furnish his name and address and he is not doing it, this is a pretty simple determination.

Senator MCGEE. You would not pretend that that would enter into a judgment of contempt?

Mr. THAYER. No, sir.

Senator MCGEE. This would only mean that it is in those States, as I understand it, that require this through the tariff, that this would be the case?

Mr. THAYER. Yes.

Senator MCGEE. What about the others?

Mr. THAYER. We have filed or will have filed tariffs in all States that have State commissions. There is only one exception to that, and that is Texas. Eleven States have already approved the tariff, this second modification of the tariff, in its present form. All of the rest of the tariffs will have been filed within the next month or less.

The date on which they will all be approved, we can't be absolutely sure. Some States may possibly turn us down. We don't think so.

Senator MCGEE. A State could turn you down?

Mr. THAYER. Yes, certainly.

Senator MCGEE. Were a State to turn you down, what recourse would you have?

Mr. THAYER. We would try to find a compromise which would be as close to this as possible and still accomplish most of the objectives we are trying to accomplish.

Senator MCGEE. If it were your conviction that it was in the best interests of all to do so, what could you do in the face of an adverse State ruling?

Mr. THAYER. We do have, you remember, the first edition of the tariff, approved in all States. So that at least to a great extent the anonymity of the subscriber is now removed. Anybody who comes to us and says I dialed this number and I got a message that I don't like, can come into our business office and immediately get the name and address of that subscriber. That is already accomplished.

We have had no trouble with that. It is simply the additional feature of having this identification as a part of the message that is in question in some States.

Senator MCGEE. The purpose of your taking this approach, if I understand it correctly, is to avoid excessive bookwork, administrative detail, in the overwhelming majority of cases where there wouldn't be any question about this. Is that it?

Mr. THAYER. That is just one of the reasons. We don't think it is feasible for us to police these things ourselves, so we have to depend, I think, on a complaint of some sort.

It was our feeling that while the first tariff went a long way toward removing this problem that we all recognize, that having the sponsor identify himself on the actual recording makes it still easier for a person who feels he has been injured to find who to take it up with.

Senator MCGEE. You think that if it could be required that this be made a part of the recording itself, uniformly, that it would simplify your chores in any case?

Mr. THAYER. I don't think it will simplify our chores, but it simplifies the job on behalf of the person who has been injured in finding out who is injuring him. It makes it just a little easier. He doesn't have to go to the business office to find out who it is.

Senator MCGEE. You ask us, in substance, in your statement, as I understand it, in view of your action on this, to give it a try.

Mr. THAYER. Yes, sir.

Senator McGEE. None of us like to run into more laws and still more laws. Laws are only used I think to fill gaps that otherwise arise.

When were you first aware of this operation going on?

Mr. THAYER. It was about August of 1964, when the first case of this sort came to my attention. We hoped it was an isolated case, and of no great importance. We began to think, back in August, of possible action that we could take, recognizing that we couldn't possibly censor the messages. What could we do?

You will recognize, I think, that the Bell System is a big operation and we have to check with a lot of people to find out what kind of procedures they thought they could live with from an administrative standpoint. There is no use having regulations that you can't enforce, can't administer. And it was not until August of 1965 that this problem became more and more important that we were sure we could take this first step that I mentioned, that is, of making the number unlisted.

Senator McGEE. In other words, you felt it required a year of experience with it to try to determine what to you seemed to be a fair and reasonable policy?

Mr. THAYER. I think it is not quite fair to give the implication it took us a year to make up our minds. In August 1964 we weren't really looking at this as a problem in the large sense. We had one or two isolated cases. Our hope, of course, was that this problem would go away. We would always like to have that happen. But it didn't go away. It got worse. That is when we began to look very, very seriously at a systemwide policy.

Senator McGEE. In the context of your concern you did have other problems.

Mr. THAYER. Oh, yes. We have lots of problems, sir.

Senator McGEE. Therefore, this particular kind of problem wouldn't necessarily be looming very large on your agenda unless there were some unexpected developments.

Mr. THAYER. It was not until it became obviously a serious problem that we took it terrifically seriously, although we started thinking about it from the first.

Senator McGEE. The program has been on the air apparently, according to the testimony of the Chairman of the Commission, for about 3 years.

Mr. THAYER. This I don't know. The first case I heard was in August of 1964.

Senator McGEE. Would you say this may make part of the point that you have a lot of other things to do in A.T. & T., and that maybe this is sort of a fringe kind of worry, a small worry type of thing that you couldn't rightfully be expected to be on top of all the time?

Mr. THAYER. These things come to us usually as a result of complaints by the public. While we may have had some complaints before 1964, I am not aware of them myself. I think I would have been.

Senator McGEE. If we were to make the assumption that this policy that you have now come to, after 3 years that the program has been on, would be a wise one and a workable one and achieve the goal that we all seem agreed upon here, would it be within the province of A.T. & T. to change that policy?

Mr. THAYER. Do you suggest, perhaps, sir, that we might abandon this approach?

Senator McGEE. I want to know if you could change it?

Mr. THAYER. If we found a better way to do it we would go to the State commissions and propose that. If we find for some reason this is not doing the job, we would think of other approaches.

Senator McGEE. I happened to think that your cooperation and position in this has been very commendable. But suppose you are gone? What happens with the next new board of directors and the next new administration of the company? Suppose they were to decide that this was a bad policy and that they should repeal it. Could they do that?

Mr. THAYER. Not without the agreement of the State commissions, sir.

Senator McGEE. Having first filed the tariff that you are now committed to, and you cannot withdraw from those State commissions?

Mr. THAYER. That is right.

Senator McGEE. Any of the cases that were to arise that were not covered by the State commissions, would still have to rest upon your own company's disposition to take the initiative in this, is that right?

Mr. THAYER. In the case of Texas there is local jurisdiction by the city instead of the State. That is the only exception. I think we would have to get permission in those cases, too, to withdraw.

Senator PASTORE. Mr. Thayer, of course the A.T. & T. serves about 85 percent of the telephone subscribers in this country. We have 15 percent of those who are not covered by the action of the A.T. & T. What would be your suggestion in reaching that 15 percent?

Mr. THAYER. I had understood, sir, that you were going to have testimony from the independent organizations—Admiral Mott—in this respect.

Senator PASTORE. Have you had any contact with them at all?

Mr. THAYER. Yes, we have had some informal contacts. I am not sure exactly what position they will give you in this testimony. But I think it will at least go along this road.

Senator PASTORE. What if a law were enacted which required you to make this requirement, that the subscriber reveal his identity? Do you see any objection to that? That would overcome this problem that is being developed by Mr. McGee, who claims that inasmuch as this is voluntary it could be at any time revoked or withdrawn or changed or modified.

Mr. THAYER. I guess to answer that question, sir, I would say that if the law read about the way our tariffs read, it couldn't possibly do us any harm.

Senator PASTORE. In other words it would be required by law?

Mr. THAYER. Yes.

Senator PASTORE. Therefore, in the filing of your tariffs, in the use of this equipment the identity of the subscriber shall be revealed, and that you shall require it.

Mr. THAYER. My suggestion about waiting to see was the hope that this would accomplish the desired result and that if it didn't then there would be time for legislative action.

Senator PASTORE. I was wondering, inasmuch as you made the exception of Texas, how would you deal with Texas?

Mr. THAYER. We deal in this case town by town, rather than statewide. Otherwise the procedure is very similar.

Senator MCGEE. It seems to me that you put your finger on it right there. The issue at stake in these questions is not really whether your voluntary policy works or not, actually. That is great if it works. The issue is where this responsibility properly belongs in the public interest. That is the basis for it, as I am sure you understand. I am not satisfied that the procedures that are set up here and the circumstances that would prevail resolve all of that. It would seem to me that you would even gain, that it would be to your advantage to have this as a requirement that gave you no alternative.

Mr. THAYER. To answer your question, our tariffs have the same effect on us as law. We feel constrained to follow the tariffs just as though they were law, and they are in a sense law. So that I don't think we are worried about that aspect of it. We will go ahead and enforce the tariffs.

Senator MCGEE. What happens in the case of the individual that has a grievance under this, then, as we touched on only lightly this morning, that is in, say, another State. He still has to get his relief, if he is to get any, in that State.

If it is in California and he lives in Wyoming, or if he lives in Rhode Island, or in Indiana, this is still a measurable inhibiting factor in terms of his realizing his position. Is that no true?

Mr. THAYER. Yes.

Senator MCGEE. So that would be a factor which would not necessarily be one you have to consider?

Mr. THAYER. That is correct.

Senator MCGEE. You are meeting your obligation in the public interest as a regulated industry. But it would seem to me that for us to leave it alone with you, that we are leaving out of it other considerations that also have to be weighed that aren't your responsibility to have to wrestle with.

Mr. THAYER. That may well be.

Senator MCGEE. That is why the committee itself is trying to probe all of these ramifications.

There is another phase of this that I would like to explore for a moment with you. If we are agreed that the binding cohesion in here to you, the cohesive quality, is the individual tariffs that you file, that it still leaves out those areas that you do not serve, or it reduces them to even a more complicated process. As you mentioned, in Texas it is on each local exchange.

The second would be the additional burden that it involves for the individual that may feel that he has been abused and has a rightful case. I wonder if there isn't still a new frontier in the technology of this business, that it would enable you to have a closer sensitivity to what is going on in your own business.

You have explained to us why it is you can't discover one of these violations or one of these questionable operations unless somebody files a complaint. Is there anything in the technology that occurs to you or that you would perhaps care to peruse and supply for the record that might offer some possibility in that direction whereby it would be possible to make these determinations before the fact rather than after?

Mr. THAYER. It would, of course, be possible for us to do a surveillance job and discover these things before complaints came in. But it would be a tremendous task.

In the case of customers who we know have rented recording devices, this is not too bad. But where the customer has his own device and it is not coupled in electrically into our lines at all, there is no possible way for us to determine whether or not this exists without dialing all the numbers in every exchange. This is an unreasonable task.

Senator MCGEE. Are there other programs of the type you have been examining here, "Let Freedom Ring," are there other programs like that now being carried through your lines?

Mr. THAYER. There are some, what I would call spurious programs, that are not identified by the name "Let Freedom Ring." I don't know that we have any identification for them, and I don't have any detailed knowledge about them. But there are others, yes.

Senator MCGEE. There are others?

Mr. THAYER. Yes.

Senator MCGEE. "Let Freedom Ring" is simply an illustration?

Mr. THAYER. Yes.

Senator MCGEE. When we talk about 40 stations or 60 stations, as was modified this morning, that are carrying—60 exchanges that are carrying "Let Freedom Ring"—this is not an exclusive list, even then?

Mr. THAYER. No, sir. Our best estimate is that it is upward of a hundred of these services in the United States, in the Bell System territory.

Senator MCGEE. And you would not knowingly have any way of obtaining that information?

Mr. THAYER. That is correct.

Senator MCGEE. As it exists now.

Have you had complaints about all of these "Let Freedom Ring" stations?

Mr. THAYER. I can't answer absolutely but I suspect the answer is "Yes."

Senator MCGEE. You have had——

Mr. THAYER. We have had lots of complaints. I don't know of any that we haven't had complaints about.

Senator MCGEE. Again you see this raises the question of your way, not of policing an individual but simply of reporting, being aware of the extensiveness of something that somehow there must be a way to at least measure in an industry that serves an entire community, that is a public monopoly service that carries with it the connotations that this new development does carry.

I was rather hopeful that there might be some technological breakthroughs on the verge at least, if not already here, that would enable you to be a little more sensitive, timewise, in a realistic way, to these developments.

Mr. THAYER. We will be glad to look into it. I can think of no way now, short of discovering it accidentally, or going into this accurate surveillance job that I mentioned, of our finding out in advance of the complaint. Because the telephone recording works just like an ordinary telephone. From all external appearances it

works just like a telephone. The only difference is that it is a recording voice that you hear instead of the person's voice.

I will be glad to look into it, and if there is anything of this sort we can see coming in the future we will be glad to report to you.

Senator McGee. The suggestion was made in your statement this morning, also, that in the bill S. 2693, which I put in, that you rather disapproved of the liability clause in it which suggests that the telephone company would be held responsible for that. Where should that responsibility rest, in your opinion?

Mr. Thayer. I think as we said in the statement, we think the responsibility lies with the customer who puts the message in there. He is the sponsor of the message, he is the originator of the message. The telephone companies have nothing to do with it at all, really.

Senator McGee. It would seem to me to perhaps be somewhat rational or logical, that if you were to take your conclusion to your statement and ask to have the responsibility for making this thing work right before we have any legislation, that it would also hang from that same piece that if that were the case then perhaps you should be responsible.

On the other hand, I would think it might make some sense that, if that responsibility were to be regarded as a public responsibility, that could be measured against the predatory individual in such an instance, or the violator, that therefore—and I would agree—that responsibility should not be pinned on the telephone company. I don't think you can play it both ways and add up logically or make good sense out of it. That is just my reaction to your comments here this morning.

I think that a case can be made to withdraw the section 223 in my bill, or modify it in some reasonable way, removing that responsibility from the telephone company directly. If we were to come out at the other end, suggesting that except for the meaningful responsibilities the company has under the FCC that the actual burden of this should not rest with anyone, and therefore they should not be pinned with the responsibility, would you care to observe on these two combinations of alternatives?

Mr. Thayer. As I understand your comment, Senator McGee, you are saying that if we pin the responsibility on the customer who originates the message, then the telephone company is responsible only for enforcing the tariffs? Is that what you are saying?

Senator McGee. Or conducting itself in the public interest according to the judgment of the FCC that it would not rest with your decision to file these tariffs, which you have now done, or not to file them, or ever even request that they be withdrawn. In other words remove that from your realm entirely if you are not going to bear the responsibility for the action that we all agree ought to take place somehow through the penalties that were suggested here in section 223 of my bill.

If we withdraw that, it then seems to behoove us to place the remaining responsibility somewhere since we removed that responsibility from you, and thus perhaps it ought to go to the public regulatory body that regulates your service.

Mr. THAYER. That is under our tariff form. We filed a tariff with the regulatory bodies and they are responsible with us to enforce the tariffs.

Senator MCGEE. The fact remains we have a requirement that we would seek to encourage, if it proves to be wise, as we exchange our differences on these questions, to require identification, put it in a message, in a form which we file for public access with the telephone company, with the FCC, or wherever it is decided to file it, is really quite something else again.

I don't see how you can make a case that would reject section 223, which you reject, and attempt to leave it with the initiative or the discretion of the company itself as to even whether the tariffs are to be filed. That is exactly what has happened. You initiated that after 3 years. I am not sure that you want that responsibility, but I can see withdrawing 223 if that responsibility were transferred to an area that would be willing to assume the public interest.

Mr. THAYER. Yes, this is perfectly all right.

Senator MCGEE. In the policing area of this, is there any process in the transmission of messages dialing into the telephone that could intercept not by transcribing the message, but at least by blocking the message if it were to come from one of these recording devices?

Mr. THAYER. No, sir. There is no way that I can see at present for any kind of a machine or electronic gadget to make a determination as to whether the voice is coming back over the circuit as an actual voice or a recorded voice.

Senator MCGEE. I don't want to pursue this in too fortuitous a fashion. I simply think it reduces itself to whose responsibility it is to survey and seek to protect public interest. While it is a matter of good policy, good relations, that you have a certain responsibility to protect the public interest, in the role in which you find yourselves because of a communications monopoly, I would suspect that our philosophy of government probably requires the public can best protect the public interest, and that you really shouldn't be expected to run the gamut of the kind of crossfire that your role of a sole purveyor inspires.

Mr. THAYER. We think that the regulatory agencies, plus ourselves, are dedicated to serving the public interest.

Senator MCGEE. On a statewide level, as you have?

Mr. THAYER. Yes.

Senator MCGEE. I think we have had it spelled out here that this does not necessarily cover the whole waterfront.

Mr. THAYER. Yes, sir.

Senator MCGEE. And that for reasons that have long since been an established history of our country, it has been necessary to establish some Federal regulatory operations for that very reason. And that is where I find it unsatisfactory to leave it with the filing of your tariffs on a State level.

Mr. THAYER. Perhaps I misled you this morning. I made a rather brief remark about the fact that we had been discussing with the FCC the desirability of incorporating in the interstate tariffs some kinds of restrictions on this service, the same general restrictions that are in the intrastate tariffs. I made the point that we wouldn't

want to file the equipment tariffs, the rates and prices in interstate tariffs.

We have no objection at all, in fact we suggested certain language that might be incorporated in the interstate tariffs to provide this same kind of protection in those tariffs. This is still in the discussion stage. I don't think there has been any decision reached as to its desirability.

Senator McGee. This again would invite your approval. That is, you go along with this general policy.

Mr. Thayer. Yes.

Senator McGee. You wouldn't argue that this was to be your sole responsibility.

Mr. Thayer. No. We think this is a job with the regulatory agencies.

Senator McGee. Therefore, to leave this hanging in abeyance, to see whether you can control it yourself, really misses the whole point of the responsibility that is properly lodged, in my judgment, with a public body.

Mr. Thayer. I didn't mean to imply that we could control this entirely by ourselves. Regulatory agencies are partners in this.

Senator McGee. I think those are all the questions that I have on this particular phase of it, Mr. Chairman.

Senator Pastore. Let me recapitulate for a moment, Mr. Thayer.

Your position is: one, that this whole problem be left to the discretion of the telephone company through the process of inserting this provision in their tariff schedule without the need for legislation; is that correct?

Mr. Thayer. Yes, sir.

Senator Pastore. Two, that if any legislation has to be passed at all, making it a criminal offense, that the responsibility should be placed upon the subscriber who has it within his power and his control to make these tapes which you have no knowledge or control; is that correct?

Mr. Thayer. Absolutely.

Senator Pastore. And three, that if a requirement were made by legal fiat, or legislative fiat, requiring that this be a condition of the tariffs when filed, you have no objection to that?

Mr. Thayer. That's correct.

Senator Pastore. Is that correct?

Mr. Thayer. That is correct.

Senator Pastore. Is that your full position here today?

Mr. Thayer. Yes, sir.

Senator Pastore. Mr. Thayer, on this question of obscenity and using of telephone for obscene purposes, is there any way, technologically speaking, that you can trace the call today?

Mr. Thayer. Yes, there is. We have, and I would rather not go into the technical details because we don't want to advertise it, because this simply makes it——

Senator Pastore. Say this louder, because this is very interesting.

Mr. Thayer. We have made great progress in the past years in tracing calls within an exchange. It is fairly easy for us do this now. We have gotten many methods. There are many methods used in parallel to track this down. We have more difficulty in tracking a call that

comes from another exchange, but that is also possible, and we are having good results.

If you make a call from San Francisco to New York, this is a very difficult thing to trace down, because of the alternate routing. The call may come on perhaps a half a dozen different routes. Nobody knows exactly what route that call came over. But even here we have methods that we are looking at to get at this kind of a problem.

Fortunately 99 percent of the cases that come to our attention are of the intraexchange type, wherein we are having good success in tracking down the people who do it, particularly with the cooperation of the offended party and the local police.

We are having good luck recently in tracking down calls from adjacent exchanges, nearby exchanges, again with the same kind of cooperation.

We are taking this thing very seriously now and have set up organizations in most companies who specialize in this kind of work. It is a detective organization.

Senator PASTORE. How widespread is this particularly?

Mr. THAYER. The annoyance calling?

Senator PASTORE. The annoyance calling.

Mr. THAYER. There is an awful lot more of it than we would like to see. We are very anxious to find that the States have adequate laws to prosecute these people when you do get them.

Senator PASTORE. Do you think that a stiff penalty on a national level, on a Federal level, would act as a deterrent?

Mr. THAYER. I don't think I have thought much about the national level. I am sure of this, that unless the State or community has an adequate way of punishing these people, it will go on. Because we have caught a lot of them.

Senator PASTORE. What if we made it a Federal offense?

Mr. THAYER. This may be the wise thing to do. I have no real judgment on that.

Senator PASTORE. But you say that we are developing means and methods of tracing and detecting these culprits?

Mr. THAYER. Yes, sir; I can say that we are not at all satisfied with our present position. We are working hard on the problem. This costs a lot of money, as you may know, and we don't get paid for this kind of thing. But to the extent that we are financially healthy, we will continue doing it.

Senator PASTORE. I think we are getting into a sad situation when the only alternative that an individual has is to take his or her name out of a listing.

Mr. THAYER. That is not a satisfactory answer at all.

Senator PASTORE. Of course not. Either that or do away with your telephone. And certainly A.T. & T. doesn't want that.

Mr. THAYER. No, sir; nor does anybody else.

Senator PASTORE. Thank you very much. It is very encouraging information. I firmly agree with you that I think a stiff penalty under Federal law in these cases would serve as a great deterrent. I think over and above that, the people ought to be severely punished for engaging in that sort of activity, and I propose to introduce that sort of legislation.

Senator McGEE. May I ask a question on that, Mr. Chairman?

Senator PASTORE. Certainly.

Senator McGEE. You think that the actual techniques and that sort of thing ought to be played in low key here? Is there any kind of an educational or informational program that is envisaged or has maybe been launched so that the individual owner of a telephone can know what he can do about it? That is quite another thing from taking up a police case where you have sophisticated people who know how to go about this business. We are talking about the ordinary individual who gets this kind of abuse.

Mr. THAYER. Our customers are used to calling us up and telling us about their problems with the use of the telephone. I don't think there are very many of these cases that go unnoticed for very long. They know that we are interested in their problems, and they tell us about them.

Senator McGEE. Only the one-shot or two-shot obscenities on the same phone would go unfollowed, probably.

Mr. THAYER. Isolated cases might not come to our attention.

Senator McGEE. Even if they did, they couldn't act on it fast, on short notice.

Mr. THAYER. That's right. It has to be a repeated thing. That is a general pattern. Somebody who starts this kind of thing will continue until he is caught.

Senator McGEE. As we envisage it now, anybody who gets whatever delights he does, if he continues to keep moving, there is no foreseeable way of apprehending him, rather than by repeating himself.

Mr. THAYER. If he is moving around we can still get him.

Senator McGEE. You can still spot him?

Mr. THAYER. Yes, we can. It isn't easy but we have caught some in the act in pay telephones. They were people who moved around from one pay telephone to another.

Senator PASTORE. I would put that individual in jail and give him a toy telephone for his enlightenment. [Laughter.]

Senator McGEE. That is all that I have, Mr. Chairman. A telephone ought to say at the end, "This is a recording."

Senator PASTORE. Thank you very much, Mr. Thayer.

Mr. Rodgers and Mr. Grady.

STATEMENT OF PAUL RODGERS, GENERAL COUNSEL OF THE NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS, WASHINGTON, D.C.

Mr. RODGERS. Mr. Chairman and members of the committee, my name is Paul Rodgers. I am the general counsel for the National Association of Railroad & Utilities Commissioners which is composed of the members of the State and Federal governmental bodies that regulate carriers and public utilities. Its chief objective is to serve the public interest through the advancement of governmental regulation of carriers and utilities.

The members of this association appreciate the opportunity you have given me as their spokesman to make our views known on S. 2693 and S. 2713 which propose amendments to the Communications Act of 1934.

The members of the association are aware of the abuses which have inspired the introduction of these bills, and are sympathetic toward ways of preventing their recurrence.

We firmly believe in the principle that every person should be held accountable for his statements. We also believe that every recorded telephone message should contain an adequate identification of the transmitting subscriber or a reasonable means for determining his identity.

The State commissions, being conscious of the problems which have spawned these bills, are presently engaged in taking vigorous corrective action. Forty-seven of the State commissions have already approved tariff provisions submitted by the Bell System companies which provide that all recorded announcement services shall not be furnished on an unlisted number basis and that the names of the subscribers of such service shall be made public upon request.

In addition, the Bell System companies are now in the process of obtaining the approval of the State commissions of tariffs providing that subscribers who transmit recorded public announcements must include therein their identity. The only exception permitted by this latter tariff is in the case of factual public announcements such as time, weather, stock market quotations, airline schedules, and similar information, which have thus far presented no identification problem.

Also, many State commissions are presently requiring all other telephone companies within their jurisdiction to adopt similar tariff provisions. In order to apprise all State commissions of the opportunity for exercising this aggressive regulatory approach, I am writing today to the chairman of each commission to suggest that his commission, if it has not yet done so, review the tariff provisions of the telephone companies under its jurisdiction for the purpose of determining whether they require an appropriate identification of the subscribers responsible for the recorded messages. I have every reason to believe that this regulatory approach will be pursued by all State commissions.

As you can readily see there is now in operation across the Nation a comprehensive array of State action which is rapidly insuring that the telephone companies will fulfill their obligations to the public in identifying the subscribers responsible for recorded messages.

We understand from conferences with telephone representatives that the vast majority of the relatively small number of offending recorded messages are intrastate in character. Furthermore, the bills here considered are directed primarily at the regulation of local exchange service which has been traditionally left to the regulation of the States.

These considerations clearly demonstrate that the identification problem here considered is not only essentially intrastate in character but is also being rapidly solved by the State commissions. Therefore, we believe that these bills are unnecessary.

We believe that the enactment of this proposed legislation would be a needless interference with the functioning of State and local institutions which are competently performing their regulatory tasks.

At that point, Mr. Chairman, I would like to divert briefly from my printed text and comment upon one suggestion that you have which appeared to me personally to have merit, and that is the idea of having a Federal libel law. That will be on the criminal aspect. So

that if there is a call made from Washington, D.C., to San Francisco, that you could fix a venue for a violation of Federal law, say in San Francisco. I think there is some merit.

In this matter of these tariffs filed, we believe this is being adequately handled under the present system of law. We believe very definitely that this action, which is being taken by the industry and by the State commissions, will be adequate to correct the problems that you are concerned with to the extent practical. We would appreciate it very much if this committee would observe the success of these efforts and would withhold final action on this bill until after the State remedy has been afforded a chance to operate.

I know that the State commissions through the NARUC—my association—will be happy to make a report to this committee. I am confident the FCC and the industry, all three of you, will be happy to join together and try to come up with some kind of decision a couple of months from now so we can see how this remedy is working.

Senator PASTORE. First of all, I compliment your organization for its forthrightness in doing something about this. The telephone company as well—A.T. & T. This is very encouraging. Do you really see this as an encroachment if we pass a law that would require the telephone companies in their tariffs to make it a requirement that they have a provision on identifying the subscriber in this sort of thing? Is it really an encroachment on the State function? Or is it a supplement or really an auxiliary help?

Mr. RODGERS. That goes to my philosophy of government and that of my association. We believe that if problems are able to be adequately handled at the local level that the Federal Government should not become involved.

We recognize in this day when so many vast concentrations of power and regulations are required in Washington, we recognize that that is proper. But in these areas where the problems can be solved locally, the State solution is the best. It is just simply a matter of keeping government close to the governed.

I recognize your point. If that is not satisfactory then something else will have to be done. All we request is that this committee give the State solution a chance to operate and see how it works. If we find out it dosen't work too well, then of course we have to do something. I recognize that. We feel that—

Senator PASTORE. How would you deal with that? You are speaking now intrastate.

Mr. RODGERS. Also the State regulation would also apply to the interstate calls because this equipment cannot discriminate between the intrastate and interstate calls. Of course you do have a problem, as you point out, how will you prosecute somebody who places a call?

Senator PASTORE. That is right.

Mr. RODGERS. I think there, if there were a criminal statute, this is my personal point of view, I would think the association will back me up on it, I think there would be merit in having a Federal statute to fix criminal venue for prosecution, making that a crime to transmit libel over the telephone. Of course, the question of what is libel has to be determined by the courts.

Senator PASTORE. You would apply that only in the criminal instance and not in the civil instance?

Mr. RODGERS. In the civil instance I think that the State solution would be adequate.

Senator PASTORE. Let's assume that you have a call in Rhode Island, from Pawtucket to Providence, and the individual who is maligned, say, lived in California. Of course the jurisdiction would have to be in Rhode Island.

Mr. RODGERS. Yes, sir.

Senator PASTORE. Yet if you had a Federal statute he could bring suit in California, couldn't he?

Mr. RODGERS. If you had a Federal statute to cover that situation, that is correct.

Senator PASTORE. That is what I am talking about. Or he could go to the Federal district court. That is our problem.

Mr. RODGERS. You have a point, if the call originated and terminated in Rhode Island——

Senator PASTORE. I am talking about the individual who is maligned. I am not talking about the jurisdiction of the telephone company or the local authorities to do thus and so, which I think they ought to have a right to do. The thing that bothers me in this, for instance, you may have a call to anyone of our States. The person maligned could be the Chief Justice of the U.S. Supreme Court, or the President, or a Congressman or Senator. The call could originate from a distant place. Yet because it is not a Federal violation of law, only a local violation of law, that person would have to travel to that State to seek his remedy to bring a civil suit. Don't you see it that way as a lawyer?

Mr. RODGERS. Under the hypothesis that you mentioned, as I understood it, you were talking about an intrastate call within the State of Rhode Island.

Senator PASTORE. I mean malign a person who lives outside the State. All we are talking about here is this slandering of people of reputation in their community and things of that kind. The person named ordinarily is not a local resident. I have had any number. I will give you one of these messages where they take President Eisenhower over the coals, they take the Chief Justice over the coals. These people don't live in the section where the call originates and terminates.

If we are talking about giving the person the right of redress, why should that person be put through the inconvenience of traveling all that distance in order to get his civil rights enforced?

Mr. RODGERS. I recognize the point. That question of course was not considered by me prior to this. That is somewhat outside the scope of these two bills. I recognize the point. There again I don't see any particular problem in fixing a convenient venue so that a civil recourse or criminal proceeding could be instituted at the convenience of the person who has been libeled.

Senator PASTORE. Even if you don't have a Federal law? How can you do that?

Mr. RODGERS. You couldn't do that. You would have to have a Federal law. But I am not prepared to comment on that particular issue which goes outside——

Senator PASTORE. I see the impact of your argument. I hope you don't think that I am arguing with you or debating with you.

Mr. RODGERS. Oh, no.

Senator PASTORE. I am being curious, legally curious, about just what the situation would be. I repeat again, I think the States are doing a marvelous job, as you already brought out. This is quite prevalent now, in requirement. The telephone companies themselves are doing an enormous job in this respect. We have certain problems here.

Mr. RODGERS. That's right.

Senator PASTORE. I am wondering if we wouldn't be relieving the burden on the parts of the States if you had a Federal law. I have found that in many, many instances where you have a law that has a Federal impact, it seems to have more of an impact on potential violators than sometimes the State law. That ought not to be really, but that is how I find it. When you say FBI people look at it a little differently than when you say State police or local police.

Mr. RODGERS. I recognize your point. I have had the same experience. To carry that thinking to the logical extreme, we wouldn't have any local institutions. I recognize the point. Most of the questions you have mentioned where you have a problem which is beyond the State power to solve, I think the need arises that we should have Federal legislation. Those questions as you point out are somewhat outside the scope of these two bills. My position is that we think the problems are covered by these two bills, but are now being solved by the States.

Senator PASTORE. I want to thank you very much, Mr. Rodgers.

Mr. RODGERS. I have one last paragraph.

Senator MCGEE. May I follow that with a question? I was waiting for your answer to the chairman about how this simplest form of the legislation really infringes in any way on your State groups. I guess I missed the answer to that question. You made a little statement about local governments ought to do it if they can, rather than the Federal Government, and that sort of thing. That wasn't the question as I understand it. The question was, How would this infringe in any measurable or meaningful way on the local commissions?

Mr. RODGERS. I agree that the purpose of these bills, and your purpose, is a beneficent objective. I recognize that it is whole. But if you go around and preempt by Federal legislation everything that has a wholesome objective, then I think that weakens State and local government.

Senator MCGEE. What does this preempt?

Mr. RODGERS. It preempts the State power from dealing with this problem.

Senator MCGEE. This is where you find me falling off of the wagon.

Mr. RODGERS. In other words my basic approach is that it is incumbent upon the Congress, I believe, to try to foster a lively maintenance of State government and local government in those areas where it can competently operate. You don't do that, no matter how

good your bill is, or how fine its objective is, if you go in there and just preempt, taking away State authority. We think——

Senator McGee. This bill as now drafted, as you have read it, inasmuch as there are tariffs now—47 tariffs, if I understand you correctly, now filed——

Mr. Rodgers. That is right.

Senator McGee (continuing). Out of all your memberships, what would this law take away from those 47?

Mr. Rodgers. One thing, actually that gets back to the same question. It is just a matter of it would be Federal preemption. In this particular case it would do inside what the States have done. So I guess it could be argued from a legalistic—from a practical standpoint as well, you have already done this, so we pass a Federal law, what harm is done. We get back to really, I think, a philosophical outlook on the relationship which we believe should exist between the Federal and the State Government.

Senator McGee. Would it be fair to say that the only State action that might be invaded by such a law as this would be in the case of a State that didn't have such a law, or didn't live up to the law? That is, requiring notification or labeling——

Mr. Rodgers. Of course——

Senator McGee. Would that be an illustration?

Mr. Rodgers. Yes; that would be an illustration if the State failed to act. But of course that is speculation. And of course the States from time to time will err. Of course, we cannot—of course, I think that when the error becomes serious and where it can be reached by Federal legislation, the problem should be solved. My only point is that I suggest that this committee should wait and see if the States can solve the problems to the satisfaction of this committee.

Senator McGee. In your organization, the National Association of Railroad & Utilities Commissioners, can you compel a State commission to act?

Mr. Rodgers. No, sir; it is strictly a voluntary association.

Senator McGee. Can any vote be taken from your commission that would prevent a State from changing its tariff on this?

Mr. Rodgers. No, sir; it is a voluntary association. But as you can see from the record of State action, already 47 States have adopted the first.

Senator McGee. How many of those 47 States would not have the right to change that next week?

Mr. Rodgers. All of them can change it. That is one of the advantages, we think, of the tariff regulation is that you have flexibility there, and that these tariffs can be changed if loopholes develop in their application.

Senator McGee. So that if we were to feel that it is in the public interest that such procedure as we are now discussing here were to be made the law of the land, without such a law as this there would be no recourse. If it were not adhered to, if the law was lived up to, the intent that everybody now agrees on in these pleasant moments together, there wouldn't be any reason for any overlap of law or any detraction from anybody's position to legislate on the State level; isn't that right?

Mr. RODGERS. Are you talking about if Congress does pass this law?

Senator MCGEE. It wouldn't affect any State in your association unless that State did not adhere to this broad principle which you are assuring us they all want.

Mr. RODGERS. That is from a practical point of view. But from a legal point of view it would preempt this area which in the past has been subject to State——

Senator MCGEE. That is what I am asking you. What does it preempt? I don't think you have answered the chairman's question on this.

Mr. RODGERS. From a practical matter there would be no effect. From a legal point of view there would be a preemption to where the States decide maybe this bill, that these requirements should be altered in the public interest or otherwise, and they could not do it because it would then have been federally preempted.

Senator MCGEE. Let me try one other way to see if we can get at this. When did your State groups put these tariffs into effect?

Mr. RODGERS. The first tariff provision was sent out by the Bell System, I believe, in September, and I understand they are——

Senator MCGEE. September of which year?

Mr. RODGERS. This year.

Senator MCGEE. This year?

Mr. RODGERS. Yes.

Senator MCGEE. So it has been since this committee has begun to stir on this question.

Mr. RODGERS. Yes; I don't know when this committee began to stir. But when A.T. & T. got started—I am talking on this legislation—when A.T. & T. got started, then, of course, the things were quick to operate and put into effect those tariff provisions.

Senator MCGEE. I think the record ought to show this is a stirring committee.

Mr. RODGERS. I can see that from the observations made today.

Senator MCGEE. This again is getting to the point. We could have been sitting from now perhaps until that place freezes over if we hadn't gotten busy on this. We couldn't wait—we didn't wait, nothing came from the State legislatures that I know of, or from a State investigative body that was either willing or aware of this kind of a problem, or maybe they felt they didn't have sweeping enough jurisdiction to get at the problem. This is part of the point. It seems to me what you suggest to us, up until now, in the reply to these questions, is that here, when we all agree to the need and even the direction, the relative general solution to the problem, that you come into it after the fact with no substitute for any improved performance in view of the record of the State commissions for the 3 years that it has already been underway.

Mr. RODGERS. I think that A.T. & T. would be better aware of the chronology of events; not that A.T. & T. would have gone ahead and acted. I am not that familiar with the problem as to how far it goes back. But I would guess that if these groups that were heard had complained to A.T. & T., without intervention of this committee, that A.T. & T., the Bell System, and independent companies, would have gone ahead and filed these tariffs.

I think this committee is to be commended for its interests in this area. I think that the influence of this committee has already exerted a very wholesome influence.

Senator McGee. I am sure we appreciate those comments, too. They have been exchanged both ways. We are trying to get to this practical question.

Mr. Rodgers. I believe we are in the process of solving it. What I ask is that this committee wait a couple of months and take a look at the State solutions and see how this works.

Senator Pastore. Will the Senator yield?

Senator McGee. I will be glad to.

Senator Pastore. What are the three States which haven't initiated tariffs?

Mr. Rodgers. Alaska, Hawaii, and Texas, as I understand it. The Bell System does not serve in Alaska and Hawaii. And in Texas the regulation is on the municipal level. I understand that the Bell System is filing the necessary tariffs with the municipalities.

Senator Pastore. Do I understand correctly that with the exception of Alaska, Hawaii, and Texas, every other State makes a requirement for identification?

Mr. Rodgers. That was the first tariff provision, sent out by the Bell System. That has already been adopted. What that tariff provision said was that recorded service shall no longer be furnished on an unlisted number basis and that anyone who furnishes recorded services, the name of that subscriber will be given to the public. That is what the 47 States have adopted.

A.T. & T. and many of the State commissions feel that is not going far enough. Now the Bell System is in the process of sending out this requirement that you have to state identity in the recorded transmission, except in those more mundane transmissions such as weather reports and time and so forth.

Senator Pastore. One further question: How long do you think we should wait to find out how readily it is being done at the State level?

Mr. Rodgers. I think we should begin to see the effects of this quite significantly by January and February.

Senator Pastore. Of 1966?

Mr. Rodgers. Of next year; yes, sir. Because these tariff filings can be handled very rapidly, and I think we can start seeing the effects of this quite soon.

Senator Pastore. That is pretty soon. We won't come back here until January.

Mr. Rodgers. That is right.

In closing, I wish to invite the members of this committee to call upon me and the other members of the staff of the National Association of Railroad & Utilities Commissioners whenever you need information concerning State regulation.

Also, we wish to commend your communications counsel, Nicholas Zapple, for his thoughtfulness and diligence in sending each of the State commissions a copy of these bills, and inviting their comments.

Thank you for your attention.

Senator Pastore. Thank you very much, Mr. Rodgers.

Mr. Grady?

STATEMENT OF WILLIAM H. GRADY, REPRESENTING WASHINGTON UTILITIES & TRANSPORTATION COMMISSION

Mr. GRADY. Mr. Chairman and members of the subcommittee, my name is William H. Grady. I am here representing the Washington Utilities & Transportation Commission. The commission is a duly constituted agency of the State of Washington charged by statute with the responsibility for regulation as to rates, services, and practices of companies engaged in telephone communications within the State.

We believe that there is significant public interest in the matters now pending before this committee, and are appearing to encourage closer supervision of recorded messages in the interest of the general public. We wish to suggest that the Federal Communications Commission be directed to work with the individual States on a cooperative basis to achieve effective regulation.

In the event a program cannot effectively be invoked, then affirmative Federal legislation would seem justified as the interstate aspect cannot be ignored.

At the instance of a committee of the Washington State Legislature the commission undertook an extensive statewide investigation into the question of solicitation by use of telephone. It was calculated to determine whether the public interest demanded regulation of telephone solicitation, the extent to which the telephone was used for such purposes, the reaction of the general public to such calls and to determine if a problem existed in the State of Washington which would justify remedial action and file its report with the legislature.

Over a period of 6 months the commission held 17 public hearings in large and small cities in the State and interviewed on the record 546 witnesses. We submit herewith a copy of the commission's report to the legislature for the consideration of the members of this committee.

Senator PASTORE. Without objection, it is so ordered.

(The document follows:)

WASHINGTON STATE COMMISSION'S REPORT TO THE LEGISLATURE

BEFORE THE WASHINGTON UTILITIES & TRANSPORTATION COMMISSION

In the Matter of Investigation Into the Use of Telephone Communication for Uninvited Solicitation of Business or for Promotional Advertising, To Determine Whether Such Use Is Consistent With the Public Interest

Cause No. U-9533

ORDER AND REPORT TO LEGISLATIVE COUNCIL SUBCOMMITTEE

Hearing in the above-entitled matter was held, after due and proper notice to all interested parties, on May 26, 1964, at Kennewick; on May 27 at Yakima; on July 23 at Everett; on September 22 at Vancouver; on September 23 at Aberdeen; on September 29 at Walla Walla; on September 30 at Spokane; on October 2 at Wenatchee; on October 6 at Bremerton; on October 9 at Tacoma; on October 14 at Lynwood; on October 15 at Bellevue; on October 16 at Renton; on October 26 at West Seattle; on October 27 in the Rainier district in Seattle; and on October 28 in the Ballard district of Seattle, all before the Washington Utilities & Transportation Commission, Chairman Francis Pearson, Commissioner Patrick D. Sutherland and Commissioner Dayton A. Witten. Examiner Boyd Hartman presided at hearings in Kennewick, Everett, and Yakima. Administrative Council and Examiner Joseph Starin presided at the other 14 hearings.

History and nature of proceedings

Letters had been written and petitions filed with the Legislative Council of the Washington State Legislature complaining of the use of telephones for uninvited solicitation for business or promotional advertising by subscribers to the telephone service of the telephone companies of this State. This problem was assigned to the subcommittee of the legislative council called the Subcommittee on Commerce, Industries, Trades, and Professions. That subcommittee held two meetings—one in Seattle and one in Vancouver—to investigate this problem. Since the legislative council was without funds to proceed with further investigations, it passed a resolution, having previously been advised by the chairman of the Washington Utilities & Transportation Commission, Francis Pearson, that said commission intended to conduct an investigation into the matter of telephone solicitation and that it was willing to pursue its study in conjunction with the subcommittee, that the commission institute an investigation into this subject to determine if it would be desirable to adopt legislation regulating undesirable telephone solicitation and that the commission report its findings to each member of the subcommittee.

The commission, having also received many complaints, instituted this proceeding and has held the 17 hearings in all the principal cities of the State which have been indicated above.

In accordance therewith, the commission sent notices of the hearings to all persons who had filed complaints either with the commission or with the legislative council; to all telephone companies under regulation of the commission in the State; to the Washington State Association of Broadcasters; to the Washington State Life Underwriters Association; to the Better Business Bureaus of all the principal cities; to the Washington Retail Council; to the chambers of commerce of all the cities involved; to the Association of Washington Cities; to the Independent Telephone Association; to all the newspapers in the cities where hearings were to be held; to press services and radio and television services; to the municipal authorities of the cities involved; and to numerous legislators. Literally hundreds of letters were written to women's clubs, sororities, fraternal orders and their women's auxiliaries; and to every person who had expressed an interest in this matter. All known means of communication were employed so that widespread knowledge of the investigation and scheduled hearings would be gained.

Information gained at hearings

Despite the very wide dissemination of information concerning the hearings, attendance was not great. It should be pointed out, however, that hearings were held during the day. Exclusive of commission personnel and telephone company employees, there was a total attendance of 546. Attendance ranged from 5 women "for" plus men "against" regulation at Aberdeen, to 65 persons at West Seattle, including all those persons who were against regulation. This limited attendance may be related to the fact that in the cities where hearings were held and the tricities, there were a total of main telephone stations of 603,432, or nine-hundreds of 1 percent, as compared to residents' main stations of 517,765, or eleven-hundreds of 1 percent. The witnesses on the stands totaled 146, with an average at each hearing of 8. Of these, 33 percent objected to all solicitation calls; 24 percent objected to certain kinds of solicitation calls; 42 percent favored proper solicitation calls.

The commission inquiry at these hearings was directed to (1) the scope and extent of telephone solicitation; (2) whether telephone solicitations are consistent with the public interest in whole or in part; (3) in the event such use is deemed inconsistent with the public interest, what action should be taken by this commission to restrict or inhibit the use of telephone solicitation including, but not limited to, the adoption of general rules and regulations, the revision of present tariff rules, and recommend to the legislature suitable legislation; (4) any other matter relating directly or indirectly to the use of telephonic communication for uninvited solicitation of business or for promotional advertising.

NOTE.—Where the term "telephone solicitation" is used, it shall include solicitation of business and promoting advertising.

At each hearing those wishing to testify were advised as to the type of questions which would be asked, which were generally to determine such matters as how many solicitation calls there were per day, per week, or per month; what was the nature of such a call, that is, what goods or services were being offered;

how long did the call take; were any of the calls a recording message; were any of them of the "gimmick" type; from what point did the calls come; were the calls welcome; was the witness in favor of receiving calls from local businessmen as distinguished from those which were invading the city with selling crews; was the call a long-distance call and, if so, from where; whether the witness was against only certain types of calls, or whether against all calls; what action did the witness feel should be taken by this commission, etc.

It developed that telephone solicitation is being used to sell dance lessons, insurance of all types, magazines, aluminum siding, paint, storm doors, windows, aluminum blinds, vacuum cleaners, water softeners, air cleaners, photographs, jewelry, bowling lessons, encyclopedias, advertising in the telephone company yellow pages, charity, little theater tickets, television surveys, merchandise by local department stores and by the national large mail-order stores, electronic gadgets, light bulbs, women's nylon stockings, cemetery lots, funeral services, household goods moving, real estate, and freezer foods, etc. It is thus seen that the extent of selling by telephone solicitation encompasses a wide range of our economic life. It is a tremendous problem, one that is on the increase, and one that is not easily or lightly solved.

Evidence of those supporting some form of regulation

At each hearing, there were a number of housewives, shut-ins, retired men, nightworkers, and others who complained, sometimes bitterly, about the unwanted telephone calls by persons or organizations who were soliciting the sale of commodities or services mentioned above. These people felt their right of privacy had been invaded. Generally, women complained of the calls coming at inopportune times—at dinnertime, or when a mother was engaged in bathing a baby or was engaged in preparing dinner, or when she was down in the basement doing the laundry or outside in the yard and, hearing the telephone, was compelled to come in and answer it. If the person was a nightworker, such as a policeman, public utility company employee, night nurse, or was otherwise employed on the night shift and was attempting to sleep during the day, these unsolicited telephone calls disturbed their sleep and they were required to get up and answer the telephone.

The complainants were naturally disturbed and resentful because of being required to answer and they felt that they could not simply allow the telephone to ring, because of a number of reasons. For example, a husband might be engaged in extra-hazardous work and the wife could not refuse to answer the telephone because of the possibility that she was needed, or they felt the telephone must be answered because they expected relatives to ring and if they did not answer the relatives might become alarmed and would go so far as to call the police to investigate; or, their children might be away and they could not dismiss the thought that the call might be about them; or maybe it was a friend or neighbor. Many persons—in fact, nearly all—stated that they could not disregard the telephone call.

Upon answering, they were frequently greeted with someone asking whether they knew who was buried in Grant's Tomb and if they did, had won a prize. Although some strong-minded person could then hang up, others, more courteous, felt obliged to listen to the entire speech. Nevertheless, once they answered the phone, the damage was done. They had been disturbed and to hang up the phone was not the solution to the problem. Many persons were incensed at this type of call. There were many calls by companies offering various inducements to have photographs taken, or inviting them to take some free dance lessons. One old lady, 90 years old, experienced this offer. Other persons complained particularly of calls offering magazine subcriptions. Certain other calls were received favorably by some witnesses, such as the offer of free bowling lessons. These persons generally had very pleasant experiences and association in connection with bowling and were grateful for having received the solicitation call.

Other witnesses stated that they were against all calls—that they were a direct invasion of their privacy, feeling that if they had anything they wanted to purchase or any services they wished, they knew where to get it from their local merchants and professional people.

A minimum of persons stated they had received recorded messages. Some calls appeared to come from long distances. These were offers of magazine subscriptions from Portland or Seattle. Florida land companies had apparently

called all the way from Florida offering great opportunities in the purchase of Florida land. Calls from as far away as San Diego and San Francisco, Calif., were received.

It may be explained that these calls were apparently actually made under another service offered by the telephone company called the Watts service. This is a flat rate for long-distance service under which the subscriber may place any number of calls in a given area or over several states, for a flat monthly charge. These rates compare favorably with local exchange service. There is also a measured time rate and these rates are available both within the State of Washington and in interstate service. It might be pointed out that the Reverse Directory, used by many solicitors is also a telephone company service.

Calls are made by local department stores from Portland, Oreg., to Vancouver, Wash., inviting customers to open an account in the Portland store. In some cities such companies as Sears, Roebuck and Montgomery Ward utilize a number of girl telephone solicitors to make sales calls advising either that they have certain attractive merchandise on sale or inviting the opening of credit accounts. Generally, the witnesses did not object as much to calls from local merchants or local insurance people or local realtors as they did to the type of call which was being made for solicitation of magazines where a "gimmick" approach was made, or any other type of gimmick sales talk. These they considered to be an insult to the intelligence, objectionable, and nearly all witnesses wanted something done about these objectionable calls.

Some specific examples follow:

A housewife who appeared at the hearing at Bellevue in opposition to the use of the telephone for solicitation or promotional advertising stated that she and her family prefer to deal with local merchants to support the community, but are against the annoyance calls who use "gimmicks" to secure attention such as "You have won 5 pounds of sugar" and generally the "boilerroom" type of calls. She does not object to the calls of local businessmen or insurance salesmen, but objects to the calls which come from out-of-town concerns who annoy the housewife with their telephone calls. She does not object to charity group calls that will benefit the children or elderly people. To a question as to whether she would favor regulation of telephone solicitation if the effect were to be cut off the appointment calls or solicitation calls, if there is no way that control could be effective except to chop off all uninvited solicitation calls, she stated that she felt that businessmen have a right to earn a living and it would be a very high price to pay in order to cut off the objectionable calls.

Another housewife at the same hearing who also objected to telephone solicitation calls, whose husband is a cement contractor and who is required to receive telephone calls so that an unlisted telephone number is impossible, was against all uninvited telephone solicitation calls. She would favor regulation which would inhibit the use of the telephone for this purpose completely. She believes that she can secure everything she wishes from local merchants downtown and that telephone solicitation products are much more expensive than what can be purchased in Kirkland, Bellevue, or Seattle. However, she does not object to calls from United Good Neighbors or church groups or Boy Scouts, and so forth, who are soliciting funds. She feels that telephone solicitation calls are not needed as plenty of mail is received that solicits magazine subscriptions and she knows where she can buy these things. Another housewife at Bellevue is against all telephone solicitation for business or promotional purposes. Still another whose husband is a technical representative for the Du Pont Co. could not get along with an unlisted telephone number. She is violently opposed to the "gimmick" telephone solicitation calls which make free offers that aren't free; the "canned" commercial, and other such objectionable calls. However, she is not unhappy with a telephone call which she received soliciting the sale of light bulbs.

Still another housewife who testified at the Bellevue hearing stated as follows: "I am against soliciting over the telephone, business and charitable organizations." She is against solicitation and promotion of every type. She would make no exceptions of a locally established business or even a charitable group. She is against State legislation on this subject. She would favor a municipal or local ordinance to control this unwanted solicitation.

A physician at the Tacoma hearing was very positive that he was categorically, absolutely adverse to telephone solicitation of any sort. He felt that this is an "invasion of privacy" or a "nuisance." In his profession an unlisted number is

simply impossible. He does not feel that the right of solicitation by telephone should be given to local businesses and deprive other businesses which are not local. In other words, any uninvited telephone solicitation is in his opinion an invasion of privacy and no one should be given a license to or allowed to invade that privacy. He thinks it is impossible to segregate those persons who should be permitted to make telephone solicitation calls and others who should not. He does not believe that a local department store which he named and which had called his home seeking magazine subscriptions should have any more right to make such calls than a person from Denver, Colo. His wife had an unfortunate experience when she was out in her yard, heard the telephone ring, ran to answer it and slipped and turned her ankle and broke two bones in her foot. The call happened to be a solicitor who was trying to sell siding. He is aware that people with disabilities and who are handicapped do make telephone solicitation calls as a method of making a living and would be hurt by a prohibition against this type of calls. He is in sympathy with them but feels that these people are being used by other persons who are profiting from such disabilities. He alluded this situation to "a number of fishing boat owners who are not Indians but who hire Indian skippers so they can fish where other people cannot fish."

There was a definite pattern throughout the State of a nuisance call, which was testified to by day sleepers, shut-ins, busy mothers and housewives at each of the 17 hearings which were held, concerning particularly the attempts to sell magazines, light bulbs, and dance lessons; house improvements, such as aluminum siding, storm doors and windows, and window blinds; vacuum cleaners and photographs. Of these the attempt to solicit subscriptions to magazines by telephone were probably the most complained of.

This growing sentiment against this form of selling has not gone unnoticed by the magazine publishing companies. The Magazine Publishers Association has had conferences with our State attorney general and has agreed to curtail its "gimmick" type of solicitation whereby free subscriptions to magazines are offered for the answer to a simple, self-evident question, but where the purchaser would be required to subscribe to the magazine at full rates at the end of a free period. Since this conference with the attorney general, this type of solicitation has diminished.

The activities of the aluminum siding and home improvement sellers has caused a great deal of indignation because of the pressure methods used in selling and the unsatisfactory work which has been experienced. An example of this type of selling includes an offer to install the aluminum siding on the purchaser's home at a certain price, but the purchaser is given a reduction for every other sale of aluminum siding to other homeowners which the first purchaser can influence for the salesman. The prospect is held out that in this way the first purchaser may be able to secure his siding free with this method. The activities of the aluminum siding sellers have resulted in complaints to better business bureaus in various cities and to the police departments. It has come to the attention of the prosecuting attorneys as well.

The vacuum cleaner sellers have been particularly persistent. One housewife testified that she had begged a vacuum cleaner distributor in her city to stop making telephone calls trying to sell her a cleaner and was told that the calls would continue until she purchased one.

These are merely examples and there was testimony in the record concerning aggravations with respect to solicitation calls for commodities and services which we have detailed previously.

There was annoyance and irritation expressed by witnesses as to the time when the calls are made. As previously states, these calls were made at all times during the day from 8:30 a.m. to as late as 10 p.m. The testimony as to the average length of solicitation calls was not definite because in many cases the recipients of the calls simply hung up and did not listen to the entire speech. The number of calls per day, per week, or per month also varied with different seasons of the year, and varied from 1 or 2 calls per week to as many as 10. Some witnesses testified that they had received as many as 10 in a day.

In general, the witnesses against solicitation calls wanted some action taken (1) to prohibit all solicitation calls or uninvited calls for business or promotional advertising, either by legislation or (2) not to prohibit all calls but prohibit objectionable calls. Those which are objectionable have heretofore been discussed. The difficulty of determining which are objectionable and which are not

is, as the record will show, practically insurmountable. We shall further discuss this subject at a later point in this order. Some persons who wanted some sort of regulation of unsolicited telephone calls though that State legislation could be effective; others believed that regulation by local ordinances, either city or county, would be preferred.

Evidence of those opposed to regulation

Generally, all the sellers of the commodities and services which we have mentioned were against any regulation either by State or local ordinances. They felt that our country is a free economy, that advertising in any form, including solicitation by telephone, resulted in the sale of goods and the maintenance of our productive facilities at full capacity, which accounts for the prosperity and the high level of our economy. It was their feeling that only a minority of telephone subscribers are objecting to the use of the telephone for solicitation purposes. They claim that the majority of such users do not object, as evidenced by the small number of people who have appeared in opposition to the use of the telephone for solicitation purposes, and also that telephone solicitation has been immensely successful, resulting in tremendous sales; that to prohibit or curtail the use of the telephone for solicitation for business or promotional advertising would be a very drastic remedy; that the problem is minor; that many businesses would have to curtail activities if they were prohibited from using the telephone for solicitation purposes; that this would result in an increase in unemployment which would further contribute to business curtailment; that legislation to curtail telephone solicitation and selling would be unconstitutional and denying the freedom of speech. The views of these witnesses are more specifically discussed hereafter.

A number of persons actually engaged in telephone solicitation appeared at several of the cities where hearings were held and described their methods and work. Some of these were housewives who were merely supplementing the family income; others were widows who in some cases made their entire living from this work. Still others were handicapped persons who by engaging in telephone solicitation work could be self-supporting.

Thus, one lady was a solicitor for the Curtis Publishing Co. (magazines) who stated that she used no "gimmick" approaches, no deceitful statements, but made direct offers to the telephone subscribers for the sale of magazine subscriptions. She does not use pressure tactics. Calls are made between 9:30 or 10 a.m., at 12 noon and 4 in the afternoon and 7 to 8:30 in the evening. The company sends her lists of the expiration dates of magazine subscriptions and she makes calls to these persons. The sale is made over the telephone. There is no request for an appointment. If a subscriber states that he does not wish to subscribe, there is no pressure selling and the call is terminated. The calls take less than 30 seconds. An unfavorable answer results in a mark on her list indicating that number is not to be called again.

This solicitor agreed that some limit of telephone solicitation was desirable, but she did not see how you could weed out the undesirable, high-pressure-method calls from the desirable ones. She agreed that some magazine crews use methods which are highly objectionable.

In nearly every city where hearings were held, insurance salesmen representing either themselves or the Insurance Underwriters Association, testified. It is their position that the selling of insurance is a public service.

A representative of the Washington Life Underwriters Association stated that there were 2,000 licensed insurance agents. They are licensed by the State Insurance commissioner and are regulated and controlled by his office. They believed that additional legislation to regulate the selling of insurance is not needed. The insurance salesmen use the telephone to a considerable extent for business purposes. The agent calls people who have a suspected need for insurance. These people are those who have just moved into an area from other places, people who have mortgages on their homes, people who have been referred to them by the insurance company. Others have been referred by other policyholders. Some insurance agents do use the "cold canvas" method whereby the telephone directory is used, but not all the names in the directory are called. The agent secures and selects the names which he would call, although he has never met the people personally. He selects the names from newspaper columns such as the notices of births, or promotions of new managers of companies. Certain other insurance agents do call consecutively all the num-

bers in the directory. This has actually been very successful. The call is for the purpose of making an appointment with the telephone subscriber to discuss the selling of insurance.

Another group of businesses which are opposed to any regulation on the subject are the bowling alley proprietors. They use the telephone for soliciting possible bowlers, particularly housewives, to join a bowling team. The calls are made from a list furnished by a listing service. Letters are then sent to these persons with tickets for a few free bowling games. This group has found that telephone solicitation is successful whereas mail invitations have not proved to be such. Door-to-door solicitation was found to be too laborious and slow as well as objectionable to the residents. If telephone solicitation is not permitted, it was claimed this would have a very detrimental effect upon the bowling alley business.

The Washington State Association of Broadcasters stated its opposition to either rulemaking by the Commission or legislation which would have the effect of prohibiting telephone solicitation. The broadcasting association is against any regulation of such as a matter or principle. They believe it would be interference by the Government with the private and business rights of individuals, both in their homes and businesses in general. The broadcasting industry stated that they are licensed by the Federal Communications Commission and that the FCC requires that they, the broadcasters, solicit from their communities the industry and needs of the people within that community. One of the principal ways of doing this is by using the telephone. This is not for sales and not for promotional advertising but for audience surveys. There is in this State a company called the Coincidental Audience Audit Co. This company plans to make telephone calls on a local basis about three times per year. Their experience shows that they had 4 uncooperative calls out of the total calls they made over a 30-day period in each market. This was 4 uncooperative calls in Seattle involving up to a total of 10,000 calls.

The broadcasters association believes that solicitation calls are in the public interest; that if there is any objection, it is a minimal thing which would not justify any restrictions on telephone solicitation. When it is considered that there is a need for the promotion of a sale of products, the need for advertising to sell goods and increase commerce, life insurance, retail selling, that the benefits of this type of promotional solicitation outweigh the slight advantages there might be in not having to answer the telephone quite so frequently.

It was the feeling of this association that if any restrictions are to be adopted, that they be placed only against the very narrow category where there might be some kind of offensive calls. Perhaps selective legislation of this type could be written, but it would be extremely difficult. The broadcasters claimed that the use of the telephone constitutes free speech and that restricting this type of free speech might be contrary to the first amendment of the Constitution of the United States; that if any legislation is to be adopted, it should not be broad-based State legislation, but should probably be enabling legislation authorizing the adoption of municipal ordinances so that regulation could be placed on a local basis. This would allow local option.

Newspaper publishers also are opposed to any regulation of telephonic solicitation. Newspapers use telephone solicitation for the purpose of classified advertising. They feel that this is a necessary public service and a great convenience to the public.

Automobile dealers and distributors also use telephone solicitation for the purpose of arranging appointments for their salesmen to call and talk about the sale of cars, to people who are interested. The automobile dealers associations state that telephone solicitation has been very successful and that they do not have unfavorable reactions to such calls. They use car registration lists, city directories and the reverse telephone directory which is obtainable from the telephone companies, and which gives the addresses of telephone subscribers so that the calls can be directed to the particular territory desired. The automobile dealers feel that any curtailment of telephone solicitation would harm their business and is not warranted.

A representative of a company engaged in the selling of heating oils and heater service, although not speaking for this particular business, gave the Commission the benefit of his experience in the use of telephone solicitation for many years back.

This solicitor claimed that many of the staple household necessities that are in use in homes today were promoted and developed only by means of some direct selling method or canvass—as much by telephone as by door-to-door solicitation—such as the vacuum cleaner, the refrigerator, and aluminum storm windows and screen doors.

This direct door-to-door method, of course, did run into some public opposition, just as the direct selling by telephone is now, which resulted in local ordinances in towns throughout the United States such as the Green River ordinance where a visitor proposing to sell in a city or town must secure a license to do so. These ordinances often exempt such things as periodicals, newspapers, and magazines; yet he stated that it appears there is greater reason to apply such ordinances to these than to some other article. This solicitor pointed out that since there were numerous complaints with reference to answering the telephone, that these complainants should remember that the telephone is both a necessity and a great convenience for the seller's business and it should be no more of a disturbance to the telephone subscriber to hang up when receiving unwelcome calls than it would be to go to their television set and turn it off when they don't wish to watch the commercial. It is the feeling of this heating-oil salesman that regulation of telephone solicitation is not justified. It was his opinion that the Green River local ordinances have not solved the undesirable aspects of door-to-door solicitation; that the American economy and society require telephone solicitation as well as door-to-door solicitation and he would be opposed to any regulation that would unduly inhibit telephone solicitation.

Real estate brokers and salesmen, and realtors and their associations, are definitely against any restrictions upon the use of the telephone for the purpose of soliciting listings of property or making appointments with prospective customers. The practice of telephone solicitation assists in the moving of house sales and is of distinct benefit in bringing together a seller and a client who is seeking a particular home in a certain area. The realtors use the telephone to call perhaps every second or third home in an area to find out if they know of something that might be available for a prospective buyer or a family that is thinking of disposing of their residence. This enables quick service in securing a home for a purchaser and quick sale for the seller. The realtors have found very good reception to their telephone calls. It is much more pleasant to the homeowner to be reached by telephone where he or she can quickly say "No" if they wish, than for the salesman to come to the door at an inconvenient time. The realtors use the reverse directories, a service sold by the telephone company. They also use the city directory. The duration of the calls is only a few seconds if the homeowner is not interested. The realtors claimed very few persons called expressed any annoyance at receiving the call. The realtors are certainly not in favor of regulation. They do not see how it can be regulated easily and equitably. It is very easy to simply hang up the telephone if not interested.

A number of representatives of companies which were engaged in either selling electric light bulbs or aluminum window blinds appeared at the hearings in several places. A considerable number of complaints involved the solicitation calls with respect to light bulbs. The company which is operating in Seattle is known as the Eterna-Five Corp. This company began operating in Seattle slightly more than 2 years ago and employs 440 people with a payroll of more than a million dollars this year in the State of Washington. These employees are all physically handicapped. The company sells light bulbs through telephone solicitation. They are members of the better business bureaus in all communities and try to follow the rules and regulations set down by the Attorney General's Consumer Protection Division and those of the better business bureau. The employees are not paid a commission but are paid a salary. The average is $1.50 an hour. The telephone solicitors identify themselves as handicapped persons. They have a day crew and a late afternoon crew. Calls are made between 9 a.m. and 9 p.m. The recipient of the call would not receive more than one call in 3 months. The company uses the reverse telephone directory and any telephone subscriber who evidences displeasure at being called is crossed off the list. The only means of selling is by telephone solicitation.

The company selling aluminum products—storm doors, blinds and windows, patio covers, etc.—had a representative at the hearings who pointed out that all governmental agencies and business organizations and chambers of commerce

were engaged in a concerted effort to secure more business and employment for the State of Washington. He felt that any move such as prohibiting telephone solicitation would hinder business from gaining prospective customers, which would be directly contrary to the efforts of those seeking to secure more business. If legislation or other checks upon telephone solicitation are adopted, it was the aluminum salesman's feeling that this would limit the ability of existing business to grow and prosper—which can only be done by gaining new customers for products and services—and, also, how could any new business be brought into the State to supply employment?

Although it is recognized that there are many sources open for advertising other than over the telephone, for some businesses those other means may not be the most advantageous ways to obtain prospects. The personal telephone call is probably the best, easiest, and cheapest means of calling attention to the seller's product. In the sale of aluminum products, the telephone can be used only to secure appointments to show and discuss the products.

The witness agreed that some of the calls might be inopportune, but as to complaints, it appears to be a matter of a few people who are inconvenienced at one time or another. Many people are employed who perhaps otherwise would not be so employed but for the fact that the employer's products are being sold through the use of telephone solicitation. This company has been in business in the State for the past 5 years, has paid Federal, State, and local taxes close to a million dollars, which would have to be gained in some other way, and it has a payroll of approximately 40 people amounting to $20,000 a month. Some of the people who complain of telephone solicitation may be indirectly benefited through the money which is spent by these employees.

The company uses the reverse directory provided by the telephone company in making calls, or the telephone directory itself. It employs 10 telephone solicitors, uses cold canvass, and makes approximately 1,000 calls a day. If there is a negative response, only 10 seconds elapse. If the called person shows interest, possible 5 minutes of conversation ensues. If telephone solicitation were prohibited, this business would be impaired to the extent of 50 to 75 percent. Possibly solicitation would have to be made door to door, which may be more undesirable as far as the householder is concerned than answering the telephone. The company enjoys one sale out of four calls from their telephone solicitation calls. It has had very few complaints.

Representatives of retail stores of two national mail-order companies testified concerning the solicitation of accounts and special sales. They have a telephone solicitation crew and have secured excellent results through these calls. They claim to have had no unfavorable reaction.

Representatives of the better business bureaus in a number of cities where hearings were held, including Tacoma and Seattle, testified concerning telephone solicitation. The managers of these organizations have had a great deal of experience as a result of complaints which have been filed. The manager of the Tacoma bureau stated that thousands of complaints have been received with respect to telephone solicitation. He classified these complaints into the nuisance complaints and the gross misrepresentation telephone complaints.

The bureaus represent business organizations as well as the consumer. As long as business organizations sell their merchandise in a fair and equitable manner, whether they use the telephone, direct mail, or other advertising, the bureau is not concerned. However, from the consumer standpoint, it is a nuisance to have the telephone constantly ringing with solicitation calls. Although there is less complaint with the calls from local, legitimate business houses, the solicitation groups which come through Tacoma with their "boilerroom" and grossly misrepresent their products, or use questionable tricks and gimmicks to attract attention, are highly resented. As to what methods could be used to stop the undesirable calls, it is not clear; the Tacoma manager seemed to think that if the housewife would simply hang up and not patronize the telephone soliciting company there would be no more telephone solicitation calls.

He referred to an organization selling light bulbs under the representation that they hire handicapped people. He stated that it was true they do hire handicapped people, but the men who are operating the organization are not handicapped and this constitutes exploitation of the handicapped. The first statement on the telephone is "I am a handicapped person" indicating "Won't you help me?" Others indicated it was impossible to know whether the solicitor was really handicapped or not.

The witness related another type of telephone solicitation that is misleading and deceptive. This is an organization calling from Seattle who say "We are carpet engineers. We previously only sold to hotels, motels, and cocktail lounges on a commercial basis, but we now have this type of carpeting available for you, and have been in business for 7 years." The manager stated that this representation is not true at all; that they are strictly in the business of selling carpets at retail. He also related the case of the magazine subscription agencies that are constantly calling on the telephone.

A photographer in Tacoma uses telephone solicitation and asks, "Who is the Governor of the State of Washington?" and if a party can name the Governor, he or she gets a string of beads; that is, simulated pearls. If the question is answered, the pearls are sent but they only cost 19 cents. Another pitch is that if a question is answered correctly in 50 seconds, the called party receives a certain number of beautiful bronze-toned photographs and in addition another gives such as a GE clock, radio, etc. The question was, "What is the name of the harbor in which the Statue of Liberty is located?" If the called party cannot answer the question, then the studio will give her a prize anyway.

Other gimmick questions are asked by other classes of telephone solicitors such as, "Which is the best television program in the area?" "Boilerroom" methods are used where they divide the telephone book and pass it out to the girl telephone solicitors to make the calls. Sometimes the solicitors are paid $1.25 an hour, sometimes only a commission.

Another type of misrepresentation call is one where the caller will telephone a business organization representing himself to be a member of a union and is soliciting ads. This is a commercial agency that rented space in the outer hall of the union where they put the ads that are sold. These are examples of the misuse of the telephone through misrepresentation. Ninety percent of the complaints and inquiries which come into the better business bureaus are not about calls from local firms, stores, or offices, but concerning calls of itinerant crews that come through Tacoma. The activities of these "boilerroom" crews cause the householder to desire all telephone calls, even those from legitimate businesses, to be prohibited.

On March 3, 1964, representatives of the magazine subscription companies, representatives of the publishers, and other better business bureaus managers had a conference, and the magazine subscription companies stipulated that they would cease these undesirable tactics in telephone solicitation. This has resulted in cutting down the complaints concerning magazine subscriptions by at least 80 percent since that time.

Apparently, the solicitation by telephone is not a new phenomenon. "Boilerroom" activities existed 28 years ago. The witness was unable to say whether the complaints are increasing or decreasing generally, although those concerning magazine subscriptions have decreased. If there is a large "boilerroom" operation the bureau will get 15 or 20 complaints in a day. When the "boilerroom" crew leaves town the complaints drop to two or three a day.

Although the witness felt that there was a need for some regulation to prevent misrepresentation calls, he was unable to make a recommendation as to how to control the situation. He sympathized with the housewife who considers telephone solicitation to be an invasion of the privacy of the home, but as manager of the better business bureau he feels that legitimate telephone solicitation is a legitimate method of doing business. The city of Tacoma does not have a Green River ordinance and he is not in favor of adopting such an ordinance. He does not feel that misrepresentation telephone solicitation is a local problem because many of the solicitors—for example, those in the roofing and siding business—call every day by long distance out of Seattle.

Two years ago the city council considered an ordinance licensing, bonding, fingerprinting, and photographing all itinerant magazine subscription agents, by telephone or door-to-door solicitation, and in an effort to have the ordinance adopted they compromised its application to telephone solicitation, but the ordinance was not passed. The manager did not believe that an ordinance covering telephone solicitation within the city would be passed by the city council because it would serve no good purpose since it could only be applied to telephone solicitation within the city, and the calls could be made from outside the city or even outside the county, which could not be reached by the local city ordinance, or a county ordinance.

The manager of the better business bureau felt that any regulation would have to be State regulation of some type. Even this State statute would not prevent

the few calls from coming from Florida selling land, or calls coming from Canada selling "moose pasture" and uranium and copper land up there.

The manager finds that if magazine selling crews come into the office and notify that they are about to start operations and advise the office that they will cooperate, there was very little trouble as a result. However, not all telephone solicitors do follow this practice. This manager has given a great deal of thought to possible solutions of the telephone solicitation problem and has not been able to arrive at any suggestion which would be practical, feasible, and effective.

The assistant manager of the Better Business Bureau of Seattle has made a study of the telephone solicitation problem by seeking the views of prominent businessmen. He gave a few quotations from replies which he received. A prominent retailer felt strongly against any legislation that would have as its motive the curtailment of legitimate enterprise, although recognizing that those obnoxious types of telephone solicitation calls should be investigated and steps taken to curtail such activities. The telephone campaigns which this retailer conducted were very successful. The complaints were negligible, and the customers were very well pleased.

An executive of another large firm also expressed opposition to elimination or even regulation by law or otherwise of the use of the telephone, whether the purpose was for the sale of products and services or for any other reason. He, too, felt it would be a denial of "free speech." He failed to comment on the question of "invasion of another's privacy." This executive wrote that practically all legitimate businesses conduct a considerable amount of their business by telephone to the complete satisfaction of their customers; that the few who abuse this medium of selling represent an infinitesimal percentage of the total; that the strongest possible enforcement could not cope with the unscrupulous telephone solicitor. Therefore, only legitimate businesses would be penalized.

A department store executive stated: "We went on record with the Washington State Retail Council as being opposed to any legislation for the purpose of the elimination of solicitation via the telephone. We believe there are too many curbs now on private industry and free enterprise. It would hamper the operation of a great segment of the people just to get at a few sinners. We think that a better attack would be to do some consumer education; encourage them to refuse to be bothered by obnoxious telephone solicitation." He did not elaborate, however, on how this could be done. He further stated: "There are a great many businesses who use the telephone legitimately and during the daytime hours and who would be seriously handicapped by any limitation that might be placed on such activities."

All traveling magazine selling crews register with the better business bureau and the local police department. This is not a city ordinance but is a voluntary action of the central registry of magazine publishing firms in New York. They register with the better business bureaus giving the dates they will be in the city, where they will be staying, and the names of the crew members. The central registry has established a code of ethics and the selling crews are not permitted to use the "gimmick" approach, such as: "I am making a survey," "I am taking a quiz," or "I will give you something free."

The better business bureau handles hundreds of complaints and requires that all such complaints be in writing. One assistant manager stated that his bureau felt that most legislation imposes restrictions and regulations on business that are not only harmful to business but also not in the public interest.

The special studies supervisor of Pacific Northwest Bell Telephone Co. stated the position of his company concerning telephone solicitation. He pointed out that many solicitation calls are pleasant and beneficial; that nearly everyone has made some sort of solicitation calls to others—such as, those relating to political activities, fund raising, religious activities, etc. There are many ethical established businesses whose employees sell by telephone for the benefit of both the consumer and the seller. He stated that admittedly some calls are objectionable; that his company believes that using the telephone for selling is good or bad, depending on how it is done. It should be pointed out here that the telephone company itself solicits for its yellow pages.

How can the problem be solved?

A solution of the problem of the telephone solicitation which would be satisfactory to all classes of the public, including the broad spectrum of business

which utilizes it in selling, those who welcome solicitation of different kinds and different degrees, those who very much resent telephone solicitation, and probably the vast majority of the public which is highly indifferent, presents a most difficult problem.

We have seen from the testimony that a very large number of businesses employ telephone solicitation in selling and promotional advertising. Some of these businesses are engaged in very necessary and desirable public service. Some of them are not. Some of these businesses could not be conducted at all, and others would be greatly hampered if telephone solicitation for selling and promotion were prohibited or unreasonably restricted. The selling groups run the gamut from highly respected services to unscrupulous groups or businesses employing illegitimate and highly questionable tactics and methods in their telephone solicitation selling.

The telephone companies suggest certain rules for improving the methods of telephone solicitation rather than legislation; yet we know that there is a large group of telephone subscribers who are against the use of the telephone for solicitation no matter how well it is conducted. They are against the call itself. They feel that such calls for business purposes are unwelcome as an invasion of their right of privacy, occupies time during which they are deprived of their own use of the telephone either for outgoing or incoming calls, and is a nuisance which they should not be required to undergo. In this category also those to whom an uninvited telephone solicitation call is a genuine hardship such as night workers, sick people, and others. To arrive at a solution, therefore, of this problem is not easy.

As indicated, there are the problems of abuse or misrepresentation in the sale of goods and services by telephone solicitation, and there is a further problem of a growing volume of such solicitation because of the increasing density of population and the expectation that this volume of the intrusion of privacy will continue to accelerate in the future.

In this connection, a witness who was a professor of sociology at a university and president of the Northwest Association of Public Opinion Research, appeared to represent both his own views and the views of the membership of that association. This witness testified that a poll has just been made by a national organization known as the Opinion Research Corp. of Princeton, N.J., who polled approximately 2,000 people as a representative probability sample of the country, 24 percent of whom testified that they had personally experienced abuse in telephone solicitation. This witness was of the opinion that the volume of uninvited solicitation calls via the telephone is increasing for audience surveys. He also mentioned a "machine that is likely to come on the market which can call 50,000 persons in Seattle in one evening and take their responses, call 50,000 people to the telephone, call without any human presence being bothered or responsive to. That can be done when you are in the middle of supper for a sales pitch by a machine of that sort." If such a machine is actually in existence (it has been mentioned in a certain publication, "The Privacy Invaders," by Myron Benton) then the prospect is indeed appalling.

This witness proposed that there be no legislation for the purpose of controlling telephone solicitation but that it be handled by organized private effort; namely, that the telephone company offer a service of having the names asterisked in the telephone book for all those people who so requested it. The asterisk can be keyed and explained to the effect that the subscriber wished no telephonic solicitation for sales purposes over the telephone and would boycott any firm that called against his wishes. The witness thought that this service would go far toward making a self-enforcing system to deal with this issue; that this plan would reduce the amount of unlisted telephones which people now secure to defend themselves from unwelcome calls; that the sellers themselves would welcome such lists; and that, pruned of hostile prospects, their cost of telephone solicitation would be reduced and would be more effective because they would then call only friendly prospects. The asterisk could indicate "no selling, please," "no market research, please," or "no opinion research of any sort—public, church, or any other organization." This asterisk system, or other symbol, could also be included in the reverse directory published by the telephone company.

It was pointed out that there are other directories which are used by telephone solicitors such as city directories, car registration lists, lists of various kinds furnished by listing companies. It appears, therefore, that to make this asterisk plan completely successful, it would be necessary to have either State statutes or city or county ordinances which would impose some sort of penalty,

perhaps making it a misdemeanor for disregarding the wishes of the subscribers indicated by the asterisk in the telephone company directory. This would require all telephone solicitors to go to the telephone company directories (the asterisk would also be placed in the reverse directory) to find out whether the subscriber was sympathetic to a telephone solicitation call. It would prevent the solicitors from using city directories and other listings as well as the indiscriminate calling of all numbers in the directories by the sequential plan. Even if the asterisk plan without penalty were adopted it would probably eliminate a great bulk of the nuisance or gimmick-type calls.

The witness also suggested that the telephone companies, the Commission, or some opinion survey company could make a poll of the entire public, checking the different alternatives or solutions and getting the public reaction to each one; that such an opinion survey would advise the Commission in much greater detail as to what the public reaction was to specific proposals and thus the legislature could also have a more fully informed basis on which to act, or otherwise.

Other witnesses also testified concerning the use of the asterisk. One such witness proposed that it be placed opposite only the names of the persons who welcomed telephone solicitation calls.

Another suggestion for the alleviation of this problem was made by the prosecuting attorney of Walla Walla County who appeared in his official capacity. He referred to the State Unfair Trade Practice Act which was passed by the legislature in 1961. This has been most effective in his county in connection with the flood of "siding" salesmen. With the cooperation of the attorney general, they were able to eliminate itinerant siding salesmen from their community entirely. Although this statute is effective with reference to salesmen personally soliciting business in the community, it does not cover telephone solicitation as such. After receiving complaints concerning the activities of the siding salesmen, or other solicitors, they attempt to contact the office of the company whom the salesman is representing which is usually located in some other city, and ask whether they have representatives working in Walla Walla. The reply is generally "No, we do not have anyone in your city." The prosecuting attorney was of the opinion that the only way this matter can be regulated is by a State statute to apply to the telephone solicitors with the cooperation of the local prosecuting attorneys. Although in these cases there is probably a violation of the Unfair Trade Practice Act of the State, the prosecuting attorney has not been successful in checking such violations when the solicitation is by telephone. The telephone calls have come from Portland, Seattle, and from the tricity area (Pasco, Kennewick, and Richland).

Another suggestion concerning which each complaining witness who appeared at the hearings was questioned was whether they could not secure an unlisted number and thereby be free of the annoyance of unwanted telephone solicitation calls. Most of the complaining witnesses stated that an unlisted number would not be satisfactory for various reasons; such as being members of clubs or associations or officers of such and wishing to have calls come freely to them, or having friends come to town who know nothing about the unlisted number and would be greatly inconvenienced. Others simply felt that they should not be compelled to resort to an unlisted telephone to escape solicitation calls since they were paying for full use of the telephone and as such did not want to be restricted by an unlisted number. They felt their phone was personal property and solicitations were an invasion of their privacy.

In this connection it should be explained that there are two terms which are used, one, an "unlisted" number which is not published in the telephone directory, but which number can be secured by asking "Information" for it; and, two, an "unpublished" number in which the name is not printed in the telephone directory and is simply not available to anyone.

The representative of Pacific Northwest Bell Telephone Co. stated that his company neither encourages nor discourages the use of unpublished numbers. If a customer is being extremely bothered by nuisance calls, crank calls, or solicitation calls where the only possible way of alleviating the situation is to have an unpublished number, the company will suggest a nonpublished number for that particular customer. The use of an unlisted or nonpublished telephone service results in increased operating costs to the telephone company. This increased cost factor is brought about by the clerical work which

is necessary to eliminate the number from the directory in the first place, and keep it in the information record without the number, so the information operator could tell the calling party that the person he is calling does have a telephone but does not wish the number given out. Further, in certain hardship or emergency cases, it is necessary to refer the call to the supervisor or chief operator who will, in an emergency, call the nonpublished number and tell him a certain party wishes to reach him.

There are approximately 27,600 nonpublished services in Seattle as of February 11, 1964. This is approximately 11 percent of the total services which are 247,900. Seattle has a higher percentage of nonpublished services than the average for the State, which is approximately 8.7 percent of the total services.

A review of nonpublished services for the Seattle exchange only indicates that there has been an increase in the number of nonpublished services. In a survey taken in the east on a Bell System company to inquire why people had nonpublished numbers, the answers showed that of the total of these nonpublished users, 19 percent had them to avoid salesmen who were soliciting and to escape mailing lists.

The representative of the Washington Independent Telephone Association, which is an organization of 48 independent telephone companies operating in the State of Washington, pointed out that there has been a concerted effort by telephone companies over many years to provide convenience and ease in telephonic communication. The 48 independent telephone companies serve 270,000 customers, about 25 percent of the total, and probably about 50 to 60 percent of the State in service area.

He stated it was his opinion that the testimony seems to indicate, although there is a large minority of those who did testify who objected to any solicitation calls, that the telephone call itself is not always unwelcome. Many of the calls have proved to be annoying and inconveniencing, such as the interruption of sleep, illness, while bathing, child care, and yard work.

He felt that the evidence also shows that telephone solicitation in many fields per se is definitely consistent with the public interest, and any wholesale prohibition or control limiting an individual in the proper use of his telephone makes the telephone service for which he is subscribing less valuable.

This witness felt that the area of correction should be in public protection. Existing consumer protection statutes, such as we already have on our statute books, should be implemented to include prohibition against fraud in the use of the telephone and should be enforced.

Discussing the unlisted or unpublished telephone numbers for the independent telephone companies, it was this witness' opinion that the so-called uninvited telephone calls have not been a nuisance in the small communities served by these companies where a close business relation exists. He further claimed the use of unlisted or unpublished telephone numbers was also because of personal or family problems, credit matters, prestige, or status symbol, and so forth.

During the course of the hearings, a number of legislators appeared and stated that they had made some investigation of this subject, and one made a suggestion which definitely merits consideration. This member felt that where there is solicitation by telephone of a commercial nature, where the solicitor or the company representative is completely unknown to the telephone subscriber, that this constitutes an intrusion and invasion of the privacy of the family. He would make a distinction of calls soliciting funds for charity or something of a community service which he does not object to, and calls from a car dealer from whom he had purchased a car 3 years earlier, who now makes a solicitation call to see if he can sell the car for the telephone subscriber and offers to sell him a new car. This is not objectionable, either. But if someone who has never previously established a direct contact makes a solicitation call, that, to him, is offensive.

The witness offered a suggestion that if any legislation is to be adopted it should prohibit telephone solicitation unless there has been a previous initial contact with the telephone subscriber.

CONCLUSIONS

In summing up, only a portion of those who were against solicitation were against all solicitation for business purposes or promotional advertising. We have previously given the findings on this as 33 percent of the witnesses on the stand objected to all types of solicitation calls, 24 percent objected to only certain

types of calls, and 42 percent favored proper solicitation calls. The total attendance at all the hearings was 564 persons, exclusive of commission and telephone company personnel. Since there are a total in the cities where hearings were held of main stations of 603,432, the attendance equals nine-hundredths of 1 percent of these stations, and since there are residence main stations of 517,765, the attendance is eleven-hundredths of 1 percent of these stations.

There was a definite pattern established across the State of some dissatisfaction with telephone solicitation for business or promotional purposes. If we are required to base our judgment upon the evidence only in this record, the only conclusion to which we can come is that only a minority of telephone users are sufficiently annoyed and discommoded at this time to register their protests with the commission. On the basis of this record, the commission could come to no other conclusion than that the majority of the public is indifferent to telephone solicitation for business or promotional purposes. Certain witnesses believed that the number of such calls were increasing. The witnesses who testified were quite uncertain as to how many such calls per week, or month, they received. Some of them thought that the average was four or five per month. Also, the peak of such calls comes at only certain times of the year. Most witnesses did not know how long the calls lasted. This was frequently because they did not listen to the end.

Based on the facts of this case, as shown in the record, we cannot find that the scope and extent of telephone solicitation as a problem is great for the present, but there definitely is a problem that should be watched closely. Based alone on this record, we would also be required to find that telephone solicitation, while objectionable to some, is generally not inconsistent with the business community on the whole, but certain abuse by unscrupulous solicitation is not consistent with the public interest. Obviously, the problem with objectionable telephone solicitation is not from the local businessman, Red Cross, Boy Scouts, and the like. It is the "boiler room" operator—the "fly by night" solicitor—who is causing this ever-increasing problem. No one objects to a call from a person with whom they have had a previous business connection or relationship. The solution to this matter, while difficult, is far from impossible.

As to what action should be taken by this commission to restrict or inhibit the use of telephone solicitation, including, but not limited to, the adoption of general rules and regulations, the revisions of existing tariff rules and/or submission of recommendations to the legislature, we believe we have fully discussed and reported all phases of this problem including the suggestions which have been made for solving it. Accordingly, therefore, we list the following suggestions to the legislature:

1. The commission could, by the adoption of rules, require the telephone companies to place asterisks in both the direct and the indirect telephone directories at the request of the subscribers, indicating whether or not such persons would accept solicitation calls. The details of how this would be done could be prescribed by the commission. However, the commission is not recommending that it take such action until it has more conclusive evidence that such action is required. A misdemeanor penalty could or could not be passed by the legislature. This would prevent, or at least deter and inhibit, those businesses which would be unscrupulous enough to disregard such desires of the subscribers.

One other aspect of the adoption of such a rule might be considered. This is that the adoption of such a rule providing that the telephone companies must place an asterisk in the telephone directories to the effect that the subscriber does not wish solicitation calls, could very well, and probably would, result in a large proportion of subscribers' names in the telephone directories having an asterisk symbol. This commission does not feel, with only the limited information which it has been able to secure, that it should make any recommendation in this regard. This is properly a subject of such broad public interest that it should be exclusively that of the lawmakers.

2. We recommend to the legislature that it direct the legislative council to create a special subcommittee to study this subject further during the next biennium for the purpose of securing more adequate information upon which to act. The hearing procedure which the commission is required to use in its investigation of this problem apparently cannot secure a broad enough sample of public opinion on this subject and it will be necessary, we believe, to have some consumer research or public survey groups make an intensive canvass upon a scientific basis to secure the needed information.

3. The legislature could, and probably should, amend the consumer protection laws to include safeguards for the public in connection with telephone selling and advertising and promotional advertising, particularly those which were enacted in the 1961 session of the legislature, now in the Revised Code of Washington, chapter 19.86.

4. As suggested by the Better Business Bureaus of the several cities and by the telephone companies, efforts in solving this problem should be stronger on the local level. The Better Business Bureaus and other local organizations, as well as the phone companies, should direct their efforts against those persons or organizations who use the telephone solicitation for fraudulent purposes, or which utilize obnoxious practices in such solicitation.

5. The commission feels also that the telephone industry has not done all that it can to help solve this growing problem. The commission feels a firmer policy directed to its business subscribers should be initiated without further delay. The commission is aware that the telephone industry cannot practice discrimination in furnishing service to some subscribers who will engage in telephone solicitation and deny such service to others, for to do so would be illegal as contrary to statute, yet the commission feels that the industry can adopt certain rules whereby misuse of such telephone service by practices constituting a nuisance, could result in cancellation of service.

6. The legislature could (assuming such action would be constitutional) by State statute, prohibt entirely the use of telephonic communication for uninvited solicitation or for promotional advertising. This action is not recommended by this commission. This would be an extremely drastic solution which is not warranted and would be an attempt to get at the persons who use telephone solicitation for unworthy purposes by penalizing the broad spectrum of business which uses it for the public interest. The commission also feels that to take such drastic action, upon the meager evidence which has been produced against telephone solicitation in the 17 hearings conducted by the commission, would be wholly unjustified because the sample is too small.

All the suggestions which have been made should be considered by the legislature. If the legislature feels that immediate action should be taken before further study, then State legislation perhaps could be directed to amendment of the consumer protection laws and possibly an enabling act, giving cities and counties the option to enact ordinances similar to the one which many cities have now governing the activities of peddlers and door-to-door solicitors and embodying a provision making it a misdemeanor for a telephone solicitor or organization which he or she represents to disregard the asterisk symbols in the telephone directories.

An example of a city ordinance prohibiting telephone solicitation is one passed in Tampa, Fla., which provides a penalty of a $500 fine and imprisonment not exceeding 6 months, or both. Each day the violation continues would be considered a separate offense and punished accordingly. The text of the law follows:

"The use of any telephone in the city of Tampa by any solicitor, peddler, promoter, vendor, or other persons for the purpose of contacting another person in the city to offer for sale, or sell products or services or to promote by any plan, scheme, device or means, any commercial or business plan, project or venture, without having been requested or invited to do so by the person called, or without the present existence of a current business or commercial relationship between the person making such use of telephone and the person to whom the call is placed, is hereby declared to be a nuisance and unlawful."

A bill introduced at the California Legislature in 1959 but which was not passed follows, in part:

"CHAPTER 3. SOLICITATION BY TELEPHONE

"17800. It shall be unlawful for any person to use the telephone to communicate with a private residence for the purpose of selling, advertising, or soliciting the purchase of, any insurance, merchandise, or commodity, or for the purpose of advertising or soliciting the hiring of, any service or skill, without having obtained, prior to using the telephone, authorization express or implied from the person to whom the selling, advertising, or solicitation is made.

"17801. It shall be unlawful for any person to use the telephone to communicate with a private residence for the purpose of offering, directly or indirectly, any merchandise, commodity, service, or skill, free of charge or at a reduced price, with the intent of inducing the purchase of similar or like merchandise, commodi-

ties, services, or skills, without having obtained, prior to using the telephone, authorization express or implied from the person to whom the offering is made.

"17802. Authorization to use the telephone may be implied from previous communications between the parties or their agents or representative or from any conduct which in the usual course of business indicates that the use of the telephone would be an acceptable method of communication.

"17803. 'Person,' as used in this chapter, includes any person, firm, copartnership, corporation, association, or other organization or any combination thereof.

"17804. Every person violating any of the provisions of this chapter is guilty of a misdemeanor."

Also see *Ex parte Williams* (345 Mo. 1121, 139 S.W. (2d) 485, certiorari denied, 311 U.S. 625), cited in NIMLO Municipal Law Review, 196, at page 351, sustaining a St. Louis ordinance requiring a permit to solicit funds by telephone for charitable purposes.

See also *Alabama Law Enforcement Officers* v. *City of Anniston* (Ala.), (131 So. (2d) 897 (1961)), discussed in Alabama Law Review (vol. XIV, fall 1961, No. 1, p. 197), which sustained a lower court order denying a temporary injunction against the enforcement of an ordinance making unlawful the use of any telephone in the city of Anniston by any solicitor or peddler for the purpose of soliciting the called person and declaring such solicitation to be a nuisance.

See also *Brown* v. *Cle Elum* (145 Wash. 588, 261 Pac. 112 (1927)), holding that the grant of the police power to cities and towns in article XI, section 11 of the State constitution, is strictly limited to the exercise of that power within the limits of such municipalities. Thus, it is important to determine at which end of the telephone line the solicitation is made.

Apparently, only one case has considered the problem, *People* v. *Hosher* (California Superior Court, Appellate Department at Los Angeles, CR A 2162 (1946)). That case, which was an appeal from the municipal court of Los Angeles, holds that the telephone's solicitations, having been heard and received by persons located within the city of Los Angeles were made within such city. The court relied on an earlier case, *Golden & Co.* v. *Justice's Court* (23 Cal. App. 776, 193, 795, 140 Pac. 49 (1914)), holding that solicitation by mail of orders for intoxicating liquors in territory where solicitation of such orders was forbidden was a violation of the statute, even though the letter was mailed outside of such territory.

It should be recognized that even these local ordinances or a State law regulating telephone solicitation for business or promotional purposes would probably not be wholly effective because calls can be made at rates only slightly higher than regular exchange service from outside the city or county by unscrupulous telephone solicitors, which may or may not be subject to the municipal or county ordinances. However, it would probably eliminate the great majority of objectionable calls. If a State law, the calls could very well come from outside the State, though the evidence showed few of these. This involves interstate commerce and probably could not be remedied by State legislation. However, the enactment of such ordinances would have a deterring effect on the unscrupulous telephone solicitors.

We believe this report presents virtually all aspects of the problem. We trust it will be helpful. This commission will be available to assist or help the legislature in every way possible.

ORDER

Wherefore, it is ordered that this order and report shall be transmitted to the Legislative Council Subcommittee on Commerce, Industries, Trades, and Professions.

It is further ordered that jurisdiction shall be retained by this commission in this proceeding to take such further action as may be required.

Dated at Olympia, Wash., and effective this 18th day of January 1965.

WASHINGTON UTILITIES & TRANSPORTATION COMMISSION,
FRANCIS PEARSON, *Chairman.*
PATRICK D. SUTHERLAND, *Commissioner.*
DAYTON A. WITTEN, *Commissioner.*

Mr. GRADY. We will make no specific reference to this report other than to summarize its essential conclusions. Based on the facts developed on the record made, the commission found that telephone

solicitation, while objectionable to some, was not so acute a problem as to require immediate attention; but observed that certain abuses by unscrupulous operators are not consistent with the public interest.

It must be noted that the commission was directing its attention to a somewhat different problem; i.e., uninvited sales pitches via the telephone. Presumably the party was already identified. But it is significant that all persons who had received recorded messages whether the caller was identified or not took exception to this form of communication. Mechanically the line of the called party is tied up as long as the recorded message continues and merely to hang up the telephone receiver does not provide a disconnect. The called party is unable to call out or receive other inbound calls until a disconnect occurs at the source.

In our view the use of recorded messages constitutes an abuse of the telephone privilege and surely the telephone companies in conjunction with appropriate State and Federal regulatory agencies should be expected to police their own ranks. We believe no public interest would be offended by requiring a recorded caller to identify himself or his sponsor so as to permit complaints to be lodged and necessary remedial action taken.

This appears to be an area in which cooperative action would be most effective through a combination of State regulation on a local basis, Federal Communications Commission jurisdiction on an interstate level and appropriate adjustments in operating telephone company tariffs to reach offenders.

We see no reason why more stringent regulation would interfere with the operation of legitimate concerns. Any firm or organization whose motives are above suspicion would not hesitate to identify itself even on a recording, assuming this is a device acceptable to the controlling regulatory body and consistent with tariffs filed by the respective operating telephone companies.

The only one who might suffer by this type of regulation are those to whom lack of identification is considered advantageous. The absence of regulation demanding identification of calling parties makes the telephone an instrument perfectly fitted to use by cranks and possibly for dissemination of slanderous matter by persons hiding behind a shield of anonymity.

We know that part of the function of this committee is to determine whether a problem exists in this area. It must thus make a determination as to whether the public needs protection from the unscrupulous operator to whom anonymity is an indispensable weapon.

We wish to be on record as supporting any movement resulting in State and Federal cooperation calculated to curb the abuse of telephone usage and contribute to better telephone service for all legitimate purposes.

Senator PASTORE. I want to thank you for this statement.

Are there any questions?

Senator MCGEE. No, I have no questions of Mr. Grady.

Senator PASTORE. Is Mr. Tuttle here?

Mr. Tuttle.

Would you like to bring Mr. McKnight along with you?

Mr. TUTTLE. I have none of the officers here. I filed a statement. They have been over the statement. It has been officially approved.

Senator PASTORE. I am not asking you to explain that. I was wondering if you wanted anyone with you.

STATEMENT OF CHARLES H. TUTTLE ON BEHALF OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

Mr. TUTTLE. My name is Charles H. Tuttle. I'm a member of the law firm of Breed, Abbott & Morgan and—a senior member. I have been general counsel to the National Council of the Churches of Christ of America ever since 1950 when I incorporated it.

It is a cooperative agency of 30 principal communions—Protestant, Anglican, and Orthodox—with a total membership of about 40 million.

I am desirous of using the privilege of this occasion to lay before you certain facts which, as I have listed today, have not been presented, and which concern the actual things that happened in connection with "Let Freedom Ring," which is the basis, at least the starting point, of this hearing.

Let me present it this way: The national council is more interested in what this does to other people than to itself. Of course it has an interest because it is one of the chief targets of "Let Freedom Ring." It also has an interest because of the doctrines for which it stands.

It wants to oppose with all its force what is being done to other victims by "Let Freedom Ring" all over the United States. And it also wants to oppose with all its force what it feels is a dangerous menace to the solidarity, the unity of our American people, and of our American way of life.

We have heard up to the present time the presentation by the telephone company and the Federal Communications Commission which have naturally and expectedly been presented from their particular points of view. Now I want to present this from the point of view of the public.

Senator PASTORE. You go ahead.

Mr. TUTTLE. The public have the final and the vital interest, and through the public, the country.

On September 29 I wrote a letter to the Federal Communications Commission, a copy of which is attached to the statement of the Chairman of the Commission. I sent a copy of that letter to the legal department of the American Telephone & Telegraph Co.

Weeks passed.

On October 21, I sent a second letter and more extended, bringing the facts that I am about to lay before you up to date and more emphatically presented.

I did receive a response to that in the form of a communication from the legal department of the Bell Telephone System.

My letter of September 29 was released by the National Council of Churches to its various councils in the various communions throughout the United States because we were inundated, swamped with communications saying, "Are you doing nothing about this? Don't you realize how this is setting neighbor against neighbor? How this is

disturbing the peace of communities? How this is having consequences in the communities of the American people, and destroying or at least endangering the principle of brotherhood on which democracy must rest?"

We had to answer our own constituents.

Consequently, my letter of September 29, which was intended for release to our constituency, was the initial letter. It went out and it received a vast amount of publicity. Whereupon, "Let Freedom Ring" felt that I should become a target.

I don't mind being a target of "Let Freedom Ring" personally. I was a U.S. attorney in the southern district of New York for many years, and I received innumerable letters from anonymous people far less skilled and at times far more skilled in the art of an anonymous malignity than has been presented here.

Consequently they undertook to send me their literature so that I would be impressed with their capacity to injure and destroy.

My letter of October 21, which unfortunately was not attached to the statement that was submitted to you today by the Chairman of the Federal Communications Commission, set forth what I received and which shows that there is far more to this "Let Freedom Ring" than meets the eye from the point of view of mere libel.

With your permission I will refer to my letter of October 21. If you do not have a copy of it, as I think you must have——

Senator PASTORE. I have a copy of one dated September 29.

Mr. TUTTLE. You have that, but they did not attach my letter of October 21?

Senator PASTORE. I don't have a copy.

Mr. TUTTLE. I addressed it to the Federal Communications Commission. So I was a bit concerned to find that that crucial letter was not annexed.

Senator PASTORE. Do you mind if we put it in the record at this point?

Mr. TUTTLE. No, sir; not at all.

Senator PASTORE. The letter of October 21 will be made a part of the record at this point.

Mr. TUTTLE. That is to the Federal Communications Commission.

Senator PASTORE. Yes.

(The letter referred to follows:)

BREED, ABBOTT & MORGAN,
New York, N.Y., October 21, 1965.

Re "Let Freedom Ring."

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C.

GENTLEMEN: As counsel for the National Council of the Churches of Christ in the United States of America, I wrote you on September 29, 1965, concerning the above subject. I also sent a copy to the legal department of the American Telephone & Telegraph Co.

By letter dated October 13, 1965, your secretary informed me that you also had forwarded a copy of my letter to the American Telephone & Telegraph Co. "for a response by the Bell System companies."

I now write again to furnish to you the highly relevant material which I received by mail on October 18 from an obviously well qualified and equipped representative of the above nationwide faceless organization for mass distribution of mass libels and for its own financing by means of the telephone system.

I will not burden you with the scurrilous letter itself because, in the years when I was U.S. attorney for the southern district of New York, I received many such from far better masters of the art of anonymous malignity.

The enclosures with it are what is important.

The first is the anonymous printed card (photostatic copy herewith) constituting the device being distributed in our cities, even to schoolchildren, to entice the public to dial weekly unrecorded telephone numbers in order to receive these "messages" from what this masked organization boasts of as its "stations."

You will note on the card the representation of a telephone receiver, the printed words "New message every Thursday," and a telephone number in display type which can be changed from locality to locality and whenever tactics suggest.

Other enclosures were six small pamphlets crammed with wholesale defamation and scurrilousness, examples of which I gave you in my prior letter and which you have received from other sources. The "message," for which the card is the lure, usually ends with an invitation to write to some post office box for a copy and for promised follow-up material. The pamphlets close with a statement like the following:

"This 'tract' No. 9 can be obtained at the rate of 100 copies for $2."

There then follows a post office box number.

One of these tracts typically closes with this:

"Let's get millions of this 'tract' circulating throughout this Nation—Hurry, hurry, hurry. Get a copy into the hands of every voter in your community."

Thus the mechanism which the Bell Telephone System supplies is the essential in the operation, expansion, financing, and money getting of this nationwide undercover, masked organization.

Although I have received no response from the Bell Telephone System, I gather from the press that consideration is being given to disclosing to any inquirer the name and address of the subscriber for the unrecorded telephone number.

I do not oppose such a plan; but I must point out that so far from stopping or retarding this use of the telephone system for the broadcasting of these libels, it would, if it stood alone, in practical effect license it. The names and addresses, even if any of them are now meaningful at all, would immediately become either fictitious or of no value at all as to the real source. The anonymity of a post office box is already a dead end.

The victims of this masked organization cannot go from city to city seeking out the irresponsible identities which would be the sole grist of any such plan. Even if, in some instances, real identities could be uncovered, bringing a multitude of libel suits across the country would be too impractical and burdensome to contemplate.

I also gather from the press that the Bell Telephone System claims, as to these messages, the restrictions of the first amendment to the Constitution of the United States protective of "free speech" and also that it cannot know but that the messages, although libelous and defamatory on their face, may be true or privileged.

The answers, it seems to me, are plain.

In the first place, the Supreme Court of the United States and other high courts have uniformly held that the first amendment does not immunize—under guise of "free speech"—libelous publications which are libelous on their face, and that such libels are actionable according to the applicable principles of the law of libel. In addition to the judicial decisions cited in my previous letter (p. 6), see: *Frohwerk* v. *United States*, 249 U.S. 204, 206; *Gilbert* v. *Minnesota*, 254 U.S. 325, 332; *Roth* v. *United States*, 354 U.S. 476, 486; *Konigsberg* v. *State Bar*, 366 U.S. 36, 49; *Post Pub. Co. v. Hallamn*, 59 Fed. 530, 540 (Taft, J.); *Burt v. Advertiser Newspaper Co.*, 28 N.E. 1, 4 (Mass., Holmes, J.).

Certainly the telegraph, radio and television companies, which also are under your jurisdiction, cannot, on a plea of the first amendment or of inability to censor, escape liability for the publication of a message libelous on its face. Indeed, the governing regulations forbid use of their facilities for such purpose and authorize their rejection of such misuse of their facilities.

The messages here involved are not fortuitous individual instances or impulses but rather are organized new weekly messages of the character and purpose of which your Commission and Bell Telephone System have abundant evidence.

They are published through the telephone system as part of an organized scheme to secure mass distribution for written compositions which on their face are obviously libelous and obviously intended to besmirch character, and

also to secure funds for the financing, aggrandizement, and greater effectiveness of the scheme itself.

I respectfully submit that the only effective protection for the public and the enlarging circle of victimized citizens is for your Commission, as the designated depository of the Government's supervisory jurisdiction, to extend its plenary regulatory power also to the telephone system of public communication.

I am sending a copy of this letter to the legal department of the American Telephone and Telegraph Co.

Respectfully yours,

CHARLES H. TUTTLE.

Mr. TUTTLE. I sent a copy of this, I repeat, to the legal department of American Telephone & Telegraph.

Senator PASTORE. You will give us a copy of this before you leave here today?

Mr. TUTTLE. Yes, sir. I will leave this copy.

What happens is this: Somebody goes to the telephone company in the locality where they are, and they ask the privilege of having an unrecorded telephone number. What I am about to say is known thoroughly to the Federal Communications Commission, and is known thoroughly to the Bell Telephone System, because not only from the National Council of Churches but from the Anti-Defamation League, from the Parent-Teachers' Association, the national association, they have been supplied with all this material for well over a month or 2 months. So we are dealing with something that isn't in the realm of discovery.

We have a public service monopoly here, properly a public service monopoly, but nevertheless, it is a public service. And the uses that are made of it by this ingenious scheme are relevant to the considerations which are now before you.

The next thing that happens, is that they ask for an unrecorded telephone number. Of course, it appears at once that they are asking for a means of putting this through a tape recorder on to the telephone system throughout the nation, because what they do in 1 spot they do now in 50. We are dealing with a mass assembly line for the distribution of hate in this country, using the facilities and the hired machines of the telephone company.

What I intend to lay before you now is the money that is being made out of it by this mass sale of hate.

What I received to begin with—and here is a photostat of it attached to my letter of October 21—is a card. It has in very large type a telephone unrecorded number: Yukon 7-4343. That happens to be a New York City telephone number—Yukon. In the middle of that card, there being no name on it at all, there is, ironically, a flying American eagle, the good old American eagle, the national bird.

Instead of carrying the arrows in its claws, it is carrying a telephone receiver. In other words, this American eagle is going around the country carrying a telephone receiver for the purpose of inviting the people of the United States of America to rush to their telephones to get these messages by way of an unrecorded telephone number, and by way of the facility which the telephone system is furnishing them.

The only words on this are—in the upper right-hand corner and upper left-hand corner—"New Message, Every Thursday." "New Message, Every Thursday," in what "Let Freedom Ring" boasts of as its stations, Senator—50 throughout the United States. I will read

you how they boast that they are increasing it, establishing new stations all the time.

There is under the American eagle in smaller type or symbol the good old Liberty Bell.

Then it says, "Let Freedom Ring." This card is the trademark of "Let Freedom Ring."

In my letter of October 21, and also of September 29, I set forth how this card was distributed, how it gets around. I am sorry to have to tell you, because I couldn't think of anything so base, that aside from distributing this through the mails, with envelopes that have no address, to the lists of citizens around the country to whom they think may be affected by this, they are using the schoolchildren.

This card is held, as the proof shows, in various cities, by somebody who stands where the schoolchildren come out, and the cards are shuffled out. You know a child always takes a card under those circumstances, and the whisper is "Take this home to your parents, they will be interested."

We have letters from people who know that that, among other things, is done. I don't say that is the exclusive way of doing it. They are too ingenious to feel that they should be limited in doing a thing like that to schoolchildren.

A schoolchild takes that home. It is the American eagle carrying a telephone receiver and to a small degree the Liberty Bell, and he says to the parent, "I got this." The parent says, "A Yukon number so and so? Let's see what it is."

So they pick up the receiver and dial this number. In the living rooms of the homes of America. In the living rooms. So that listening to this "new message every Thursday" can become a national institution in the family circle, children listening to it.

Let me illustrate. We have, in my firm, a large lunch table where the members of the firm meet. I got this card. I took it up to the lunch table and everybody took out a pad at once and made a note of the telephone number. And everybody, as far as I could get the report next day, came to the lunch table and said, "I got this kind of a message." And I will show you in a moment what kind of a message it was.

You can see how insidious this is, and how it can become readily a guest, a hate-selling guest, in every home in America. That is its ambition.

I repeat, I am not here to plead for protection for the National Council of Churches alone, although I would be entitled to, for the 40 million people in its constituent communions. But I am here to plead for the homes of America that this thing be kept out of those homes.

They thought perhaps I would be impressed because when you look at this particular card that came to my desk, you will see in the usual handwriting that nobody can possibly identify because it is in print, not longhand, it says "This message will never stop ringing—traitor." Somebody enjoyed writing that. What a revelation of the inspiration: Mr. Tuttle, your letter has been distributed in the press. It comes from the National Council of Churches. But let us tell you, traitor, that this message will never stop ringing.

Gentlemen, the answer to that is with you.

Now, then, what happens from the monetary side? You haven't heard a word about that today. You call the number. And this is the way it ends. Almost invariably it says "Please send 25 or 50 cents, or $2, and we will send you, by way of further information, a tract." This is the way that is being stated in these messages. This is being hawked for money in the homes of America. Not hawked simply for the purpose of instilling hate, but for money, sir, for getting money out of the family purses. You send this 25 or 50 cents—when postage is only 5 cents—and we will send you a pamphlet for you to look at. And this pamphlet, when you get it, then says this: "This tract No. 9"—there are a score of them—"This tract No. 9 can be obtained at the rate of 100 copies for $2." That tract is about 3½ or 4 inches high, and about 3 wide, and it is folded over. It makes three pages, but it is printed on each side.

That tract, on the basis of mass printing, sir, would not cost $2. It can be printed in the mass for about 5 or 10 cents a hundred copies.

One of the operators of this in Sarasota, Fla., is out with a statement "We are not only increasing our stations all over the country, but we are building a central building here in Sarasota."

So that this can be institutionalized.

These people who want to impress me sent not only the "traitor" announcement, but they sent me a bunch of these tracts on every page of which somebody or something is libeled from start to finish.

The tract closes with this typical statement. Gentlemen, here it is right on the record: "Let's get millions of these tracts circulating throughout the Nation. Hurry, hurry, hurry. Get a copy in the hands of every voter in your community."

How much money do you think that means? Two dollars for these pamphlets costing 5 or 10 cents a hundred, asking every recipient of this message to constitute himself a messenger to "Hurry hurry, hurry," "get this tract into the hands of every voter."

My letter of October 21 laid all this before the telephone company, laid all this before the Federal Communications Commission, and all I heard today was talk about constitutional law and the difficulties which the first amendment presented.

The first amendment, as you surely know—and I have the authorities in my letter—does not expose the public of America to this kind of poison. Nor does it expose the public of America to be victimized by milking money out of them for the sale of hate.

There is a market for the sale of hate, of course. There are crackpots, some people who like to hate. The object here is to build a commercial market for the sale of hate. They mean to get in the profit.

Senator PASTORE. Do you mind if I interrupt you and ask you a question?

Mr. TUTTLE. No, sir.

Senator PASTORE. You are a distinguished lawyer and have been for more years than I suppose I have been an adult. In your opinion, how can you stop this?

Mr. TUTTLE. What is that?

Senator PASTORE. How do you stop this?

Mr. TUTTLE. I will answer that directly. You stop it by first having the Federal Communications Commission exercise its full jurisdiction.

Second, you stop it by not accepting the statement made here today by the Bell Telephone System's representative, that you should leave this matter to he Bell Telephone System.

Senator PASTORE. Could you be more specific?

Mr. TUTTLE. Beyond that, if the American people are not protected against this atmosphere injected into their own homes, I think that the Congress representing the American people should take action.

Senator PASTORE. If you will be a little more explicit. You know the old addage, "I don't agree with anything you say, and I will protect with my life your right to say it." That is the keystone of freedom of speech.

It is true this is poison; I quite agree with you. It is poisonous, and it is the propagation of hate. I even agree with that.

But at this point, as a legislator, and you as a great, distinuished lawyer, you tell me what is it that you do to stop it.

You say that the FCC should exercise its full jurisdiction. That is a pretty general statement. I say "amen" to that. But how? Under what right, under what legal right? You are a lawyer.

Mr. TUTTLE. I have given that a great deal of thought.

Senator PASTORE. I would like to hear you on this, Mr. Tuttle, because I am interested.

Mr. TUTTLE. The thing that will stop it, and perhaps the word "stop" may have a degree of meaning which I am undertaking to deal with now—it has been suggested that it will be enough to have the disclosure of the name in the message itself.

Let me tell you how that will work. You have to bear in mind that this thing is nationwide. All these localities. I have here in my letter a boast that "We are opening new stations now, just last month, in additional places."

The name, the name that will be included; is that name of any value? Is that name an honest name? What is the address? Think of the address when they say send money to a post office box. That is in the message. The irony of it is that the post office box is usually 1776, and it is a dead end.

An organization as ingenious as this, in my mind, is not going to find great formidableness in being asked to provide a name. Furthermore, what is the situation? This is going on in 50 cities. We can't have, the American people can't have, somebody sitting in each of these cities to test these numbers.

The way it works in our council is this: Somebody outraged in a council, we will say in San Francisco, telephones in to New York, as they do, and say "Have you heard just what I heard what is being said concerning the national council?" We haven't heard. But what was said about it?

Well, it went so fast—you had illustrations of it today—it went so fast that all we knew was that it was malignant and there were these general statements in it.

Did you get a copy of it? No, there wasn't time. I didn't know it was coming.

That happens in connection with these other organizations other than the national council, just what I am telling you. So what can the national council do, or they?

The statement is that they have redress to the courts. That comes in to this. All we have is somebody who can give us nothing but hearsay of an indefinite character. And probably it goes so fast they didn't even get the name, much less the address.

I am saying, and this is a point I want to make, Senator, that unless you have a requirement for the text which is used, the suggestion of recourse to the courts is merely an illusion.

I have been called upon to make a number of addresses from time to time over the radio on such inoffensive subjects as higher education, because I am a member of the Board of Higher Education in the city of New York, and on some religious or civic matters. I am always asked "Mr. Tuttle, have you a manuscript? We would like to put it in our library." I know what happens. Somebody goes into the library and scrutinizes it to see if anything is said that might get him into some kind of imaginary trouble.

Senator PASTORE. Are you saying, Mr. Tuttle, that any subscriber who applies for this kind of service or equipment, should be required by law to give a script of what the telephone conversation is?

Mr. TUTTLE. I am saying that I would recommend strongly that where the telephone company knows, either in advance or through immediate information, that this announcement system of theirs is being used by "Let Freedom Ring" (and everybody knows what that means, as a consequence), or that some like organization is using it for a like purpose, they should say, the radio people say in New York, "Mr. Requestor of an unrecorded telephone number, we found out what you are doing, and we will hereafter ask that you file a text." There will then be a chance, if we have to throw this back solely to the question of the civil remedy in the courts, which I would deplore—but if we have to throw it back to some civil remedy in the courts, that that civil remedy will be made available and meaningful.

It isn't possible to go around the country to different States and find out names when you haven't got the text, when you may not have any witness who can say anything except hearsay, which the court wouldn't accept at all.

It would never be allowed to go to a jury. It is an illusion. But knowing as they know—nobody has any doubt about what "Let Freedom Ring" is; that it is a trademark for the sale of hate. All they have to do, and they are perfectly aware of it, is to say, in the obvious public interest, we will ask you to file your text. That doesn't require anybody passing on the question of libel. It doesn't require any censorship at all. It is a simple thing that we suggest be done for the protection of the American people.

Senator PASTORE. Is it your feeling that the mere requirement of the furnishing of the text will serve as a lever for responsibility in making these other answers?

Mr. TUTTLE. I said this is one of the steps that I would strongly recommend. I am in favor of the principle of these bills. I am glad that this hearing is being held; and I know that the bills are intended for the purpose of protecting the public. Nevertheless I am pointing out that there is, in our judgment respectfully submitted, a further step in which in no way involves censorship or anything of the kind—simply to do what is being done by the radio companies, where the subject may be a little controversial, ask to furnish a script.

Higher education is controversial in many ways. Hence, I am asked to furnish my text, which I am glad to do.

And then I read either from the text or faithfully follow it in some summary form.

Senator PASTORE. Mr. Tuttle, you heard the testimony here of Mr. Thayer today, the representative of the telephone company, who said that they have many, many, many kinds of this equipment.

For instance, you pick up the telephone and you can get the schedule of an airline, you can get the weather report, you can get a multitude of things. Once you draw a law, then anything that is recorded and comes from a tape and is transmitted by a telephonic line, that the text should be rendered to the telephone company.

You see where that would become quite cumbersome? How would you feel about that? How do you make a distinction, in other words.

Mr. TUTTLE. I make the distinction in this way: That if the telephone company knows when an unrecorded number is asked for, it starts there. This isn't an ordinary use of the telephone; it isn't an ordinary use of the announcement system. It starts with asking for an unrecorded number.

If the telephone company knows at that time that this is for the interests of "Let Freedom Ring," they know what the consequence is going to be right then and there.

On the other hand, if it becomes obvious, as it has been from the information which the victims furnish to the telephone company, that it is being used for this kind of sale of hate, I don't see that it is any burdensome requirement, certainly not as burdensome as the burdens which the victims have to carry.

Senator PASTORE. Would you be interested to know that in one State where the telephone company has made it a condition in the filing of their tariff that "Let Freedom Ring" may be challenging this on constitutional grounds that it is a deprivation of the right of freedom of speech.

Mr. TUTTLE. I would be interested in it, because they are trying at that point to use, on the telephone system, the same thing that they tried to use on me.

Senator MCGEE. You partially cleared up one of your earlier statements which I hope the record will show was cleared up. I tried to jot down as accurately as I could your statement when you said that this thing must be kept out of those homes. You were saying the living room.

I think as it stands in the record, that only means one thing, that somehow, through some legislation or some mandatory policing system, you are going to abolish it. You obviously don't mean that. I hope you don't mean that.

Mr. TUTTLE. I proceeded at once to at least attempt to set forth a practical means by which that could be accomplished.

Senator MCGEE. I think that should be understood. You started out in much stronger language.

The things that we tolerate and the kind of freedom we believe in are just this sort of risky operation, though it may be aimed at destroying us all. I don't think we dare lay ourselves open on that.

You don't really propose that we abolish by an act of the Congress, "Let Freedom Ring." You just ask that we make them responsible for what they say.

Mr. TUTTLE. That is right, sir.

Senator MCGEE. Would you be happy in this legislation if we could determine verbiage, language, that would tend to insure the proper identification of the individual involved? You suggest a false name is the quickest way in the world to get rid of it. Surely we can be sharper than that and require a greater discipline than that, a greater responsibility than that.

Mr. TUTTLE. Senator, I can't shake off the feeling that the motivations and ingenuity back of this device, "Let Freedom Ring" would find means by which a man in New York City, finding a friend in San Francisco, calling him up and saying, "Did you hear what was said about you?" is not going to find any comfort at all in going to the person in San Francisco and through him going to the telephone company and saying, "Who was the man who did that?" I am quite sure that there is no genuine civil remedy back of that.

Senator MCGEE. No. But isn't there actually a logistical opportunity there?

Mr. TUTTLE. Oh, yes.

Senator MCGEE. This is on the telephone recorded message, what we are talking about now. Presumably for 10 cents he can get it played back again if he didn't get it straight, or he can get it transcribed if he is really interested in protecting his good name. You can call them long distance yourself. We have a list of numbers before us. It isn't an impossible a task as suggested; is it?

Mr. TUTTLE. Let me add this fact: Some of these pieces of information from councils around the country, from individuals around the country, who are members in one way or another of the National Council of Churches—and I have to speak of their experience, although I think it is duplicated in such an organization as the Anti-Defamation League and the Parent-Teachers Association—come in a week or so later. By the time they go through the office here there isn't any playback possible. This is a fresh message every week. And sometimes apparently it is more frequent than that.

All I am saying is the possibility of evasion should be, I respectfully submit, considered. The one thing that cannot be evaded is to assure, if we are to go back on the judicial remedy, that we have the text.

I have been through libel and slander cases quite a bit in my career. The courts are very, very strict, as I am sure you are aware, in having what exactly was said and not somebody else's hearsay opinion as to what was said. In fact a bill of particulars is the first thing, if you are a little indefinite.

Senator MCGEE. Are you saying to us then that if we can tighten up the identification and then require transcriptions of the message, that this would constitute a formula that in your judgment would be as fair as we can be and still not raise the question of eroding other freedoms?

Mr. TUTTLE. I would say that it would be a very substantial step forward here, far beyond the uncertainties that would otherwise be presented. It would be worth, in the interests of the American people—and I have to come back to that—trying as an effective remedy, limited to a field that we are dealing with here, the kind of field that a message from "Let Freedom Ring" presents to us.

I don't think that it would get very far if they knew they had to file their text when the telephone company or the Federal Communications Commission knew that it was an assembly line for the "sale of hate for profit."

Senator McGee. You wouldn't suggest they would abolish even if they knew all those things?

Mr. Tuttle. I was U.S. attorney during prohibition days and know what the difficulties of a flat prohibition is. I would have to study much further than I have the wording of any such flat prohibition. Those things are in a delicate field.

The National Council of Churches is as ardent as any other organization or set of people or individuals in the United States for free speech and against censorship.

Senator Pastore. In other words what you are saying, Mr. Tuttle, is that it will serve a twofold purpose: One, the mere fact that there is a compulsion in submitting the text would in a way shape up in better form the responsibilities of other answers and who is making them. And two, the matter of evidential proof. In order to prove the fact that that was the statement that was actually made, because it was submitted by the maker of the statement. Whereas anything else might just be hearsay or hard to prove or to connect by proximate cause to the actual utterance itself, the verification of it would be hard.

Mr. Tuttle. Nor do I see that it would be a burdensome requirement. When we talk of burdensome requirements we must weigh it in the scales of the burdens which this "Let Freedom Ring" and its imitators place on highly innocent people.

May I give you an illustration, just one?

What this means, here is a message of recent vintage. It says:

"Let Freedom Ring." Another fact ignored by the press that the Communist lining, National Council of Churches, is openly promoting bloodshed through armed revolution by Negroes. There is documented proof that Negroes are being armed for open revolution this summer. We urge our listeners to send a dollar donation to—

there is always a dollar or two in it—

We urge our listeners to send a dollar donation to box 654—

they give you the box number—

Sarasota, Fla., for our civil rights packet.

One of these pamphlets.

We also urge our listeners to purchase a rifle or pistol for home defense.

Suppose that advice were taken. Forget the libel on the National Council.

We repeat, we are not promoting insurrection as does the National Council of Churches. We are merely urging you to exercise your constitutional and God-given right to protect yourself and your loved ones.

Send a dollar and get that packet.

So I am saying, Senators, this is not an abstract question and I am not asking for anything that involves censorship or any necessity on anybody's part to play court. The thing is on its face, and they know it.

Let me say just one word about libel. There is, of course, as we all know, what the courts call libel per se, or libel on its face, and anybody can tell it. And the telegraph company takes care that it does not transmit statements libelous on their face, because their own regulations provide that anything that is libelous or defamatory on its face shall not be accepted. The consequences under the law are that a publisher of a libel which is libelous on its face is liable even though he is not the author. That is why the radio requires me to supply a text in advance.

Here we have an instance of what is unquestionably libelous on its face. It isn't theoretical. That is libelous on its face. Even a layman would know that. You don't have to play court. The law of libel is, as you know, that where there is a defamation that is libelous on its face, it is actionable prima facie, and it carries three presumptions with it, not conclusive presumptions but prima facie presumptions:

(1) That it is untrue.
(2) That it is issued with malice; and
(3) That it causes damage.

I had sometime ago to sue a rather large newspaper on behalf of a client for an article which was libelous on its face. They admitted publication. I merely put in the libel itself and admission of publication, and rested my case. The court said, "Defense, you overcome, if you can, the presumptions."

So we are dealing with communications in this particular instance which do not require a whole lot of legal considerations, for it is obvious on their face that they are libelous and defamatory and intended to be such.

I don't think that the victims should be put off simply because if we did go to court, somebody might attempt to prove it is true, not withstanding that is libelous on its face, or that it is privileged. That is the business of somebody else, not the telephone company.

Let me close, please, by calling your attention to one or two considerations. Because after all, as several of your questions suggested, there is the question of responsibility of the Federal Communications Commission. By what I am saying I am not criticizing the Federal Communications Commission. I want to make that clear. I have every respect for them.

Nor am I criticizing the telephone company. I can understand that they have certain burdens that they would like to avoid because while they are not an impoverished corporation they feel that it might throw a little too much weight on them to get what they can get easily—the manuscripts.

The Federal Communications Act provides, in so many words, in the very first section dealing with it, that their obligation under section 151 is, and I quote:

> The purpose of promoting safety of life and property through the use of wire and radio communications.

How can there be anything broader than that? Their responsibility is to promote safety of life and property through the use of wire and radio communications.

Of course, nobody is going to say that the word "life" is intended merely to mean the protection of physical existence. Life is much more than merely staying in the world of being and not being thrust into the world of nonbeing.

And property. There is no more vital piece of property, more precious piece of property, and nothing that is more capable of being devaluated if not destroyed by communications of this kind. So life and property—life, of course, means exactly the same thing as it means in the Declaration of Independence—the right to have a full existence.

Then section 154 of the same act says:

The Commission may perform any and all acts, make such rules and regulations and issue such orders not inconsistent with this chapter as may be necessary for the execution of its functions.

To wit, going back to section 151, promoting the safety of life and property.

You see, the word is "promoting," not merely defending but promoting the safety of life and property through use of wire and radio communications.

There have been, and I don't intend to talk about the brief because we have it in the letters; I will state one decision from one of our Circuit Courts of Appeals with certiorari denied by the Supreme Court, *Carbon Mountain Transmission Corp.* v. *Federal Communication Commission* (321 Fed. 2d 359, denied 375 U.S. 951). And the statement: "The protection of the public interest does not amount to censorship within the meaning of section 326."

There has been citation in the statement of the Federal Communications Commission to the recent decision of the Supreme Court of the United States in the *New York Times* case. That case does not hold, in fact it denies holding, that libel is protected by the first amendment.

All that case holds is that criticism of the public conduct of one who offers himself for office in a political campaign must be allowed to be pretty rugged. However, that case itself holds that the plaintiff can recover if he can prove that the opponent in the campaign or his allies stated something defamatory that he knew of be untrue, or that he knew that he didn't know whether it was true or not, and published recklessly.

Senators, I am deeply appreciative of the time and attention that you have given me. I will leave it with that. I will go along with the principle of these bills. But I would like to have this one additional easy requirement for the protection of the people, not of the national council but of the people in general, included, by the voluntary action of the Federal Communications Commission or by the voluntary action of the telephone companies; but if not, then by the body that is sitting to protect the life and property of the American people.

Senator PASTORE. Thank you very much, Mr. Tuttle.

At this point we will insert in the record the full statement of Mr. Tuttle, representing the Council of the Churches of Christ in the United States of America.

(The statement follows:)

STATEMENT ON BEHALF OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA BY CHARLES H. TUTTLE, GENERAL COUNSEL

An underground faceless organization, masking its identities under the ironical title of "Let Freedom Ring," is propagating itself in all the principal communities of the United States by means of the automatic announcement service of the Bell Telephone System.

By the use of this telephone service and within the anonymity with which this secret organization shrouds itself, it pursues three objectives.

The first is the use of the telephone wires, local and national, as an assembly line for the mass production of mass libels designed to poison our people with hate, prejudices, fright, dissension and disloyalty to the protection by law of the freedom of all.

The second objective is to stifle free expression of views which they wish to suppress; to force our educational system into molds whereby they can control thought; and, by labeling all opposition as disloyal and subversive, to achieve domination by their own minority.

The third objective is to create a commercial market for their sale of hate, and to route the money into the anonymity of a post office box with accountability to no one.

The immediate victims of this guerrilla warfare are some of our most distinguished citizens, living and dead, some of the distinguished leaders of our great religious bodies, some of our essential organs of government (including our Supreme Court), and all those public and private citizens and bodies who are championing civil rights for all our citizens and are striving to make meaningful the declaration of our Founding Fathers that all men are created equal.

But the long-range victims are our country itself and the American way of life.

One of the constant victims of this practice of character assassination by means of telephone facilities is the National Council of the Churches of Christ in the United States of America which is the cooperative agency of the principal Protestant and Orthodox communions in the country.

But, and this must be emphasized, the National Council is not coming before this subcommittee so much in its own right to have facilities under control of our Government not turned against it, but because of the council's deep and urgent concern as to whether this expanding scheme, arrogating to itself the name of Christianity and using the telephone facilities of our country to disrupt our country's essential solidarity, security, and free democratic system, is to be allowed to continue to enjoy immunity from effective governmental action.

The facts as to this misuse of the Bell Telephone System are well known to that system and to the Federal Communications Commission, and have been repeatedly placed before both in writing.

The following is a documented description.

First, there is secured from the local telephone station an unrecorded telephone number.

This unrecorded number is then printed in display type on a card of a size (3½ by 2 inches) easily carried in pocket or billfold. The only words on this card are: "Let Freedom Ring" and "New Message Every Thursday." In the center of the card is a flying American eagle carrying in its claws a telephone receiver.

This card is then broadcast by mail or pushers. One of the practices is to hand it to children as they leave school with the suggestion that their parents will be interested.

The intention is, by means of this card in conjunction with the automatic announcement service of the Bell Telephone System, to make every home in America addicted to these weekly messages and infected with their poison.

Persons thus ensnared into calling the unrecorded number will hear a quickly spoken venomous message which opens and closes with no identification other than "Let Freedom Ring," and, what is most important to the scheme, will also hear sensational advice in the name of aroused patriotism to send 25 or 50 cents at once, addressed to some post office box number, in return for which "more information" will be forwarded. The favorite post office box number is, ironically, "1776."

The pamphlets thus received are small folders of six printed pages, 3¼ by 6 inches in size. They usually close with a statement such as: "This 'tract' No. 9 can be obtained at the rate of 100 copies for $2." There then follows a post office box number.

One of these tracts typically closes with this: "Let's get millions of this 'tract' circulating throughout this Nation—Hurry, hurry, hurry! Get a copy into the hands of every voter in your community."

The "100 copies" for which the $2 is solicited could not, in mass printing, have cost more than 5 or 10 cents.

Thus the mechanism of the Bell Telephone System is the essential in the operation, expansion, and moneygetting of this nationwide undercover, masked organization.

The vicious character of these "tracts" thus hawked through the telephone system in our American homes for $2 per hundred copies, is manifested by the following few brief extracts:

"Americans: To save America from the Communist conspiracy." "Why Congress must thoroughly investigate the State Department." "The truth about the U.N." "Bondage to bondage." "They (a satanic force) are the (truly atheistic) 'National' and World Council of Churches." And so on.

How much money is thus gathered in and who gets it is presumably not ascertainable except by appropriate governmental action.

The National Council of the Churches of Christ is a frequent target of these scurrilous "messages" and pamphlets broadcast from coast to coast through the automatic announcement service of the Bell Telephone System.

An oft-used "message" viciously attacking the council is the following: "Let Freedom Ring!

"Another fact ignored by the press is that the Communist-lining National Council of Churches is openly promoting bloodshed through armed revolution by Negroes. There is documented proof that Negroes are being armed for open revolution this summer.

"We urge our listeners to send a dollar donation to Box 645, Sarasota, Fla., for our civil rights packet and we also urge our listeners to purchase a rifle or pistol for home defense. We are not—we repeat—we are not promoting insurrection as does the National Council of Churches. We are merely urging you to exercise your constitutional and God-given right to protect yourself and your loved ones."

Another much used viciously false "message" is the following:

"Let Freedom Ring. The National Council of Churches has from its beginning been under the control of Communists and Communist fellow travelers. Among the NCC's most vicious and anti-Christian spokesmen are Dr. Franklin H. Littell of the Chicago Theological Seminary. Littell was on the executive committee of the Communist front called the Methodist Federation of Social Action. Rev. Edward Dahlberg, former president of the National Council of Churches, has been supporting Communist causes for 20 years. Dr. Harry Ward, one of the founders of the original organization called the Federal Council of Churches, has been identified under oath as a Communist. But this is only a sample of the NCC's pro-Red leadership.

"Let us quote from hearings of the House Committee on Un-American Activities: 'Of the leadership of the National Council of Churches we have found over 100 persons with records of service to Communist causes. The aggregate affiliations of the leadership is now, according to our latest count, into the thousands.'

"With people like this in positions of power in the National Council of Churches is it any wonder that the NCC promotes literature so filthy that it cannot be sent through the mail, and that they financed a revolutionary training school at which a convicted homosexual acted as instructor?

"If your church belongs to the NCC we suggest that you make your next church pledge with the following restrictive statement: 'Payable within 1 year after date of withdrawal from the National Council of Churches."

"For more information on this satanic, pseudoreligious organization send 25 cents in coin to: Church Dictatorship, in care of Let Freedom Ring, Box 1776, Oakwood, Ill., Let Freedom Ring."

These defamatory messages and the broadcasting of their scripts by automatic announcement service are far within the law's definition of a publication which is libelous per se as tending on its face to expose a person to public contempt, aversion, disgrace and evil opinion, and which in consequence raises on its face prima facie presumptions of falsity, malice, and damage. (*Sidney* v. *Macfadden-Newspaper Pub. Corp.*, 242 N.Y. 296.) Since these messages are from recorded tape they constitute libel, not slander. (*Hartman* v. *Winchell*, 296 N.Y. 296.)

The documented facts are all fully known to and in the possession of the Bell Telephone System and the Federal Communications Commission. From the moment application is made to the Bell Telephone System anywhere in this country for an unrecorded telephone number and the automatic announcement service for the use of Let Freedom Ring, the Bell Telephone System knows precisely what the uses thereof will be, and what injurious consequences to innocent victims across the land are intended.

There is nothing in the 1st or 14th amendments to the Constitution of the United States which protects as "free speech" such systematized libelous publications and mechanized broadcastings thereof whether by the author or by any individual or corporation who knowingly aids or provides the facilities. They are not "within the area of constitutionally protected speech." (*Beauharnais* v. *Illinois*, 343 U.S. 250, 266.)

Neither amendment immunizes "the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words, those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." (*Times Film Corp.* v. *Chicago*, 365 U.S. 43, 48 (1961).)

This principle was expressly recognized in *New York Times* v. *Sullivan*, 376 U.S. 254, 268 (1964), but was held, in the special case of "expression critical of the official conduct of public officials," to be inapplicable except upon proof that the utterance was "with knowledge of its falsity or with reckless disregard of whether it was true or false."

The court concluded by holding that, in that particular case, there was no competent proof of such knowledge or recklessness by the Times.

Any effort at a civil remedy in any given locality would be frustrated by the fact that unlisted telephone numbers of this character are scattered throughout the United States and widely publicized according to a scheme which insures their repetition in various places and at various successive times and from various sources which would be found irresponsible even if ascertained. It is scattered like buckshot from a multibarreled shotgun.

Accordingly, the national council feels that this latest adaptation and systemized enlargement of this well-known method of defamation by anonymous "poison pen" letters is a matter which should receive urgent investigation and remedial attention by the Federal Communications Commission with the purpose of preventing this clandestine and abominable use of the services and facilities of a public system of communication existing and operating under Federal supervision and governmental regulation for the performance of honest public service only.

Obviously, if such practices as Let Freedom Ring—mass libels for profit—can take root as accepted in the United States, no one is secure and Government has defaulted in its primary duty of protecting its citizens and the security of the country.

Nor, under the circumstances here existing, does the plea of lack of power to "censor" have any substance. This is not a case of statements by a candidate campaigning for public office, and, therefore, not within section 315, title 47, United States Code.

No one can or should escape liability for aiding with facilities the systematic publishing of vicious statements libelous and intentionally defamatory on their face, by pleading that not so to aid would be censorship. Neither common nor statutory law confers such immunity.

For example, by decrying censorship, no newspaper could escape liability for lending its presses to the publication of a series of advertisements libelous or intentionally defamatory on their face. Nor could radio or television escape liability for such an offense against private and public rights.

Nor could such media escape liability for pleading that they are without judicial power to determine whether such statements libelous on their face might be defensible as true or privileged. Whoever publishes such libels or aids their publishing is bound to know that in law they are actionable on their face and constitute a prima facie case without more thereby, under the law, the publisher or aider or abetter assumes the risk and the burden of establishing that the injury done is justifiable in law for some factual reason not disclosed by the libelous material itself. These principles of law are elementary. (See sec. 207, title 47, United States Code.)

Indeed, the telephone companies themselves have asserted the right to refuse any use of interstate facility which violates the "condition that it will not be used for an unlawful purpose." Their right to do so has been upheld by the courts. (*Delaware Sports Service* v. *Diamond State Telephone Co.*, 214 F. Supp. 847, 851 [1965].)

Matter of Western Union Telegraph Company Tariff—(FCC 176, 4th revised, p. 15A), prohibits Western Union messages containing defamatory statements.

Among the purposes for which the Federal Communications Commission was created, as declared in title 47, section 151, is "the purpose of promoting safety of life and property through the use of wire and radio communication." The same section declares that the Commission is created to "execute and enforce the provisions of this chapter." Subdivision (i) of section 154 provides:

"The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary for the execution of its functions."

Surely, no one can be sure of "safety of life and property" if this insidious and unlawful system of proliferating fear, distrust, hysteria, strife, and hate to the point that "we also urge our listeners to purchase a rifle or pistol," is allowed to cancerize the public body by the very use of public facilities under public regulation and control for the very "purpose of promoting the safety of life and property."

The word "life" in section 151 means, of course, more than the mere maintenance of physical existence; and the word "property" includes the most precious and yet the most fragile of all assets—reputation.

Section 326 of title 47, United States Code, forbidding the Commission to exercise "censorship" over radio communications or interfere with "the right of free speech" is confined to radio's special field and cannot conceivably be applicable to the supplying by the Bell Telephone System of its automatic announcement service to "Let Freedom Ring" for what it knows to be the intended systematic broadcasting across the country of daily "messages" libelous and defamatory on their face and endangering the public's and the country's interest, peace, and security.

As said in *Carter Mountain Transmission Corp.* v. *F.C.C.* (321 F. 2d 359, 364, cert. denied, 375 U.S. 951):

"The protection of the public interest does not amount to 'censorship' within the meaning of section 326."

Hence, for all the reasons above stated and in the public interest the National Council of the Churches of Christ presses upon this subcommittee, as well as upon the Federal Communications Commission and the Bell Telephone System, the existence of a legal, moral, and public duty to terminate this scandalous misuse of a governmentally regulated facility of communication for the mass distribution of libel and for profiteering from the sale of hate.

In *Matter of Revocation of License of Mile High Stations, Inc.* (28 FCC 795 (1960) at 797), the Commission stated:

"Maintaining ultimate control over programing constitutes a most fundamental licensee obligation, and a licensee's unfamiliarity with the program content reflects an indifference tantamount in effect to abdication of control. In our opinion such conduct falls substantially short of that required of a licensee operating in the public interest."

Senator McGee. The next witness is Rev. W. J. McKnight. Is he here? I think you understand, Mr. McKnight, that we put Mr. Tuttle on yesterday at his request. We were trying to accommodate as many as we could. That was the reason we jumped the gun in this case.

STATEMENT OF REV. W. J. H. McKNIGHT, RECORDING SECRETARY, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

Reverend McKnight. That is quite all right. I do understand that to be the fact. Because of that fact, it is quite satisfactory from the standpoint of the speaker and of the general counsel if we may simply be assured that the testimony which has been prepared on the two pages which have been distributed is written into the record as part of the testimony offered by Judge Tuttle.

Senator McGee. Yes. That will be made a part of the record and will follow Mr. Tuttle's comments at that time. It will appear that way.

Reverend McKNIGHT. I can read it if you wish. I am satisfied to leave it with you.

Senator McGEE. If you are satisfied that way, the committee is satisfied. We had a rather thorough going over on this yesterday. We would appreciate that courtesy.

Reverend McKNIGHT. Thank you very much.

(The prepared text follows:)

STATEMENT ON BEHALF OF THE GENERAL COUNCIL OF THE GENERAL ASSEMBLY OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA BY REV. W. J. H. McKNIGHT

Mr. Chairman and members of the committee, the speaker serves as the elected recording secretary of the general assembly and the general board of the National Council of the Churches of Christ in the United States of America and as the associate secretary, an employee staff executive, of the general council of the General Assembly of the United Presbyterian Church in the United States of America. The general council, an administrative and coordinating organization of the United Presbyterian Church at the national level, is composed of elected members representng the 3,300,000 members of the denomination and additional members representing the boards and agencies of the total church, and is charged with the cultivation and promotion of the spiritual welfare of the whole church.

The primary purpose of this particular testimony before the Subcommittee on Communications is to bring to the attention of the committee an action by the general council at its meeting held October 21, 1965. Having been informed of the vigorous protest made by Judge Charles H. Tuttle, legal counsel of the National Council of the Churches of Christ in the U.S.A. against the "Let Freedom Ring" program, the general council expressed "appreciation to the National Council of Churches for its significant leadership in combating this particular evil and indicated its readiness to take such steps as might be considered advisable to give support to actions designed to eliminate this menace to the reputation of many individuals and organizations whose deep devotion to God and whose strong loyalty to this Nation contribute immeasurably to the strength and glory of church and country. The gravity of the situation is clearly set forth in Judge Tuttle's letter of complaint addressed to the Federal Communications Commission in which he stated that the "Let Freedom Ring" program was utilizing telephone equipment in "responding to widely disseminated unrecorded telephone numbers and thereby broadcasting, interstate and intrastate, anonymous flagrantly defamatory attacks and libels on individuals and institutions and sowing fear, distrust, strife, and hate through the communities of our land."

In implementation of the assurance given by the general council of the United Presbyterian Church to the National Council of Churches this supplementary statement is respectfully presented to the committee in record of profound concern that this system of the dissemination of unfounded accusations shall be thoroughly investigated and that such measures as may be necessary shall be taken to completely eradicate the employment of such facilities for the destructive purposes of such programs as that which masquerades under the slogan "Let Freedom Ring."

Such campaigns of violent attack and divisive suspicion and hatred threaten the unity and spirit of this Nation from within in a time when these are crucial to her strength and to her leadership among nations.

Such vicious communication of unsupported allegations and malicious misrepresentations irreparably injure the life and reputation of persons and institutions whose sound counsel and constructive leadership are essential to the realization of the noblest visions of society.

Under a powerful conviction that the need is alarmingly urgent and that the period of time for constructive action is alarmingly brief we join in petitioning prompt evaluation of the situation and strong corrective action.

Senator PASTORE. Is either Admiral Mott or Mr. Berger or Mr. Felknor in the room?

VOICE. Admiral Mott is not.

Senator PASTORE. These are the witnesses that were scheduled for tomorrow. We thought that we would have time to hear one of them now.

VOICE. Mr. Berger I believe will not be here until this evening in Washington.

Senator PASTORE. We will recess now until 9 o'clock tomorrow morning.

(Whereupon, at 4:10 p.m., the subcommittee was recessed to reconvene at 9 a.m. the following morning.)

ANONYMOUS USE OF AUTOMATIC TELEPHONE DEVICES

FRIDAY, NOVEMBER 19, 1965

U. S. SENATE, COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee reconvened at 9 a.m., in room 5110, New Senate Office Building, the Honorable John O. Pastore, chairman of the subcommittee, presiding.

Senator PASTORE. It is 9 o'clock. Our first witness this morning is Admiral Mott, representing the U.S. Independent Telephone Association.

Admiral, you may proceed.

STATEMENT OF ADM. WILLIAM C. MOTT (U.S. NAVY, RETIRED), U.S. INDEPENDENT TELEPHONE ASSOCIATION

Mr. MOTT. Mr. Chairman, I have a prepared statement. Many of the points which are made in my statement were made yesterday. I may skip over some of them as I go along.

Senator PASTORE. Why don't we insert your statement in the record in its entirety and then you can pick out the points you would like to emphasize this morning. It that all right?

Mr. MOTT. Thank you.

(The prepared text follows.)

Mr. Chairman and members of the committee, my name is William C. Mott. I am the executive vice president of the U.S. Independent Telephone Association, a trade association which represents over 2,500 independent (non-Bell) telephone companies. The members of this association appreciate the opportunity you have given me as their spokesman to make our views known on the proposed changes in the Communications Act of 1934 as set forth in S. 2693 and S. 2713.

It might be of interest to this committee to know that independent telephone companies serve over one-half the geographical service area of the United States. There are two States, Hawaii and Alaska, which are served in their entirety by independent telephone companies. Thus, we represent a substantial segment of the industry. We provide service to nearly 15 million telephones with a plant investment of $6 billion by more than a million stockholders.

All the members of this committee come from States with independent telephones. Some States like Indiana and Pennsylvania each have nearly a million independent telephones. One State, that of Chairman Pastore, has only a token number—one company with a little more than 100 telephones.

We are, as the name implies, an independent group of companies, including both the large and small. We try new things in the American tradition of free enterprise. Our industry was the first to install the dial telephone. We pioneered the answering and recording equipment about which we are concerned today. The first equipment on the market originated in Sumter, S.C., in the middle or late 1930's. The trade publication, Telephony's Directory, for 1941

advertised to our independent telephone companies "The Mechanical Secretary." It was described as "amazing", "most interesting," "a new source of income." (A copy of the ad is submitted for the record.) It was manufactured by the Peatrophone Co. and was displayed as attached to an old-style, oval base, hand-set telephone with a separate bell box.

An ad in the same publication in the year 1944 showed the "Improved Peatrophone"—now displayed with a hand-set telephone with a ringer in its base. In 1951 it was a full page ad. The equipment looked like a complex portable recorder-phonograph.

Today our companies, like the Bell System, have in the main three types of equipment:

(a) Automatic answering which rents for $7 to $8 per month per line and up.

(b) Automatic answering and recording, $15 per line and up.

(c) Recorder-connector tone device, $3.50 per month and up which permits the subscriber to attach his own equipment.

Today there are a half dozen manufacturers of automatic answering equipment for our telephone companies. A new company just announced its entry into the field on October 20, 1965. The Japanese are reported interested in introducing their product. These half dozen companies plus the Western Electric Co. constitute the source of supply for the announcement devices in which the committee is interested today.

The largest independent manufacturer of announcement devices, Electronic Secretary Industries, reports that it has manufactured a total of 20,000 modern units, some for the Bell System. It is estimated that from 12,000 to 15,000 units are in actual service in our segment of the industry. We doubt whether there are more than 8 to 10 "Let Freedom Ring" stations in this total (we can identify only 6).

The announcement and announcement-recorder services are of considerable benefit to the small businesses in our rural communities. Doctors, lawyers, artificial inseminators, plumbers, insurance salesmen, ministers, even volunteer fire departments use them. Practically all are the type of telephone service which would be listed in the directory.

Many of these devices are used intermittently, for example, a doctor's equipment is not in use when the doctor or his secretary is taking calls. For the most part these are now "tape" machines. The day of the record "disc" is passing. No record need be maintained. Surveillance of use would be most impractical. Monitoring of changing messages and alternating live voice and record use would present a near insurmountable task.

The independent's principal problems to date have not been what we are considering today. One has been the completion of a toll call into an announcement-recorder device. Some toll users feel "cheated" when they are answered by a recording. There are other problems, not big in the overall, with these services. For example, there are occasions when callers will leave obnoxious or annoying messages on the tapes of answering recorder subscribers.

Telephone announcement services are relatively new. Uses to which these services are put increase every year. For example, the Railway Express only a few years ago installed an answering-recording service in a one-man office to take "pick up" requests while the office was unattended. Today Railway Express has 250 sets in service in its widespread one-man offices. In my home we order milk and eggs through an electronic recorder. Electronic Secretary now manufactures an "electronic sentry." Fire alarms, burglar, and other devices cause the equipment to dial a predetermined telephone and transmit a prerecorded warning message.

The announcement service that had much to do with precipitating the bills which are the subject of this hearing as well as the letters of complaint which have been written to the Federal Communications Commission is one called "Let Freedom Ring." I think the committee should understand that this particular service is a very small part of the announcement and answering services furnished by independent telephone companies. These services are provided on one in a thousand telephones. "Let Freedom Ring" is provided roughly in about 1 in 1,000 of the answering services supplied. Through a simple process of multiplication of these two factors we find that "Let Freedom Ring" is a one in a million service.

Thus, our companies have to find a solution which would prevent a one in a million service from masking its service under the cloak of anonymity without

punishing or placing an undue burden on the thousands of other subscribers to announcing and answering services.

Each and every independent telephone company which to our knowledge has found itself faced with this problem has taken prompt steps through recommended tariff changes to remove the mask of anonymity if one existed. I say "if one existed" because our research has indicated that most of these "Let Freedom Ring" stations are already listed in the various telephone directories. I have with me, for instance, the telephone directory for Sarasota, Fla., which not only lists "Let Freedom Ring" but gives as its address 6916 Point of Rocks Road in Sarasota (since changed in telephone company records to 730 Norsota Way). Similarly the directory for the United Telephone Co. of the Carolinas lists "Let Freedom Ring" at Morgantown Road in Southern Pines. Both of these directories happen to cover independent telephone territory.

It has further come to our attention that "Let Freedom Ring" is incorporated as a nonprofit organization authorized to do business in the State of Florida. At the time of filing with the secretary of state it was indicated as doing business in Miami, Clearwater, and Sarasota.

Be that as it may, wherever independent telephone companies have been faced with a possibility of a mask of anonymity being used to hide a sponsor's identity, prompt steps have been taken leading toward the filing of a tariff which would set up conditions removing such anonymity. At this point I would like to submit for the record separate evidences of tariff actions already taken by our companies. The first is an instruction sent out by the General System, our largest member, to its operating vice presidents. I believe you will find the instruction speaks for itself. The second two filings are identical and emanate from the United Telephone Co. of the Carolinas to the North and South Carolina Commissions and from the Carolina Telephone & Telegraph Co. to the North Carolina Commission.

While these suggested tariff changes vary slightly in scope, they would all effectively remove any anonymous character from the sponsor of the message.

The U.S. Independent Telephone Association is of course a trade association and it does not undertake as the Bell System can to, in effect, dictate to its member companies the position they should take when faced with a particular situation. As a trade association we can only formulate a position which is then sent out to our companies as a recommendation. We are now in the process of formulating such a position through our commercial committee. The recommendation of the commercial committee in the premises will be taken to the executive committee of our board of directors and when approved by it will be circulated to our members.

It would be my hope and this hope is echoed by the officers of our association that the Congress of the United States would be content to let regulation of this matter lie with the State Commissions where in our judgment it properly belongs. The very fact that many State commissions have already moved through approval of tariffs indicates that the public will be protected.

Thus, we who represent the independent telephone industry find ourselves completely in sympathy with the objectives of this committee of the Congress insofar as stripping the anonymous character of messages such as those emanating from "Let Freedom Ring" stations. We feel, however, that it would be unfair to the vast majority of announcement and answering service subscribers to impose conditions upon them in order to control an infinitesimal few. We also feel that it would be unfair to burden the telephone company with excess and unnecessary recordkeeping or burdensome monitoring procedures. Furthermore, it would be manifestly unfair to impose upon the telephone company a criminal or civil liability for an act of omission or commission on the part of a subscriber.

The McGee bill, for instance, would hold the telephone company criminally liable for an announcement service customer who did not identify himself in the message. Recording tapes can be changed at will, equipment can be switched on and off, and a subscriber might even through inadvertance omit his name and address in a single recording. The only way the telephone company could protect itself would be by a constant and expensive surveillance. The economic burden of such a surveillance would fall on subscribers at large. Furthermore, it should be noted that no exceptions are provided for in the McGee bill, not even such factual announcements as time, weather, airline information, etc.

Similarly, the keeping of libraries of recorded messages or of transcriptions in the telephone company such as one complainant suggested would be an unwarranted and expensive administrative burden upon the company.

The McGee bill would also require the telephone company to maintain a file of all subscribers having a telephone which is connected into any message toll telephone system which the company operates and which the company knows is used for the transmission of a recorded message. I can't find much objection to requiring the telephone company to keep this information and furnish it upon request, but I do think it objectionable that such a file should be kept in a separate place and "open to the public" as the bill would require. So long as anyone with a legitimate interest can get the name and address of a subscriber using recording announcement service, the telephone company should not be burdened with keeping a separate file which might be used for "fishing expeditions."

The Javits bill would go further than the McGee bill in that it would require the user to give his identity and address in the message, and if the message is on behalf of another, the name and address of another must be given, or if an organization, at least one responsible officer must be named. It seems to us that this would be an unfair burden on the innocent subscriber. Furthermore, to include all of this information at paid rates would take up a goodly percentage of a short message. To require the telephone company under FCC regulations to sort out the innocent from the suspect would represent an intolerable burden.

In sum, we feel that if the telephone company is willing to keep on file the needed information and give it upon request, this should be sufficient to satisfy anyone who has a libel suit in mind.

It might be of interest to the committee to know that the grandfather of all "Let Freedom Ring" stations is located in independent territory in Sarasota, Fla. Before coming to this hearing, I checked the telephone facilities provided to Dr. W. C. Douglass, who has been described as the originator of the "Let Freedom Ring" messages and about whom the complaints which brought about this hearing seem to be principally concerned. Dr. Douglass has a business line equipped with automatic answering equipment at Sarasota, Fla., under the telephone number area code 813–924–1311. Anyone, including the chairman of the committee, can dial this number after looking it up in the Sarasota telephone directory.

The equipment used by Dr. Douglass is a magnetic tape and such tape can, of course, be changed at will by the user. The General Telephone Co. of Florida reports that it is not aware of any local newspaper advertising of this particular number but outdoor advertising has been used. So far as the local telephone company is aware, no cause of action is pending against Dr. Douglass concerning the use of the service and no telephone company records have been subpenaed by any court. As a matter of information to the committee, I submit for the record a copy of a "Let Freedom Ring" message which was recorded in Sarasota on November 8, 1965. While it does not express sentiments that I would care to echo neither does it in my opinion libel anyone.

Were it libelous, in the opinion of a person mentioned in the message, I would think that person would have all evidence needed to institute an action in the courts of Florida. This is exactly where we in the telephone business would like to see any determination of libel end up in the courts. We want no part of having to decide even preliminarily what is libelous and what is not.

In conclusion, the U.S. Independent Telephone Association is of the opinion that Federal legislation is not warranted at this time in order to correct the practices indulged in by a very small number of announcement and recording service subscribers. This is especially true when measures already initiated at the local level will remove the major source of concern thus far expressed.

I am grateful to the committee for this opportunity to express our views.

[Attachment 1]

G.T. & E. SERVICE CORP.,
New York, N.Y., November 17, 1965.

To: All domestic operating vice presidents.
Subject: Automatic announcement services.

GENTLEMEN: Due to the misuse which is being made of automatic announcement services by a very small segment of our customers, it has become necessary to establish certain conditions to their use. This action is necessary because of complaint made to the Federal Communications Commission by Anti-Defamation League of B'nai B'rith, the National Council of Churches, and the National Council of Parents & Teachers.

Each of the above-named organizations has requested in its complaint that the names and addresses of the sponsors of automatic announcement service messages be made available to destroy the anonymity which these people now enjoy. Since most of these services are provided to our customers on a nonpublished basis, it becomes necessary to modify our tariffs for nonpublished service to provide the requested information.

Accordingly, we recommend that you take steps immediately to condition your tariffs and operating practices to provide the name and address of each customer of automatic announcement service upon request and where the requesting party will provide the telephone number of the automatic service of which he is requesting information. Details concerning the revised commercial and traffic practices will be forwarded to the affected departments by the commercial and traffic directors here at the service corporation. If you anticipate any problem in the establishment of this policy, please let me know.

Yours very truly,

GEORGE H. GAGE,
Vice President, Telephone Operations Staff.

[Attachment 2]

EXTRACT FROM TARIFFS OF CAROLINA TELEPHONE & TELEGRAPH CO., TARBORO, N.C., AND UNITED TELEPHONE CO. OF THE CAROLINAS, SOUTHERN PINES, N.C.

Add to the General Exchange Tariff, section 28, entitled "Rules and Regulations Applying to all Subscriber's Contracts," as the next numbered paragraph at the end of the section, the following:

Use of telephone company facilities or service in connection with automatic announcement service, automatic answering and recording service, recorder-coupler service, or miscellaneous devices for recorded public announcements are subject to the following conditions: [1]

(*a*) For purposes of identification, subscribers to telephone service who transmit recorded public announcements over facilities provided by the company must include in the recorded message the name of the organization or individual responsible for the service and the address at which the service is provided.

(*b*) Subscribers transmitting factual public announcements such as time, stock market quotations, airline schedules, and similar information are excluded from the preceding condition.

(*c*) Nonpublished telephone service will not be furnished for use with recorded public announcements.

(*d*) Failure to comply with the provisions of this tariff shall be cause for termination of the service.

[Attachment 3]

[Recording, "Let Freedom Ring," Sarasota, Fla., 924–1311, Nov. 8, 1965]

Let freedom ring.

President Johnson says, "This is war," but what he neglected to say about Vietnam was that the American Government is cooperating with world communism in putting just enough men and materials into the war not to win, but enough to eventually bleed us white and bankrupt the Nation. American coffins are stacked higher every day in Vietnam, but Asiatics, such as the Filipinos, the Japanese, and the Nationalist Chinese, are not being used to fight Asia's war with communism. Walter Lippmann, long a mouthpiece for the administration, says that victory is impossible in Vietnam, and our State Department has admitted that victory over communism is not our goal, so Americans are beginning to ask, "What are we dying for in Vietnam if we don't intend to win?" The answer is that the Vietnamese war is a gruesome and carefully managed stage play designed to hypnotize the American people into believing that their Government is fighting communism. From Senator Thurmond's report to the people we quote: "The one major world power with most to gain from a major U.S. ground war in Asia is not the United States, not Red China, but the Soviet Union."

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[1] Number as appropriate.

To win the war in China it would be necessary to bring to bear our real power advantage, air and sea power. In the final analysis there is no realistic middle ground. We must either apply our power to win the war or get out, either now by surrendering, or later through negotiations. We cannot escape the immutable truth of General MacArthur, who said, "There is no substitute for victory."

For a clear understanding of the Vietnamese tragedy, send $1 for the 285-page book, "Background to Betrayal." Send your $1 to Betrayal, Post Office Box 1775, Sarasota, Fla.

Let freedom ring.

Mr. MOTT. My name is William C. Mott. I am the executive vice president of the United States Independent Telephone Association, a trade association which represents some 2,500 independent—that is to say, non-Bell—telephone companies. The members of this association appreciate the opportunity, Senator, that you have given to me as their spokesman to make our views known to this committee.

I propose to comment on changes in the Communications Act which are represented in the two bills before the committee this morning.

It might be of interest to the committee to know that the independent telephone companies in he United States serve over one-half of the geographic area of the United States. There are two States, Hawaii and Alaska, which are served in their entirety by independent telephone companies.

Incidentally, because the question came up here yesterday, I had a long talk with the Hawaiian company last night. While they have no "Let Freedom Ring" stations in Hawaii, happily, they say that they would not be adverse to modifying their tariffs to remove the mask of anonymity were such an event to occur, or even if it did not occur. I feel certain that since the General Co., which has already taken steps to modify its tariffs, has a subsidiary in Alaska, that steps will be taken in that State as well to remove any screen of anonymity.

Senator PASTORE. Let me ask you this, Admiral, along the lines developed by Mr. Tuttle yesterday afternoon. You weren't here yesterday afternoon?

Mr. MOTT. No, sir; but I read Mr. Tuttle's statement last night.

Senator PASTORE. He made quite an emphatic statement with reference to the rendering of a text, of a statement. I realize that fundamentally we must preserve in every fashion possible the freedom of speech. I don't think we want to encroach upon that. I don't think we even ought to debate it, because everyone is in agreement with that principle. Senator McGee and I have made that very, very clear. There is no attempt here to infringe or to impinge or to encroach upon the liberty of a man to say what he thinks, provided of course that there are certain limitations that recognize rights of other individuals when they are libeled or slandered or defamed or disparaged.

It appears that many of these controversial subjects will be discussed more and more and more as time goes on, as the media of communication continues to expand and grow.

If you go to a broadcaster especially during a campaign when there are many things said sometimes in exaggerated form, these stations may require that you furnish a text, because they don't feel that their media should be used or abused in such a way that other people are maligned, whether it be unjustly or not. If the telephone system is going to get in this area of transmitting over their equipment, statements that are taped and statements over which they have no control,

and naturally they don't know what damage has been done until the statement has been uttered and then it might be too late, what would be wrong in following that suggestion made by Mr. Tuttle in giving the Federal Communications Commission the authority to institute a rule, with certain exceptions, to afford protection to the public?

For example, on weather reporting, they could exempt that. Or schedules of airlines, that could be exempted. Or a person who calls up and wants to make a complaint about his television set and is told that the place doesn't open until 10 o'clock, but if you leave your name and address we will call you back. Exempt those cases because that is not an issue here.

But rules provided in those instances where these controversial subjects, these political issues, or these society issues are being discussed so freely by people—and they should be discussed—I have no opposition to that. Where the telephone company, which is a monopoly in that location and is a fine media of communication between people and people, what is so wrong in the telephone company saying, "All right, if you want to put on this equipment, we don't want to tell you what you are going to write, but you are going to tell us what you will say, because we want to put it on file, and if you say anything that subjects you to any kind of action, that individual is entitled to have a document which would be the basis of proof for any slanderous or libel that was committed."

What is wrong with that?

Mr. MOTT. I think it would be terribly difficult, Senator, to monitor, terribly difficult to control, without doing violence to the freedom of speech which you mentioned.

For instance, in the operation of the Let Freedom Ring station, as I understand it, Dr. Douglass puts out certain suggested scripts to a wide list of subscribers. However, the subscribers have the liberty of modifying those scripts if they wish.

One of the subscribers happens to be an independent territory down in Southern Pines, N.C. She has stated that she doesn't go along with everything that Dr. Douglass says and reserves the right to modify the scripts as she goes along.

Senator PASTORE. I didn't say that. I didn't say you should monitor or censor anything. All I am saying is that you require a script and you put it on file.

Senator MCGEE. Couldn't you require her to submit a script?

Mr. MOTT. Yes, sir; under a filed tariff——

Senator PASTORE. Of anything that is recorded and stated.

Mr. MOTT. You can change these things 20 times a day. What is she going to do, run down to the telephone company every time she changes the script?

Senator PASTORE. That is the point, she would not change it 20 times a day if she was charged with this responsibility. That is what I am getting at, this vacillation, this irresponsibility, and this fickleness and this frivolousness. Those are the things that are affecting this whole issue.

Mr. MOTT. Senator, it isn't difficult to make a recording of one of these speeches. I made three of them last night. All you have to do is to make a recording and you have the script yourself. Why should

you put the burden on the telephone company of keeping files and files and files of libraries of these things when the person who listens to it can do it so easily?

For instance, a mutual friend of Senator McGee's and mine made a speech in Pittsburgh the other night to the Presbyterian Church. She was there, she and her husband were picketed by the John Birch Society. One of these Let Freedom Ring stations had a program on about her, and I refer to Bonaro Overstreet, Senator.

I called her up afterward and said, "Bonaro, what did they say about you?"

She said, "The usual diatribe that they always say about Harry and me, half-truths and so on."

Senator PASTORE. Let's assume there was a libelous statement. How would she prove it in court? How would she prove it was said if they are going to change it in 5 minutes?

Mr. MOTT. She gets a recording of it.

Senator PASTORE. How is she going to prove that that recording reflects that statement? I am talking about proof. How is she going to prove that that is the statement that was made?

Mr. MOTT. Senator, I know you are a distinguished lawyer. I took this question up with a number of lawyers in Florida last night. I talked to them at great length, people who have had experience in trying libel cases. They said there wouldn't be any difficulty at all. You get the statement—Dr. Douglass' organization is incorporated in the State of Florida. In fact they said you wouldn't even need to know the name at the time of recording because you could go in to the telephone company with a John Doe warrant and get it later.

So you are here talking about degree, how easy are you going to make it for these people to sue. It seems to me if Mr. Tuttle wanted to sue, and nobody has sued Dr. Douglass in Florida, he could take his legal talents down there and sue him. It wouldn't be difficult for him to institute a cause of action in libel if indeed he met the criteria for libel which he defined here yesterday. It is just a question of degree.

Senator PASTORE. It is just a question of which side you are on. If you were representing Mr. Tuttle you would like to have the statement. That is the point. If you represent the telephone company, you don't want to take the bother. That is about as simple as it is. But after all, somebody here is going to protect the public.

All I am saying, Admiral, is this: If we are going to get into a widespread, expansive use of this kind of media, the public has to be protected. Whether it causes a burden for people who do it for a profit is another question. I think the human rights are much more valuable and much more precious than any inconvenience that may be caused the telephone company.

I am not talking about how easy you are going to make it to sue. I am going to talk about how easy it is going to be to protect the public. That is what is disturbing me.

You wouldn't like it either, if 50 or 60 stations began to talk about Admiral Mott and what kind of a guy he is.

Mr. MOTT. They already have.

Senator PASTORE. You wouldn't like it either, and this idea that you say if Admiral Mott doesn't like it, let him bring a suit, I am not concerned about that.

All I am saying is this, that if these people want to indulge in this sort of communication, there ought to be some responsibility in order to protect the public.

The serious question here, and that is our function—our function here is not to regard how inconvenient it is going to be for the telephone company, because first of all the telephone company is a monopoly. Whatever inconvenience they undergo, they pass it on to the consumer. But if you are going to have this kind of media, and this is going to disturb so many people, like the Council of Churches of Christ in America that has 40 million members, if we are going to leave loopholes in its use, and if the media is used in such a way as to allege that the President of the United States is a traitor, questions are raised about the character and background of every member of the Supreme Court, if we are going to have that kind of thing through a telephone system, which is a monopoly, whose opportunity for profits are guaranteed by law, I say if this is going to become widespread, I don't care to accept this argument that we are going to have files and files and files of statements on file.

I mean, Admiral Mott, let's talk man to man here.

Mr. MOTT. I will be glad to. First of all let me point out that the profits of the telephone company are not guaranteed by law.

Senator PASTORE. Of course they are. By law you are guaranteed a certain return on your investment; that is, afforded an opportunity to do so under prudent management. And if you don't make it, you raise your rate. I have been a Governor. I know all about this. Of course it is a sort of guarantee.

Mr. MOTT. I am afraid that is not true, sir.

Senator PASTORE. Well, I know it is true. I don't know of any monopoly of any telephone company that has gone bankrupt. And now don't tell me that the independent telephone companies of this country are losing money without reason.

Mr. MOTT. Some of them are not making as large a rate of return as others.

Senator PASTORE. I know that, but they are not losing money. No one is in the red without reason. And you don't represent one firm that is in the red without reason. And if you do, state it.

I want to impress upon you people here that we are only interested in the public interest.

Mr. MOTT. We are interested in the public interest.

Senator PASTORE. This idea that we are simplifying the rights of a person to sue doesn't just strike me correctly. That isn't what we are trying to do here. We are not trying to make it easy for anybody to sue. What we are trying to do, we are trying to protect the public. And at the same time not injure a man's right to say anything he thinks. But all we are saying is, if you want to take this liberty and this privilege, you file a statement; you file a statement of what you are going to say, so that we know beforehand what you are going to say.

And if you don't do it, we will deny you the privilege and the license of using this media.

That is the question before us.

All right, Admiral.

Senator McGee. Admiral, if this were made a requirement both ways, that is, this would be required of the lady in South Carolina or the doctor in Sarasota, Fla., or whoever else it is in these other—now well more than a hundred communities, according to the testimony yesterday—this in itself becomes an initiating obligation on their part, too; does it not? It isn't strictly on the telephone companies. If they know that this is the regulation?

Mr. Mott. It is an obligation put on them, naturally.

Senator McGee. Wouldn't this be a regulatory factor from the standpoint of the disposition of the lady in South Carolina, or the doctor in Sarasota, to change it every 5 minutes? I don't see that that introduces a new factor that would be unduly burdensome to you or to your company. I would think the burden would be more on whoever wanted to change their statement that often, because they have——

Mr. Mott. It would be a burden on them.

Senator McGee. Not without some cause.

Mr. Mott. It depends on which side you are on.

Senator Pastore. That is right. We are coming back to what I said.

Mr. Mott. Yes, sir. I want to point out that whenever you put a burden on the telephone company, you put a burden on the public, and you are in a sense not protecting the public because any cost that the telephone company incurs has to be passed on to the public.

Senator McGee. Sure. This is just what Senator Pastore was saying to you a moment ago. If we follow that logic through, we will take off all regulation and turn you loose. The history of the past has suggested that in the public interest we are making real progress in protecting your interest and the public interest at the same time.

It seems to me that is no argument at all. We are talking about living up to responsibility. You have a media here that has through technocracy become so considerable in its impact potential, so efficient in its operation devices, that we are simply saying that responsibility to the public interest keep pace with scientific and technological breakthroughs. And it is the lag between the two that has brought this question up right here.

Senator Pastore. There is another point, too, if we may discuss this further. It has been my experience, it has been my practical experience, that where a script is required by a broadcasting station during the campaign, that, in itself, brings about a certain sense of responsibility in avoiding scurrilous statements. I know that in many instances where the script was not required, and a person was allowed to run loose, in some instance they had to shut him off.

When a person knows that he is going to be held responsible for what he says, and when that person knows what he has got to say beforehand and furnish a text of what he is going to say about another individual, that, in itself, serves as a certain mark of responsibility in being careful what you say about other people. And that is the thing that I feel that in many instances could be used as a deterrent against this.

I realize there is a certain amount of burden involved, and I don't think it ought to be done in every case. But I think we could very well say that where another man's name is used by any individual without his permission in any scurrilous or defamatory way, that statement has to be submitted beforehand.

Mr. MOTT. Who judges whether it is in a scurrilous or defamatory way? Who judges whether it is? This is the difficulty that is involved in this case, it seems to me. How do you differentiate between what is scurrilous and what is not?

For instance, in one of the ones that I recorded last night, Chief Parker, of the Los Angeles police, is quoted. He is alleged to have said:

> The police are now being relegated to the same level as the criminal. The police always find themselves on the defensive in an attempt to justify what they do. This downgrading of the police cannot continue if America as we have known it is to survive.

Senator MCGEE. You don't have to make that decision in the proposal, as I understand it. You simply require that on all of these categories, except the perfunctory ones of weather——

Mr. MOTT. That is the difficulty. It is that exception. How do you differentiate?

Senator MCGEE. You can't differentiate between a controversial issue and the weather report, or a report on the timetables of airlines, or on a prayer.

Mr. MOTT. Well, I don't know. Some prayers can be controversial, too.

Senator PASTORE. All right, let's follow you through, Mr. Mott.

First of all, in the one you have read, nobody's name is mentioned in any derogatory way. It merely quotes this chief in a very abstract fashion. Take a look at this one: "How long will the American people put up with treason right in the White House itself?" You don't have to use much imagination to require a statement on that, do you?

Mr. MOTT. No, you don't. And, of course, this is said in a wide variety of forums. I heard on the radio coming in here this morning where the chief of police, Chief Clark, said even worse things about the President last night in Denver before thousands of people.

Senator PASTORE. In that case, you require a statement. What is wrong? All you are asking them is to put in a script, and you can require it in every case.

How do you like this one for size: "The Civil Rights Act will turn America into a Fascist state practically overnight. No business, no church, no club, public or private, would be free of the evil smell of Bobby Kennedy's marshals and spies."

You don't have to use much imagination on that, do you?

Mr. MOTT. No, sir. But what would you gain by having that filed at the telephone company? Do you consider that that is defamatory?

Senator PASTORE. No, but I think that the statement wouldn't have been made in such a rough fashion.

I think when you impose a responsibility on people——

Mr. MOTT. Aren't you coming back to that inscription, Senator, on the inside of the State House dome in Rhode Island, "Rare felicity of the times when it is permitted to think as you like, and say what you think."

Senator PASTORE. That's right. Why do I impinge upon that? I am not telling these people they can't say it. All I am saying is if you are going to say it, submit your script before you say it.

I am not saying that you have to stop them from saying it. All I am saying is that your requirement is not to deny them the service. No matter what they say, your requirement is that they shall furnish you the text. That is all; that is all.

You don't have to judge anything. All you have to say is we feel you should give us the text. That is all. And you put it on file.

I am not saying you have to read it. You don't even have to read it. But if I come to you and I say I would like to have the text that they put in, then you give me a copy of it. They do it in radio; they do it in television; why can't you do it on the telephone if you are going to get into the same kind of thing?

Why does the telephone, if you are going to get in the same area, differ from radio and television? Unless we turned around and said we wouldn't want you to do this, to make you responsible for a slander suit, because you are a party to the publication of it. Would you want to assume that responsibility?

A newspaper today, if I make a slanderous statement about you and they print it, I can sue the newspaper, and they are not free from it. You wouldn't want me to sue the telephone company because you didn't make the recording. But you were an instrument in publishing a scandalous statement. You gave it wide publicity. You are a party to it, whether you did it knowingly or unknowingly. You wouldn't want me to make you responsible, would you?

Mr. MOTT. No, sir.

Senator PASTORE. I don't want to make you responsible. Yet, even innocently, you could become a party to a nefarious act.

Why, if "X" said "Y" was a crook and they used the telephone to publish that among a whole community of people, why would the telephone company be any different than a newspaper that gave the same widespread publicity to a slanderous statement? And that is the point. And we are trying to protect you against this responsibility because there isn't a person here that wants to hold the telephone company responsible.

I think a good point was made here yesterday by Mr. Thayer, who said that if there is going to be any criminality involved, that it should be on the individual who puts the voice on, rather than the telephone company that allows it to be transmitted.

Mr. MOTT. We agree with that.

Senator PASTORE. I agree with that. I think that makes sense, because in many, many cases, if you are not a party or have no control over the making of the tape, I don't think that you ought to be held responsible for what is said. And I am not saying that you ought to be held responsible for it or that you ought to become a censor of it. All I am saying is that in these cases there ought to be some kind of a rule where the text ought to be submitted and kept on file.

I could be wrong about this, but I am afraid that the public interest, if this thing becomes widespread and widespread and widespread—and today it is Let Freedom Ring, and tomorrow it will be somebody else, and somebody else—you are just going to permeate this thing through the entire fabric of the American society—especially today in the world of communications, when it has the biggest impact upon

people, upon the development of any society, whether it is radio, television, or telephonic.

I am afraid that we are in a very, very perilous age. And I think that without impinging upon the freedom of speech, that we can do some things here that will knock some responsibility in this whole area.

Senator McGee. I would like to raise a tangential question to that, and that is, aren't there photostatic or recording facilities that we have in most of our libraries that would make possible the preservation of these records, even the storing of them, to protect this kind of situation?

You make it out to be a troublesome operation. I wonder how really troublesome it is.

Mr. Mott. Senator, there isn't any question but what it could be done. However, it would be, I think, an added expense upon the telephone company to do it.

I have one of these machines in my office, and it costs 4 cents a copy to make copies to pass out. I don't know what the traffic would be.

In the example I started to give about our friends, the Overstreets. After they had gotten this copy of these statements, I said to her, "Did you bother to call up?" because we have a tariff in Pennsylvania which requires giving out the name of the person, so there is no screen of anonymity there. She said, "No, we didn't bother." I said, "Why not? Aren't you interested? Do you want to sue them? I can get you a lawyer." She said, "Oh, no; this is the most wonderful lecture material in the world. We are carrying it on to our next lecture to expose these poor, deluded people."

There is another side to the coin, too. I really don't think that people are very much interested in suing these folks. The very fact that there has been no suit is an indication that this is true.

Senator McGee. Come, now, Admiral. In the fisrt place, our friends, the Overstreets, happen to be masters of this and have had to live with this sort of thing. Suing is not—defamation of character, whatever it might be, is really incidental or insignificant. They are people involved in a study of this whole question. Defamation isn't an issue.

There are millions of our countrymen who can be victimized by this same thing—not on the level of the Overstreets or the Pastores or the McGees, because we are in public life—who can be attacked in the same way on the local level, who have no recourse.

We are simply trying to put a floor under this practice so that it protects the individual's right to go through the court procedure, the legal procedures, and even to inhibit irresponsible procedures. And you tell us that this may cost a little more money to the telephone company which will then have to be passed on to the consumer.

I really don't think that is very good public relations, if I may be very candid. The issue here is one of protecting the responsibility in elementary freedom. We have to then weigh the cost once we figure out how we can best achieve that protection.

Senator Pastore. Here is another example, too, in talking about this matter of suing.

The mere fact that people don't sue means no harm is being caused. It all depends who you are, the respectability of the people in the community, whether or not they want to get themselves into a skunk-spraying party themselves.

Here is one, May 3:

> Former President Eisenhower avers that the conservative pro-Communist record has surfaced again. Eisenhower has joined hands with such leftwing extremists as W. H. Berry, who sneers at the FBI, and Labor Czar Walter Reuther, who has called for a Soviet America.

The mere fact that Walter Reuther and Eisenhower don't sue, we can't say it is harmless; can we?

Mr. MOTT. No; we can't. I have had some experience in dealing with these people. I have lectured around the country for the American Bar Association in, among other places, Senator McGee's State. I know some of the problems he has had with extremists out there.

I would like to ask you, Senator, do you really think that filing a copy of this with the telephone company is going to stop these people?

Senator PASTORE. No.

Senator MCGEE. No; but it is going to inhibit them.

Passing the Civil Rights Act didn't stop incidents and abuses of it, but it certainly has toned up the living up to it. It inhibits it. Passing a law against murder didn't stop murder, but it certainly slows it down.

We are trying to set guidelines here because of a problem that has arisen due to this modern phenomenon. This didn't exist years ago. We are simply trying to protect the public.

I can tell you that in my State, and I think it can probably be established in most any State, that the mere fear of these kinds of things being said about a man that wants to run for the school board or the city council, or the local county commissioners, has discouraged responsible public people, businessmen, schoolteachers, doctors, from even trying to hold his name up for election because he doesn't want to expose his family to this kind of scurrilous attack.

I can tell you personally, as one who has been through this, that it has a very searing, burning effect on your kids. And this is one of the restraints. I don't think we have to condone that in terms of leaving it without a sense of responsibility.

I think that once this were achieved that it would at least be some assurance that the fellow that is willing to lay his neck on the line in a public way would at least know that he had some recourse if he were abused beyond the range of normal political assault. I think this is an important contribution to make to our own sense of political freedom and political responsibility.

We are not going to get good people to go into this if we are going to permit this sort of thing to proceed under anonymity without due limitations for legal responsibility. And that is all that the question here really looks toward, is the filing of a script in that regard.

Mr. MOTT. May I go on and tell you what our companies have done in this regard?

Senator PASTORE. Yes. We want you to know, Admiral, that this is a friendly debate that we are in.

Mr. MOTT. Yes, sir; I realize that.

Senator PASTORE. We are trying to provoke one another's thinking. This is no reflection upon you. I hope you don't take it as that, that we are trying to take you over the coals.

Mr. MOTT. No.

Senator PASTORE. You are just as innocent as a dove of peace, as far as I am concerned. You are trying to do a job here and you are representing an interest. The mere fact that you are trying to avoid any inconvenience on your company I applaud it from where you sit. All I say is that it doesn't strike me the same way from where I sit.

Mr. MOTT. Yes, sir.

Senator PASTORE. Somebody has to protect the public. That is our concern here today. I hope you don't misunderstand.

Mr. MOTT. I do not, sir.

All of our companies, from the smallest—and one of our smallest, Senator, is at Prudence Island, R.I. I talked to the president of that company last night.

Incidentally, she said you haven't been over there to see them lately and she would like to have you come over to Prudence Island. It is kind of tough in the wintertime, I know. I went to Cranston High School myself, and I know about Prudence Island.

At any rate, I talked to her and asked her the question we are considering here today, Would your company be willing to file a tariff requiring names of sponsors to be made public? She said, "No question about it; we are perfectly willing to have a tariff." So it is with our largest company, the General System. There are about 60 telephones in Prudence Island, and 6 million in the General System. They all reacted in the same way.

We received these letters from B'nai B'rith and the National Council of Churches for Christ. We analyzed them. It seemed to us that the main thrust of the complaint was that there was a mask, a screen of anonymity here, which had to be stripped. Our companies have to find a solution which would prevent, say, one-in-a-million service, and it doesn't really amount to much more than that in our industry, from masking its service under any cloak of anonymity without punishing or placing an undue burden on the thousands of other subscribers to announcing and answering services.

Each and ever independent telephone company, which to our knowledge has found itself faced with this problem, has taken prompt steps through recommended tariff changes to remove this mask of anonymity if one existed. I say if one existed, because our research has indicated that most of these "Let Freedom Ring" stations are already listed in the local telephone directories.

I have with me an independent telephone directory for Sarasota, Fla., and an independent directory for Southern Pines, N.C. Both of them list "Let Freedom Ring" stations with an address and, of course, in Florida, as I mentioned, this organization is incorporated with the secretary of state.

Be that as it may, wherever independent telephone companies have been faced with the possibility of a mask of anonymity being used to hide a sponsor's identity, prompt steps have been taken leading toward the filing of a tariff which would set up conditions to remove such anonymity.

At this point I would like to submit for the record separate evidences of tariff actions already taken by our companies.

Senator PASTORE. Without objection, it is so ordered. This has already been placed in the record, I have been informed.

Senator MCGEE. Would those include when those actions were taken, Admiral?

Mr. MOTT. They have been taken within the last, I would say, 2 or 3 weeks, Senator.

Senator MCGEE. Since this committee got into business?

Mr. MOTT. I would say that they came about as a result, not to downgrade the committee in any way, as a result of the complaints that were made to the FCC, which were sent out to our people for study.

Some of our companies have already moved in this direction. The General System has sent out an instruction to its operating vice presidents——

Senator MCGEE. Let me modify that to say that there has been a strange coincidence of the activity of the telephone companies on this question and the declaration of intent from the floor of the Senate to have a look at what the telephone companies were doing about this.

Mr. MOTT. Yes, sir.

Senator MCGEE. You can draw your own conclusions. We can all draw them.

Mr. MOTT. That's right.

I believe you will find this instruction of the General System speaks for itself. The General System instructions would require that the name and address be put on deposit at the telephone company and readily available to anybody who asks.

Incidentally, this is the alternate suggestion which was made by B'nai B'rith in its original letter. It says:

> As a suggested alternative to the requirement that the identity of the true and actual sponsor be disclosed in the message itself, the telephone company may include in its tariff a provision that the recorded message service will not be furnished to a subscriber unless the true and actual sponsor's name and address is listed with the telephone company and that this information will be made available on request to any inquirer.

The other tariff, which is filed, does require that the name and address be put in the message.

We had a rather interesting conversation last night with one of our companies out in California. One of the subscribers called up and asked whether or not it was true that his name was going to be published. He was told it looked that way.

He said:

> I don't care whether my name is published or not. But if it is published I'm going to immediately institute suit to force all of the telephone company's unlisted numbers to be made public.

I hope this doesn't mean that you will lose your unlisted number, Senator McGee. He said this is what he is going to do. Whether he does it or not I don't know.

Senator MCGEE. Do you think you would have acted on this telephone company if it hadn't been for the complaints? Were you aware that this was going on?

Mr. MOTT. I personally was not aware of it. The first time I ever heard of it was when this B'nai B'rith letter was sent over to us by—I will take that back, Senator.

As you know I'm on the American Bar Association committee on education about communism. It passed the word to its members. This was brought to our attention by two of the Florida lawyers who are members of that committee.

Senator McGee. Remind me to put you on the mailing list of the Congressional Record. I think that antedates that quote a bit.

Really, do you have a record of complaints that would suggest that the State commissioners initiated any action here before you got FCC complaints?

Mr. Mott. I do not happen to have, but I think that this answer could easily be obtained from the NARUC witness who was here yesterday, was he not? He would have to go out to all of the State commissions.

Senator McGee. We can ask him those questions. We asked him some of them. I'm asking you. You are representing independent telephone companies.

Mr. Mott. That's right.

Senator McGee. Were you alerted to this? Surely you can tell us whether your groups were alerted to this by State commissions.

Mr. Mott. No, sir.

Senator McGee. You were not?

Mr. Mott. We were not.

Senator McGee. Can you control the use of these devices? Do you have a way of determining that they are being used, and that you can monitor them in any way? That is, do you know when they are being used?

Mr. Mott. I would not say that we do. However, I wouldn't go so far as to say it isn't technologically possible to do what you said.

Senator McGee. You don't know whether they are being used?

Mr. Mott. No, sir; not unless you monitor them.

Senator McGee. Then what can you do about it? You are asking us to leave with you that responsibility.

Mr. Mott. I wasn't aware that I had asked you to do that, sir. Our tariffs, which are being filed—and I understand that these tariffs are being made effective in North Carolina on Monday through action of the State commission down there. Our tariffs require that certain conditions precedent be made before a person is entitled to use announcement recording equipment.

If they violate the conditions of the tariff presumably the telephone company would take the recorder away from them.

Senator McGee. How do you know they haven't? Do you issue the recording devices? Or can they get them on their own from other sources?

Mr. Mott. If they got them on their own it would be an unauthorized hookup. There are three ways in which this can be done:

We furnish all the equipment, or we furnish what is known as a recorder coupler, and then they can put their own equipment on the coupler. I think this was described.

Senator McGee. Can you determine how much those are being used by them? How do you assess them? You bill them, I suppose.

We were told yesterday it costs $25 a month.

Mr. Mott. It is a flat monthly rental.

Senator McGee. You don't know whether they used it once during that month or not?

Mr. MOTT. No, sir.

Senator MCGEE. As long as they have it they are charged the rental?

Mr. MOTT. That's correct.

Senator MCGEE. You have no other way of measuring the use to which that is put?

Mr. MOTT. No, except to monitor it.

Senator MCGEE. You can monitor it?

Mr. MOTT. Just like anybody else can, I guess. I would say that it is technologically possible to monitor it.

Senator MCGEE. Would you be willing to take on that responsibility?

Mr. MOTT. No.

Senator MCGEE. To determine whether it was being used or not, more than what was being said?

Mr. MOTT. I would have to refer this to our operating companies, Senator.

Senator PASTORE. May we clear one point, Admiral?

No matter how it is done, they either rent equipment from you, which means that you know that they have this equipment—to what extent, of course, in debatable; or if they do have their own equipment, whereby they make their own tapes, they cannot—they cannot get that voice or the tape over the telephone wire without your knowledge.

Is that correct? I'm talking about knowledge now.

Mr. MOTT. No, I would not say that they could get their voice over it legally without breaking the law.

Senator PASTORE. I mean through some mechanical device. You mentioned "coupling." It has to be coupled on.

For instance, you pick up a telephone and call a number.

Mr. MOTT. Announcements can be made illegally by an induction process——

Senator PASTORE. Whether it is your machine or their machine, the fact of the matter is that there has got to be some mechanical process that gets that machine going in order for the voice to come over the telephone line.

There is a coupling process there that they have to confer with you. And if you find out that they are doing it without your permission or authorization, you can take the telephone service away from them; can't you?

Mr. MOTT. Yes, sir.

Senator PASTORE. So that in every case there is an obligation upon the individual, either if he hires from you or rents from you, or used his own equipment, that the telephone company has to come into play on this operation. Isn't that true?

Mr. MOTT. That's correct, sir, when used legally.

Senator PASTORE. Do you agree with that, too, sir?

Mr. BUTLER. We have some 15,000 sets out. We don't know when those are used or when they are not used. It is like this set here.

Senator PASTORE. I know that. That set can't even be used once without your having given them permission to use it.

Mr. BUTLER. That's correct on this particular set—on these 15,000, that is correct.

But a subscriber, if he so desires, can hook it up on his own, and they have. Until our workmen go out and find it hooked up, we can't determine that it has been illegally hooked up.

He can, by induction, in other words, put a pad that is close, and induct this message from the telephone itself.

Senator PASTORE. That has to be done by manual operation if he does that. I'm talking about the mechanical machine.

Mr. MOTT. Illegal use would soon be discovered, Senator.

Senator PASTORE. That is what I mean. The reason why I raised this is because it was indicated yesterday that the telephone company had no control over this. I realize that. But it would have to either be done clandestinely, or with the permission of the telephone company.

And if it is done clandestinely, it is being done in violation of the law, unless the individual sets the machine going and while he is holding the receiver he holds it up against the loudspeaker and the voice comes over.

It is not being done that way. This is a mechanical operation if you are going to get into mass publication. And in any event, even if the person owns his own machine and does his own recording, he has to go to the telephone company for the coupling processes.

Is that correct?

Mr. BUTLER. Legally.

Senator PASTORE. Legally, that is what I'm talking about.

Mr. BUTLER. Yes, sir.

Senator PASTORE. If he doesn't do it legally you can take his telephone away from him.

Mr. BUTLER. If you catch him.

Senator MCGEE. If this is our problem, we seem to agree, Admiral, it is probably a little easier to get at doing something constructive and intelligent about the problem now while it is relatively small.

We return to the suggestion that we are talking about a case in your systems, at least, where it is maybe only one in a million. But it is that old question, "For whom the bell tolls."

We are talking about elementary rights of people. And if it involves one person, and his character, and his status in the community, his freedom is yours, and it is mine.

That is the reason it seems to me that the size of this at the present moment is irrelevant.

Hitler started in a beer hall in Munich. Nobody paid any attention to him because he was insignificant. That is the reason we ought to operate with some foresight instead of too late with hindsight.

I would hope that it might be possible to get, maybe even submit later for the record, some more of your thinking on this in consultation with your staff that might offer some constructive suggestion of other ways in which we can go.

I would like to think that the emphasis would be on the constructive direction in which we can go, rather than on how much money it is go-to cost you.

We are looking for helpful solutions here. The budgeting can come later, as we have long since found out in a lot of other great social questions of our time.

Mr. MOTT. Senator McGee, as a trade association we are proceeding in accordance with our bylaws and our method of operation to do just what you suggest. Our individual companies have moved very promptly whenever this matter has been brought to their attention,

and those where it hasn't come to their attention have indicated, such as the Hawaiian company, that they would move promptly if the need showed itself.

As far as the recommendation of this association, the U.S. Independent Telephone Association is concerned, we look at this problem as we do any other problem. It is a problem for one of our expert committees which in this case happens to be our commercial committee.

We can't udertake, as the monolithic Bell System does, to put out a directive to its companies. We have to suggest and recommend. For that purpose we have committees. And this commercial committee is in the process of formulating a position which will be recommended to our companies.

We have called a meeting of our executive committee here in Washington the 13th of December at which time we hope to have a position formulated which, after approval by our executive committee, would go out to all of our companies as a recommendation.

U.S. INDEPENDENT TELEPHONE ASSOCIATION,
Washington, D.C., December 28, 1965.

Hon. JOHN O. PASTORE,
Chairman, Subcomittee on Communications,
Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In my appearance before your committee on November 19, 1965, during hearings on Senate bills 2693 and 2713 I stated "I would be pleased after all (USITA) governing bodies have concluded (review of) this matter, to file with the committee what their suggested remedy is."

The executive committee of the U.S. Independent Teelphone Association (USITA) met on December 13, 1965, and passed the following resolution:

"Whereas it has been brought to the attention of the association that recorded or automatic announcement equipment attached to the telephone has been used for the dissemination of derogatory statements; and

Whereas it is claimed that there exists a "mask of anonymity" as to the identity of the sponsors; and

Whereas the matter is of considerable concern to Members of Congress, the National Council of Churches, and the Anti-Defamation League of B'nai B'rith: Now, therefore, be it

Resolved, That the association strongly urges all independent telephone companies supplying recorded or automatic announcement equipment, as a matter of public policy, to file local tariffs which would strip the "mask of anonymity" from announcements by recorded telephone messages; and be it further

Resolved, That in the event the interstate toll message tariffs of the American Telephone & Telegraph Co. are similarly changed, independent companies concur in these changes."

Wide publicity has now been given this resolution as well as the report of the commercial committee upon which it was based. It is hoped that all of our companies will file tariffs as a result of this resolution. If so, it would "pretty much cover the entire scope of telephone, telephonic service in the United States of America" as you had hoped.

Already tariffs have been filed by all our companies which serve known stations of "Let Freedom Ring." The action of the executive committee and the followthrough of our members should cover potential locations even though they are in relatively small communities. Further, we have furnished the headquarters office of the National Association of Railroad Utility Commissioners (NARUC) with the information of our association's recommendation. It is our understanding that this national body will give publicity to our action. Thus the regulatory commissions in the 49 States where we have companies will be aware of our urgent request for uniform tariff filings.

It is hoped that the actions of our governing body and our member companies will bring the kind of action the committee desires.

Sincerely yours,

WILLIAM C. MOTT,
Executive Vice President.

Senator PASTORE. Would you say that your thinking on this whole subject coincides pretty much with the presentation that was made by Mr. Thayer yesterday?

Mr. MOTT. I would say that it does; yes, sir. There are some pros and cons to be considered in the two regulatory positions, both of which were advanced by B'nai B'rith, whether you require the name and address to go in the recording or whether you merely require that it be put on deposit at the telephone company. Both of these systems strip the mask of anonymity.

One of them requires a telephone call to get the name and address of the particular person.

Senator PASTORE. I believe the position that was taken by Mr. Thayer yesterday was, No. 1, he would prefer not to have either of these two bills enacted into law; that he would prefer that it be done through the process of tariff filing; and that it would be done more or less on a State level.

He had no objection if it were done on the Federal level, provided that the responsibility were placed upon the subscriber rather than the telephone company. I think he took that position. And he wouldn't have too much objection to that.

Thirdly, he had no objection if it were done on the Federal level as against being done on the State level. He had no strong feeling as to that.

Is that your position?

Mr. MOTT. My position is given in my statement. As I just explained, sir, this has not yet been passed on by our governing board.

But it is the hope of the officers of the association with whom I have spoken that the Congress would give the States a chance to regulate this before it moved.

We think that the State commissions, working with our telephone companies, can control this without a Federal law, unless it is found necessary, as Bill Henry suggested yesterday, that we have to put in something to control interstate calls.

However, while this committee and I are very curious, and I have been calling all over the United States to record these things, I don't think that the average person is ever going to make an interstate call to listen to "Let Freedom Ring"; so I don't know how much of a problem this would be.

Senator PASTORE. It all depends.

For instance, you are familiar with Rhode Island. You could make the call from Providence to Attleboro, and that would be an interstate call. The question is whether or not you would invoke Federal responsibility in that case as supervisory authority or enforcement authority, or whether you would do it on the local level.

I suppose that if it were that proximate, chances are it wouldn't be a problem anyway. I agree with you, nobody will pick up a telephone in New York and make a call to San Francisco. I realize that. After all, there are some States that are pretty close to one another.

Mr. MOTT. I know that. If I know the people of Rhode Island—and you know them a lot better than I do—I don't think anybody will spend a dime to call Attleboro to listen one of these things. I may be wrong.

Senator PASTORE. You would be surprised. It could happen. Thank God it hasn't happened in Rhode Island at all up to the present moment. We are the cradle of religious freedom.

Mr. MOTT. That's right.

There is another inscription on the statehouse that sets that out, as you will remember.

Senator MCGEE. Our experience in the communications industry, in the telephone industry, has suggested that it is so completely interlocked now in terms of its massive capabilities, that it is no longer feasible to weigh most of these questions in a practical sense on a State-by-State level. This is what it really comes down to. And in response to your questions here yesterday, the gentleman who was speaking for the State public service commission could see no—could tell the committee no instance in which such a Federal statute would in any way infringe upon the State's operations in this regard unless the State didn't live up to that obligation.

And, therefore, it would simply be this reinforcing insurance because of the interstate nationwide implications of this modern phenomenon of telephone wonders that we now live with.

I think that we are only ducking the 1960's and its implications by pretending that this can be reduced to the local level any more. You wouldn't run the transportation company that way, and you couldn't. So I think we are just kidding each other when we talk about the theory of trying to localize this.

We have long since passed that day when it was possible in this field.

I happen to believe very firmly in local responsibility, and a great measure of that could be exhibited and a great deal of it initiated, but it wasn't. The problem of protecting the interests of all people probably lies on that level, rather than isolating it on a local level.

As you pick off one local community against another, and take advantage of individuals caught in between, you will probably require some protection.

Mr. MOTT. I certainly hope that I have left the impression with both Senator Pastore and Senator McGee that we deplore this mask of anonymity as much as you do and that we, our companies, have taken prompt steps to remove it.

Wherever the situation arises, I am certain, if I know our companies, that they will move with speed and celerity to do the same thing. We are only trying to find out what is the best system.

I would be pleased, after our governing bodies have considered this, to file with the committee what their suggested remedy is.

Senator PASTORE. One further question, Admiral Mott, for purposes of the record.

If the Congress should see fit to proceed according to the suggestion made by the representatives of the two communications companies, that is, via the tariff filing route, would that pretty much cover the entire scope of telephone service in the United States of America between the companies that you represent and the A.T. & T.?

Mr. MOTT. I believe that it would; yes, sir. We represent about 92 percent of the independent telephones in America. There are about 15 million, nearly 15 million, independent telephones in this country, and I think certainly the 92 percent that we represent, plus the Bell System, leaves only an infinitesimal number. I am sure that these companies would follow suit as well. So the answer, I believe, to your question is "Yes."

Senator PASTORE. I would hope, if you can, if you could file for the record, just how broad your scope is. You said geographically speaking, you service a greater part of the country. I would hope that you could give me the States that you cover.

Is it your statement?

Mr. MOTT. We operate in every State in the Union except Delaware.

To give you a rough idea, we don't have as many telephones in every State. In your State we have less than a hundred. In Senator McGee's State we have about 10,000. In Senator Hartke's State, we have nearly a million. And in California we have well over that. In California we have more independent telephones than we do in any other State.

Senator MCGEE. Your total is something like 15 million?

Mr. MOTT. Fifteen million; yes, sir.

Senator PASTORE. Thank you very much, Admiral.

Mr. MOTT. Thank you, sir.

Senator PASTORE. I understand Dr. Douglass is in the room. Are you ready to testify, sir? You may come forward and take a seat, Doctor.

STATEMENT OF DR. WILLIAM C. DOUGLASS, SARASOTA, FLA.

Dr. DOUGLASS. Thank you, sir.

Senator PASTORE. I understand that you have expressed a desire to testify before this committee, Doctor.

Dr. DOUGLASS. Yes, Senator.

Senator PASTORE. All right, sir; you may proceed.

Dr. DOUGLASS. First, I would like to have it on the record, if I could, that I am here voluntarily.

Senator PASTORE. Every witness is here voluntarily.

Dr. DOUGLASS. And at our expense.

Senator PASTORE. Every witness is here at his expense, also.

Dr. DOUGLASS. Yes, sir; I understand they are.

On November 10, 1965, I received a letter from Mr. E. A. Essinger, of the Southern Bell Telephone Co. of Jacksonville, Fla., in which he stated that, starting November 4, 1965, we would be required in his city of Jacksonville to have the name and address of the local sponsors of our telephone messages put at the end of the tape, or put somewhere on the tape. So I sent Mr. Essinger a letter. And I sent you a copy of it special delivery, which I hope you received, sir. I would like to quote from it in part, as part of my statement.

Senator PASTORE. We haven't received it yet. So read the whole letter, if you want to.

Dr. DOUGLASS. All right. Some of it is probably not relevant for your particular use, just to save time.

Senator PASTORE. All right, sir.

Dr. DOUGLASS. Quoting from my letter to Mr. Essinger of Southern Bell:

There has been no legislation passed requiring what we feel is a ridiculous and obviously persecutive regulation. The "Let Freedom Ring" tapes are only 2 minutes in length, and this requirement would take up precious time unnecessarily.

The vice president of your own parent organization, Mr. Richard W. Miller, of American Telephone & Telegraph Co., has stated to the Federal Communications Commission that the restrictions wanted by your company would impose an undue burden on users of the service.

Mr. Miller went on to state, and I quote: "We believe that there are substantial legal and practical obstacles to telephone company censorship. A balancing of the public interest indicates that the carriers should continue to devote their efforts to rendering communication service with the remedies against the user or subscriber for dissemination of libel left to the courts."

End of quote from my letter.

Anyone who feels injured by the "Let Freedom Ring" messages has now and always has had access to the courts for remedy.

Most of our stations are located in private homes which poses a special problem for our station managers if this legislation is enacted; that is, the proposed legislation of Mr. Javits and Mr. McGee. This is well recognized, we feel, by the Communist enemy.

When Gus Hall, Mr. Drew Pearson, or Mr. Eric Severeid says something that is not complimentary to some particular individual, are they too going to be required to give their home addresses at the end of their broadcast? How is this any different from what this legislation would require of us? As our machines are located mostly in private homes, this is what it boils down to, in our opinion. Or is this to apply only to us?

Do you not see this regulation, this proposed bill, as an invasion of privacy? With such easy access to our equipment, do you not see that you are jeopardizing the safety of our sponsors by inviting violence by the unstable among us?

Warren E. Baker, counsel for the United States Independent Telephone Association, in a letter to the Federal Communications Commission, dated September 27, 1965, said:

The USITA believes that imposition of the restrictions requested by the Anti-Defamation League would be unlawful because such would conflict with the constitutional limits and the power of the Government to impose restrictions on free speech and would moreover require the common carriers to unlawfully subject some persons or groups of persons to discriminatory and disadvantageous treatment.

I would like to repeat that this is the counsel for the Independent United States Telephone Association. These are not my words.

Moreover, the imposition of the ancillary restrictions suggested—

which are those that the Jacksonville, Fla., telephone company attempted to impose upon us—

would be an unreasonable burden both upon subscribers and the common carriers and such are unnecessary to provide adequate relief at law.

Mr. Baker further stated:

The area of communications which the ADL letter suggested should be subject to restrictions are (quotes in the ADL words) recorded messages which discuss public issues or which contain defamatory attacks on individuals, groups, or institutions. The discussion of public affairs, issues, and officials is the area which the courts have found was most particularly intended to be covered by the free-speech provision of the first amendment.

Mr. Baker could also have cited the 14th amendment to the Constitution as guaranteeing equal protection to our citizens. Are our sponsors getting equal protection of the laws when, for telling the truth about the Communist conspiracy, they are unduly exposed to the Bolshevik fanatics in their particular city? Isn't recourse to the courts, without violence, the American way? Clearly, commonsense and justice would indicate that the names of our sponsors should be available on court order only.

All Americans are entitled to the right of privacy, and telephone companies have always honored this. I would like to ask the distinguished gentlemen of this committee what possible good can come from discriminatory legislation of this nature. What aspect of free speech will be better served by exposing our station managers and their families to the vindictiveness and ridicule of the Communist enemy and their dupes?

Mr. McGee and Mr. Javits have implied in their pronouncements about "Let Freedom Ring" that people who feel they have been slandered have no recourse. This is false. One does not have to be an attorney to know that the telephone company can be subpenaed and thereby the name of the local sponsor can be ascertained at any time by anyone who feels that he has been injured.

Senator PASTORE. Do you take the position, Doctor, that because you are not sued by an individual, that what you are saying is true? Do you take that position?

Dr. DOUGLASS. Senator Pastore, in 3 years of "Let Freedom Ring" we have not been sued by anyone.

Senator PASTORE. Does that prove that what you say is true?

Dr. DOUGLASS. No, sir; it does not. I am just making that statement, sir.

Senator PASTORE. Then why do you say it?

Dr. DOUGLASS. Because I think it is good to have it on the record. We have been slandered from coast to coast by every newspaper in the country. We have been called irresponsible and have been told over and over again that we are using libelous statements. But no one has ever attempted to sue us because we tell the truth on these broadcasts.

Senator PASTORE. All right. On May 3, 1965, in Detroit, this is a statement that came over without any indication of the individual who uttered the statement:

> Former President Eisenhower, the ersatz conservative with a pro-Communist record, has surfaced again. Eisenhower has joined hands with such leftwing extremists as W. H. Berry, who sneers at the FBI, and Labor Czar Walter Reuther, who has called for a Soviet America. These men and others like them met in New York in February to discuss the best way to surrender you and your family to the Reds. They met under the auspices of a high-sounding group that consistently follows the Communist line and calls itself the Center for the Study of Democratic Institutions.
>
> Dwight David Eisenhower is one of the greatest phonies ever put over on the American people. The people elected Eisenhower in revulsion against the Truman scandals and the exposure of traitors, such as Alger Hiss. But while the people slept and left everything to the grinning Ike, the Eisenhower administration helped the Communist gobble up vast quantities of the world, including Cuba, and blocked every sincere effort of patriots to clean the Communists out of the American Government.
>
> Eisenhower took a personal part in the destruction of Senator Joseph McCarthy. He put the pro-Communist toady, Earl Warren, on the Supreme

Court. He looked the other way when the Hungarian freedom fighters appealed for help; and he assured Russia that we would not intervene.

Few Americans know that Eisenhower was the presidential choice of Eleanor Roosevelt, Claude Pepper, and other leftwing radicals. Fewer know that Eisenhower's book, "Crusade in Europe," was ghostwritten by an identified Communist agent, Joseph Felds Bond.

To understand the perfidy and deceit of Eisenhower and many other of the so-called modern Republicans, you should read the book "The Politician." For $1 we will send you a copy revealing the real Dwight Eisenhower. Send your dollar to The Politician, Box 1775, Sarasota, Fla.

Let freedom ring.

Who said that?

Dr. DOUGLASS. Thank you, sir. I appreciate your reading the entire broadcast. It is very seldom that anybody does that. They usually take a piece at a time.

Have you read the book, "The Politician"?

Senator PASTORE. Oh, no.

Senator MCGEE. I have, Doctor. I happen to have one of the first original copies, complete, before it was censored and cleaned up. So if you want to discuss it, we can do that some other time.

Dr. DOUGLASS. You have an "uncensored" copy? I would like to see your copy, sir; may I see it?

Senator MCGEE. That is not the issue.

Dr. DOUGLASS. You're right. It is not the issue.

Senator PASTORE. Why don't you follow my questioning, please? Who said this?

Dr. DOUGLASS. Which part of the broadcast are you referring to? I said it.

Senator PASTORE. You said it?

Dr. DOUGLASS. You said there is no identification in the broadcast. I am about the most unanonymous person around these days. I have been unanonymous since the beginning.

Senator PASTORE. There is nothing in the statement that reveals your identity. You said you would be denied your constitutional rights if at the end of this—I don't question your right to say that.

Dr. DOUGLASS. I did not say that I would be denied my constitutional rights, sir.

Senator PASTORE. Do you say that you would have exposed yourself to Communist violence if you had revealed your identity?

Dr. DOUGLASS. Not myself, sir. I said our station managers, who have these answering machines in their homes, would be unnecessarily exposed to people of an unstable nature who may try to take physical retaliation against something that they did not agree with.

I do not say I would have my freedom of speech interfered with in any way. I don't see that these people who have our stations would actually particularly have their rights of free speech interfered with. I was quoting the man from the telephone company. I don't think this is true.

My objection is, these people are going to be exposed unnecessarily to crackpots in their particular areas. Their freedom of speech is not being denied, sir. I don't think this is true. I agree with you on that, sir.

Senator PASTORE. It is a matter of debate who the crackpot might be?

Dr. DOUGLASS. That is true, I am sure, from your point of view.

Senator PASTORE. The question is, you say that the reason why the identity was not revealed was because the person might fear violence at the hands of somebody else?

Dr. DOUGLASS. One of our station managers has lost two jobs already because of "Let Freedom Ring." Because his employer was a so-called liberal. He is still "Let Freedom Ring," because he has the guts to continue. These people are just ordinary Americans trying to do a job. They are trying to do what the press has not done, and that is reveal some of these things to the American people.

Senator PASTORE. Do you think you are doing a job for America when you say what you have just said here, that Eisenhower——

Dr. DOUGLASS. I suggest you read the book, "The Politician."

Senator PASTORE. I don't want to read the book "The Politician." I am talking about the statement that came over the telephone.

Dr. DOUGLASS. Isn't it in the broadcast, about "The Politician"? That is why it is there.

Senator PASTORE. You are trying to sell the book, "The Politician," for a dollar. That is advertising.

Dr. DOUGLASS. Yes, sir.

Senator PASTORE. Do you believe this statement that you made about Eisenhower?

Dr. DOUGLASS. Yes, sir. I don't put things in "Let Freedom Ring" that I don't believe. I do not put things in "Let Freedom Ring" that I do not believe; no, sir. Everything I said in that statement, I believe, of course.

Senator PASTORE. You feel that you can do this and remain anonymous?

Dr. DOUGLASS. I am not anonymous, sir. I have not been anonymous, as I have stated a number of times here. I have been very unanonymcus.

Senator PASTORE. Until I asked you how would anybody know that this was your statement——

Dr. DOUGLASS. The address is on there, sir. At the bottom.

Senator PASTORE. The address of "Let Freedom Ring"?

Dr. DOUGLASS. Yes.

Senator PASTORE. Are you "Let Freedom Ring"?

Dr. DOUGLASS. Would it satisfy this committee if I put my own name at the end of every broadcast all over the country? I am willing.

Senator PASTORE. That is the legislation we are talking about.

Dr. DOUGLASS. My name?

Senator PASTORE. No. We want to know what objection you have in identifying yourself when you make a statement.

Dr. DOUGLASS. I have none. I am talking about our station managers. I have no objection whatsoever to putting my name at the end of every broadcast. None whatever.

Senator MCGEE. When it is your voice?

Dr. DOUGLASS. When it is my voice or not.

Senator MCGEE. Do other people make the statements?

Dr. DOUGLASS. I take the responsibility for these scripts. I will put my name after anything I say before any group.

Senator MCGEE. Does anybody else put these things on the air—on the telephone?

Dr. DOUGLASS. Yes, sir. The local voices.

Senator MCGEE. You have no objection to the local voice being put on?

Dr. DOUGLASS. Oh, no; not at all.

Senator MCGEE. They would add their name?

Dr. DOUGLASS. No, sir; I don't want their names.

Senator MCGEE. You don't want their names?

Dr. DOUGLASS. May I finish reading my statement?

Senator PASTORE. Yes; you may finish your statement.

Dr. DOUGLASS. This is right in line with where you came into my statement.

It has never been a secret, the name of the national chairman of "Let Freedom Ring." Over a year ago my name appeared in practically every daily newspaper in regard to our remarks about Senator Javits. In 3 years of operation, as I told you before, we have not been sued by Mr. Javits or anyone else.

If this legislation is cleared through this committee, and passed into law, you will have succeeded in doing only one thing, and I am not referring to my name. I am not worried; I am not afraid of these people. If you want to put my name on the end of the broadcast all over the country, I am delighted. I don't care. I am not worried about that. I am trying to protect our people from fanatics of the left.

You will have succeeded, if this legislation is passed, in making life miserable for a small group of dedicated American patriots who are simply trying to do something for their country. Instead of violating the privacy of these people for no constructive purpose, I would like to suggest that legislation be introduced that would make it a Federal offense for the telephone company to reveal the name of any telephone subscriber without his permission. Everyone deserves the right to privacy. Our people as well as other people.

I am available for lawsuits and have been all along, and everybody knows this, including Mr. Martin Luther King, who didn't like a few things we said about him.

In conclusion, "Let Freedom Ring" will continue to operate even if restrictive legislation is passed. Our people are courageous and determined to do the job the American news media has failed to do; that is, awaken the American people to the serious Communist infiltration into our various institutions and to treason within our Government.

End of statement.

Senator PASTORE. Do you think you are doing the American people a service when you say——

Dr. DOUGLASS. Yes, sir; I certainly do.

Senator PASTORE (continuing). That Earl Warren is pro-Communist?

Dr. DOUGLASS. He certainly is. In my opinion, he is very pro-Communist, sir.

Senator PASTORE. If anyone who reads the script that you write, uttered it over the telephone, what would be your objection in that person revealing his identify, or her identity?

Dr. DOUGLASS. I thought I explained that, Senator, very well here. I will be glad to try to explain it again.

I feel that there is no constructive purpose by revealing the home addresses—are you going to make Fulton Lewis, Jr., put his home address at the end of every broadcast? What is the difference? I see no difference, Senator. Is he going to be required to put his home address at the end of every broadcast he gives around the country if he says something about somebody that someone doesn't like?

Senator PASTORE. He gives you the station from which he is broadcasting.

Dr. DOUGLASS. But that is not his home address.

Senator PASTORE. And you can reach him.

Dr. DOUGLASS. You can reach me. I am perfectly available. I get phone calls all the time.

Senator PASTORE. You are the one who wrote this?

Dr. DOUGLASS. Yes, sir.

Senator PASTORE. You are not the one who said this. Did you say this over the telephone in Detroit?

Dr. DOUGLASS. Does the United Press man who writes his piece say——

Senator PASTORE. He identifies himself as United Press and we know where this is.

Dr. DOUGLASS. And we identify "Let Freedom Ring," Box 1775, Sarasota, Fla.

Senator PASTORE. But "Let Freedom Ring" isn't the person who made the statement. "Let Freedom Ring" is a corporation.

Dr. DOUGLASS. What is UPI, sir? Isn't that a corporation?

Senator PASTORE. But the person, that is the person's address, the UPI. You reach him through that medium. The person reveals his identity. He tells you who he is.

Dr. DOUGLASS. On the UPI release?

Senator PASTORE. That is right.

Dr. DOUGLASS. You mean the newspapers, the bylines? No, sir. It says "UPI," in my experience—most are not bylined.

Senator PASTORE. UPI is not using the telephone. We are talking about people who are using the telephone.

Dr. DOUGLASS. All right, sir.

Senator PASTORE. You dial a number, and a voice comes over, and this voice speaks about Warren, it speaks about a lot of other individuals——

Dr. DOUGLASS. Yes, sir.

Senator PASTORE (continuing). In not a kindly fashion.

Dr. DOUGLASS. That is right, sir.

Senator PASTORE. In a very severe fashion.

Dr. DOUGLASS. Yes, sir.

Senator PASTORE. And this person, we say, ought to have some reason to know who the person is that is uttering this statement. And you say the only reason why it shouldn't be revealed is because that person who is making the scurrilous statement needs the protection of anonymity so that no violence will be shown against him. How about the person who is being defamed?

Dr. DOUGLASS. All right, sir. How about the cases——

Senator PASTORE. What about his rights under the Constitution?

Dr. DOUGLASS. How about Senator Javits saying that some anonymous person in the Department of Defense said that I have an "aber-

rated mind? Did somebody come to my defense about that? Does this committee wish to come to my defense about that?

Senator PASTORE. We are not concerned with what Senator Javits said on the floor of the Senate or any other place. All we are asking you is, what is your severe objection in revealing the identity of a person who utters a statement in defamation of somebody else?

Dr. DOUGLASS. I don't see how I can make it any clearer, Senator. This is a unique situation, because these machines are in people's private homes. When the UPI calls me an extremist or something like this, the man who wrote that does not give me his home address. I don't see the difference, sir. Please explain to me the difference. Free speech is free speech, whatever the communication medium happens to be. We are a news service just like a newspaper.

Senator PASTORE. If you have a right against that paper, that appeared in that paper, you can sue the paper.

Dr. DOUGLASS. Yes, sir, and I can be sued, too. People have always had recourse to the courts. We have not kept anybody from having recourse to the courts.

You mentioned Earl Warren. May I read one of our recent broadcasts?

Senator MCGEE. I want to ask a question, first.

(Permission was given to Dr. Douglass to read his broadcast first.)

Dr. DOUGLASS. I want to quote Millard Caldwell, a very distinguished member of the Supreme Court of the State of Florida. You mentioned in my remarks about Chief Justice Earl Warren, and my opinion of him. This is a release of July 20, 1965:

According to the Honorable Millard Caldwell, justice of the Florida Supreme Court, the Earl Warren Court is transforming our Republic into a Latin American type despotism.

This is a supreme court justice of the State of Florida, one of our finest. Justice Caldwell said:

The Supreme Court, once revered as the guardian of the Constitution, has wielded the knife against its vitals.

What has the Supreme Court done to deserve this indictment, and why are many responsible leaders now demanding the impeachment of Chief Justice Warren? In the 12 years that Earl Warren has been Chief Justice, the Court has:

(1) Protected Communists to the point that it is now practically impossible to convict these traitors and foreign saboteurs; the Court has caused the relase from jail of many convicted Communist agents. For this the Communist Party loves Earl Warren and they are not shy in telling about it.

(2) They have banned prayer from the schools.

(3) They have protected rapists and other criminals through grotesque interpretation of the law. This has caused the deepest dismay among law enforcement officers who see rapists, murderers and other sordid criminals go free because of unconstitutional decisions of the Supreme Court. Yet they see the Court deny jury trial to the Governor of Mississippi.

Virgil Peterson, director of the Chicago Crime Commission, says that we are reaching a point where preventive police work is almost an impossibility.

That is the body of the broadcast.

Senator McGEE. May I ask a question, Mr. Chairman?

Senator PASTORE. Certainly.

Senator McGEE. If the requirement were made that in each of these telephone messages—and we understand some of them are changed after you write them, that is, they are modified——

Dr. DOUGLASS. Very slightly, Senator.

Senator McGEE. Therefore it isn't you, any more. If we put the name of the person who is responsible for that in that local area, is it your response to this committee that this would keep them then from making these telephone declarations?

Dr. DOUGLASS. I understand your question to be, if these people were to write——

Senator McGEE. If we were to require in the telephone message their identification——

Dr. DOUGLASS. Yes.

Senator McGEE (continuing). Would this no longer do that, is that what you are saying?

Dr. DOUGLASS. Oh, I guess I didn't understand your question. I thought your question was, if they were to write a local broadcast about a local issue, say flouridation——

Senator McGEE. No. Any of these telephone messages. Let's don't duck the question.

Dr. DOUGLASS. No, sir; I won't duck the question. I didn't understand the question.

Senator McGEE. Are you saying to the committee, if we require, as these two measures would propose, that this program would not be carried in that local area——

Dr. DOUGLASS. No, sir.

Senator McGEE (continuing). This wouldn't deter them from doing it?

Dr. DOUGLASS. No, sir.

Senator McGEE. They are willing to take on that risk?

Dr. DOUGLASS. I am sure most of them are.

Senator McGEE. So that there is no impingement there.

Dr. DOUGLASS. I didn't say there was no impingement. I said they would continue.

Senator McGEE. They would still continue?

Dr. DOUGLASS. Yes, sir.

Senator McGEE. A second thing, if, as some have proposed—it isn't in my bill—if as some have proposed there is a requirement that the script of the telephone message be filed, would this rule you out? Or would you file those scripts and continue?

Dr. DOUGLASS. I will be happy to file them.

Senator McGEE. We are talking now about the scope of your particular operation.

Dr. DOUGLASS. Yes, sir; I will be happy to file them.

Senator McGEE. And they will be filed in advance? You would be willing to go along with an accord like that?

Dr. DOUGLASS. I think if there was any reason, Senator, I have no objection to that. We are not trying to hide anything, Senator.

Senator McGEE. Obviously. That is why you don't want the names of the local sponsors on the list.

Dr. DOUGLASS. I think I explained that very well, Senator.

Senator McGEE. Namely, that they were afraid of extremists of one sort or another.

Dr. DOUGLASS. I am afraid for them. Put it that way.

Senator McGEE. Your concern for them is fully appreciated.

Dr. DOUGLASS. Thank you.

Senator McGEE. The point that that really brings up is your view of the great patriotic motives of these people to serve their country. It has been my experience in reading a few pages of American history that whenever you had a patriot, that one of the marks of his patriotism was to be identified with it; that he was not afraid to stand up and run the risks of responsibility for doing what he did or saying what he did. Patrick Henry didn't hide behind anonymity. Thomas Jefferson didn't hide behind anonymity. I find it very difficult to accept this alibi that you use for trying to protect these individuals from some kind of, as you call it, Communist retaliation against them for what they say. And I would conclude this with this observation:

Since these hearings were announced, I received a telephone call from someone that at least approves of what you are doing, a call to my office, that simply said that we have already let enough blood around the country; it is time we let some of yours, and we don't appreciate your attack or your inquiry into this telephoning device.

Assuming that this woman is serious, my life is in jeopardy. But I think that I ought to stand up and be counted. I think if we are serving a free society, that you have to be willing to stand by what you are willing to peddle, yourself. I don't mean you, Doctor. I mean any of those who pervade the messages that you pen up for them. That is all that this legislation requires.

I find it very difficult to accept the rationalization that you accept for your spokesmen in these various areas hiding behind anonymity only to protect their individual persons. That doesn't happen to be either the kind of country we live in or propose to live in.

That, it seems to me, is the blind spot in your whole position.

Senator PASTORE. Do you want to answer that, Doctor?

Dr. DOUGLASS. Yes, sir; please, may I?

Senator PASTORE. Go ahead.

Dr. DOUGLASS. First let me say, Senator, I am sure you realize that I do not favor anyone making anonymous threatening phone calls to you, me, or anyone else.

Senator PASTORE. Or telephone messages.

Dr. DOUGLASS. No, sir; I am talking about threatening calls. We have threatened no one in "Let Freedom Ring."

May I continue?

Senator PASTORE. Continue.

Dr. DOUGLASS. You say in this kind of country we live in we don't have to worry about this sort of thing. We had a President killed recently by a leftwing fanatic. There is this danger, and I am sure you recognize this danger as being present. I think a person would have to be blind not to see this. We have a lot of leftwing fanatics. One of our Presidents was recently killed by one.

As far as our people hiding behind anonymity, as I said they will do what they have to do. But I am speaking from experience, what these people have already gone through.

I have had many of our people who have lost their jobs because their boss didn't happen to agree with their particular political views. I think this is pretty rotten in a country like this. We hate to see this, but this happens to be the way it is. So these people are in jeopardy, not from just the Molotov cocktail slingers but from the liberal employer who is not so liberal after all. This is one of the reasons why we would like to keep these people, allow them to keep their privacy.

This, I think, Senator, is really more of an issue than the other, the danger of someone throwing a rock through your window. This is present. I fear this. But the other aspect I fear most. These people have to make a living.

I think that sums it up.

Senator McGee. No one would quarrel with their privacy if they wish to attack their neighbor. That is their business.

Senator Pastore. How do you equate the justice in a person keeping his own identity secret and yet batting around somebody else's name? How do you equate that as a human being?

Dr. Douglass. These people, Senator, are not giving their own scripts. They are giving mine.

Senator Pastore. But they are not saying it is yours.

Dr. Douglass. As I said, if you wish me to put "William Campbell Douglass, president," at the end of each broadcast, fine.

Senator Pastore. It is not a question of what you do now. It is a question of justice.

Dr. Douglass. Is this justice? Did your committee feel this is justice? I would be perfectly happy if they put at the end of every message: "William Campbell Douglass, president, 'Let Freedom Ring.'" I would be happy to although it takes up precious time unnecessarily.

These tapes are only 2 minutes long. We have to put in a lot in 2 minutes. It takes a lot of writing and rewriting to get our message across in 2 minutes. We could take up 15 seconds just giving my name and address.

Senator Pastore. I want to ask you a question and not facetiously. Have you ever said anything nice about anybody?

Dr. Douglass. Certainly we have.

Senator Pastore. Who?

Dr. Douglass. General MacArthur, Senator Thurmond.

Senator Pastore. Is that all?

Dr. Douglass. No, a lot more. We have said a lot of nice things. We might say something nice about you, Senator. [Laughter.]

Senator Pastore. I will tell you very frankly, coming from you I am not so complimented. [Laughter.]

Dr. Douglass. We have to keep our sense of humor in this fight, don't we, Senator?

Senator Pastore. Are you all through now?

Dr. Douglass. Yes, sir.

Senator Pastore. Thank you very much.

Dr. Douglass. Thank you very much for allowing me to testify, I appreciate it.

Senator Pastore. Senator Javits is here.

STATEMENT OF HON. JACOB K. JAVITS, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, thank you very much for the opportunity to testify before the commmittee.

As I have been one of the objects of the attentions of the "Let Freedom Ring" campaign, I suppose I have the right to speak with some feeling on the matter.

I first disclosed to the Senate on October 2, 1964, the details of this operation. And then I was very, very pleased to be joined almost at the same time when Senator McGee put in his bill to do what we could in the Federal establishment to deal with the problem without an invasion of civil liberty.

It seems to me to be very analogous with this hate propaganda of the worst kind. Although freedom of speech, which I, and I know every Senator would put down his life to defend, has certain limitations which Justice Holmes epitomizes in his famous dictum on calling out "fire" in a crowded motion picture theater, I think that the regulations which my bill seeks to impose and which is generally sought to be imposed by the other bill, are very reasonable.

I think the analogy is with the political announcements and political publications as this is, no matter how we condemn it, no matter how it is extremist, a political publication. There it is uniformly the law that the one who utters it must take responsibility for it. And the only way in which we know that responsibility can be taken is by at least a disclosure of a source.

The course—and I have just heard the testimony of the witness, Dr. Douglass—the source is not Dr. Douglass, the author. That would exculpate anybody. What is the worst slander? You could say I'm uttering it because everybody else is uttering it.

The source is the utterer of that slander. And that person should stand in the court of public opinion charged, or, if the case is proper, indicted, or subject to suit.

Senator McGee is absolutely right, and I see no alternative to it.

The only real point that can be made in respect of this matter with which we are just catching up—that is all it really comes down to—is the fact that the telephone company feels that its tariffs filed in the various States will deal with this.

I don't agree. I gather that Senator McGee doesn't agree, because for one, it has taken them an awful long time to get to this point. For another, depending on the actions of various State public service commissions, you may have very different types of regulations and enforcement. And for a third, this is a real abuse, a real loophole which this "Let Freedom Ring" outfit has discovered, and we should proceed to block it under the very same law which opened it; to wit, the Federal Communications Act.

I would like to say to Senator Pastore that it is typical of him that he has moved into this situation with the intiative to head this subcommittee, to give these bills a hearing, and to let the country consider. I believe that the country has already profited enormously.

I think it is a very good thing that Dr. Douglass appeared here this morning. The more we see these faces on television, and in the open prints, the safer is America.

I must say, too, that I somewhat am very unhappy about all these innuendoes about the assassination of President Kennedy. I don't know whether it was the extreme left or the extreme right. But I do think America has a right to depend upon the findings of the most eminent Commission that ever served in this country on any factfinding responsibility, and I believe that the country should, in a sense of tranquility and order, depend upon the findings of that Commission as to the dastardly act which has so shocked the country and the world, and its findings are very clear in not characterizing the extreme left or the extreme right, but placing the responsibility where I fell, and I think the overwhelming majority of Americans feel, it belongs.

All of these skeletons shaking in the closet give a sense of instability, witch hunting, looking for scapegoats, leading to the kind of dangerous threats that the Senator spoke of. The hands of a woman can fashion a bomb as well as the hands of a man.

We are finding that out in Vietnam today, because a woman doesn't immunize us. Neither should those who are the enemies of society be immunized by being free by a loophole in the law from the responsibilities of far more orderly and honorable and true Americans.

Senator PASTORE. Do you feel, Mr. Javits, that a law should be enacted, rather than leaving it to the telephone companies to do it by the processes heretofore defined?

Senator JAVITS. I certainly do. I do. I feel that the penalties of the law should include penalties and not just the denial of telephone service. When secrecy and anonymity is sought for such legal material as I will, if the chairman will allow me, read to the committee.

And this matter is very widespread. It is not an isolated case. We are not dealing with something which is a fly-by-night operation.

It is a very substantial operation as again my testimony will show, in many cities and in many places, and it should be far more strictly dealt with than the telephone company can, within its attribution, deal with this. And I have no quarrel with them. They are doing the best they can.

They can't pass laws with penalties, but we can. And the Communications Act is being abused, Mr. Chairman, in this regard, and this loophole should be buttoned up.

Senator PASTORE. Do you cover the question of submitting a text of the statement in your statement?

Senator JAVITS. No.

My bill calls for disclosure of the source at the end of every broadcast. The true source; that is, the actual subscriber. I believe that that is adequate. A person listening to it can make a record of it. We have. I have myself had records taken, not only of the stuff about me, but of many other prominent people like President Eisenhower and President Kennedy and Chief Justice Earl Warren and so on.

In short, Mr. Chairman, free speech we thoroughly agree with. But free speech also requires free disclosure. And that is all we ask for. I would ask for nothing more. I resist with every power I have anything more.

I am against censorship in this country, even of the ultraright.

The people can decide; they are pretty intelligent people. But what we have got to do is to give them the source, the person who utters these things.

I think Senator McGee made a most eloquent speech about that, and I subscribe to every word of it. They should stand responsible for it. As the Chair indicated, they have no hesitancy about revealing my name, or Senator McGee's name, or the President's name.

Why should there be any compunction about revealing their names so that the public may know who is offering these hate messages?

Now, Mr. Chairman, I would like to brief my testimony, if I may.

Senator PASTORE. Let's put your statement in the record in its entirety, and you can give us a synopsis.

(The statement follows:)

DISCLOSURE NECESSARY TO CURB TELEPHONE HATE MESSAGES

It is a great privilege to appear before this subcommittee to testify in support of S. 2713, a bill I introduced to amend the Federal Communications Act of 1934 to establish certain requirements with respect to the use of recording equipment for conveying messages by telephone. This measure is intended to strip the cloak of anonymity from individuals and organizations who use telephone tape recorded messages to attack public figures or community organizations. It is intended to deal with the critical nationwide problem of dissemination of noxious propaganda over telephone recording devices.

My bill expressly requires disclosure, through maintenance of files made available to the public by telephone companies, of the names and addresses of individuals or of a responsible office of an organization, using recording tape devices. It also requires organizations using such messages to include in the message the identity of the sponsor or of a responsible office of the sponsoring organization. The bill provides for fines up to $5,000 for each violation of this latter provision.

For some time now, telephone facilities have been used by organizations providing messages on recorded tape to those who dial an advertised phone number. These messages are transmitted by equipment rented from local telephone companies at costs varying from $20 to $45 monthly. As of November 5, the Federal Communications Commission has advised me that some 14,000 recording devices were being used in the Bell Telephone and 1,454 in the general telephone system, the largest independent service.

Since I first informed the Senate on October 2, 1964, of a nationwide, radical right organization which uses recorded telephone messages to challenge the loyalty and integrity of scores of public officials, many prominent individuals and organizations have entered the fight. The Anti-Defamation League of B'nai B'rith has conducted a thorough investigation of the organization which calls itself Let Freedom Ring, and our former Senate colleague, the Honorable Harry P. Cain, now a resident of Miami, Fla., has done extensive work on his own after Let Freedom Ring made a concentrated attack on the University of Miami. The organization has also attacked the National Congress of Parents and Teachers. This attack followed, in its use of innuendo and half-truth, the style of vicious attacks, on grounds of Communist sympathy or orientation, made over the last 3 years against such dedicated and patriotic Americans as former Presidents Eisenhower and Kennedy, President Johnson, Chief Justice Earl Warren, and the late U.N. Ambassador, Adlai Stevenson. I also have been a subject of these vicious personal attacks.

The "Let Freedom Ring" organization with national headquarters in Sarasota, Fla., has been reported active in at least 30 American cities which include: New York, Philadelphia, Chicago, Detroit, Baltimore, Miami, Dallas, Kansas City, Indianapolis, Witchita, Sacramento, and several cities in the Los Angeles area. In addition, there are reported facilities in Decatur, Bedford, and Calumet City, Ill.; Jacksonville, Sarasota, and Clearwater, Fla.; Knoxville, Tenn.; Boulder, Colo.; Port Arthur, Tex.; Long Beach, Calif.; Brockton, Mass.; Summit, N.J.; Nashua, N.H. and Southern Pines, N.C. According to an ADL report of August 1965, this organization, "Let Freedom Ring," was established as a nonprofit

corporation to disseminate anti-Communist, anti-Socialist, pro-American broadcasts. Its messages are used by some 36 subscribers using independent telephone services. The "Let Freedom Ring" scripts have set forth lurid visions of a "Communist consipracy" lurking behind the civil rights movement, the U.N., the Supreme Court, the last three U.S. Presidents, the State Department, the National Council of Churches, the ACLU, et cetera. Messages contain vitriolic and savagely critical comments on Federal programs and officials as well as private groups. One such message on January 26, 1965, for example, states: "Americans will soon be in a position of hopeless military inferiority to the bests of Russia because of deliberate disagreement by traitors in the Johnson administration." A Miami Herald report of September 6, 1965, revealed that the "Let Freedom Ring" recorded message entitled, "The Peace Corps Tragedy" called the Peace Corps program "something akin to the Hitler Youth Movement with a Communist twist." The ADL report also indicates an attack upon the National Council of Churches in May of 1964 included the following statement:

"Another fact ignored by the press is that the Communist-lining National Council of Churches is openly promoting bloodshed through armed revolution by Negroes. There is documented proof that Negroes are being armed for open revolution this summer.

"The Communists, working through their errand boys in Congress and the White House, are working feverishly to have passed a bill that will outlaw the ownership of guns by private citizens while at the same time they are urging armed rebellion by Negroes. These carefully coordinated drives are aimed at simultaneously disarming the American people and overwhelming them through Communist-controlled revolts * * * and we also urge our listeners to purchase a rifle or a pistol for home defense. We are not—we repeat—we are not promoting insurrection as does the National Council of Churches. We are merely urging you to exercise your constitutional and God-given right to protect yourself * * *."

Now, of course, we know only too well this kind of diatribe of the ultraright. But this new technique has a particularly vicious aspect because secrecy under our laws hampers use of our best weapon against such diatribes—public knowledge.

The bill I have introduced is, in my view, particularly necessary because the method used by "Let Freedom Ring" makes it faceless and anonymous. A voice on the telephone. Not even the written word where the inaccuracies and innuendoes can at least become apparent to reasonable people on considered reading—just the short message over the phone, which leaves you asking what exactly was said, but with just enough of the message to cause suspicion and doubt.

It is, in my judgment, vital to make the identity of the sponsors of such messages known to anyone who hears these messages, so that they can better evaluate the content. It is also proper that those being attacked—especially those attacked in the local-oriented programs sponsored by "Let Freedom Ring"—have ready access to the identity of the sponsors so that the sponsors may be subject to responsibility for their acts.

Unless the public can learn the identity of those paying for these messages and unless it understands that this sort of message depends on the use of innuendo, half-truth ond invective to leave a nagging, if illogical, suspicion of Communist taint in the mind of the listener, it may underestimate the effectiveness of this sort of propaganda. Both the Communists and the Nazis understood only too well that the constant repetition of half-truths and outright lies over a long period could make suspicion of lawful, democratic authority commonplace.

I have been advised that progress toward the fuller disclosure of information called for in my bill has been made in a number of States by the action of leading telephone companies. The FCC staff reveals that as of this week, telephone tariff revisions have been filed with State regulatory bodies or administrative steps taken in 48 States and the District of Columbia to remove existing regulations prohibiting the publishing by telephone companies of the name and advisers of subscribers to automatic announcement services. Subscribers names and addresses can be obtained from the local business offices or telephone companies in the Bell System, which comprises approximately 84 percent of all telephone installations in the country. In addition, the Bell System is commencing action to require that recorded automatic announcements contain the name and address of the subscribers. As of November 15, the FCC staff indicates that nine States (Alabama, Florida, Louisiana, Mississippi, North Carolina, South Caro-

lina, Tennessee, Michigan, and Utah) have already established these requirements and additional States have scheduled implementation of these requirements this month.

These developments should be commended. But the legislation (S. 2713) I have introduced, in my judgment, is the best way to proceed to establish uniform interstate standards throughout the country, consistent with civil liberties. It makes it mandatory for all telephone companies—including those not under the A.T. & T. standard—to make known the identity of local subscribers using such devices, and also requires these sponsors to be identified in the message itself. Public disclosure is the best way, in our free society, to curb these vicious attacks. While a number of States are taking important steps to require this disclosure, Federal legislation to establish uniform requirements and similar procedures appear necessary. It has taken newspaper reporters weeks of hard work in local communities to find out the identity of the local sponsor of "Let Freedom Ring" messages. It has been virtually impossible for many citizens—without the means of uncovering information available to journalists—to find out who was making these attacks, even when the attacks were directed at them personally. A national uniform system of public disclosure would be of great importance.

Senator McGee's bill (S. 2693) incorporates the same principles of disclosure as does my bill. But it does not require the specific disclosure in the recorded message of the identification of at least one responsible officer of the organization subscribing to the recorded services or of identity and address of a person on whose behalf a message is transmitted. I believe disclosure of this information is valuable and should be required. It also does not contain express penal provisions for violation of its provisions. Unlike H.R. 11605, introduced on October 14 by Congressman Rosenthal, my bill does not require telephone companies to maintain a transcription available to the public of each recorded message which it permits to be transmitted through a telephone connected into any telephone system which it operates. It would be of value, I believe, to determine the views of the telephone companies on whether such a requirement imposes an unduly expensive or difficult administrative burden.

Finally, it should be noted that the requirements established by section 511(a) of S. 3713 for public files to be maintained by carriers and by section (b) (1) for disclosure or certain information in recorded messages would be implemented by regulations to be prescribed by the Federal Communications Commission. Such regulations, I believe, should be directed to making such disclosure available in accord to the maximum extent feasible, with existing telephone operations.

I very much hope that this subcommittee will do all possible to provide a meaningful legislative solution, along the lines I have suggested, to a serious nationwide problem of dissemination of propaganda on telephone recording devices.

Senator JAVITS. I am very solicitous of the time of Senators. I would like to give a few facts, because I think that is a very important point.

My bill I have already described to the committee. It requires disclosure through maintenance of files made available to the public by telephone companies of the names and addresses of individuals, of a responsible officer of an organization using recording tape devices. It requires organizations using such messages to include in the message the identity of the sponsor or of a responsible officer of the sponsoring organization. And it provides for fines up to $5,000 for each violation.

The extent of this thing is very important. As of November 5, the FCC has advised me there are some 14,000 recording devices being used

in the Bell Telephone System, and 1,454 in the General Telephone System, making a total of about 15,500.

Of course these include factual messages to which the telephone company has very properly referred.

There have been many protests about this matter, as my analysis goes on to show. I would like to compliment, if I may, the work of the B'nai B'rith, which has been very active in the revelations in this field, and of our former colleague, Harry Cain, now of Miami, Fla., who has done a lot of work in these disclosures.

Of course, the disclosures really verge on the ridiculous except for the fact of their address to the public and that they undoubtedly find many takers, as is evidenced from the fact that this is carrying on unabated as it has. Not only do they attack public officials like myself, and the distinguished former Presidents whom I have named, and Adlai Stevenson, but also they have attacked the National Congress of Parents and Teachers as being some kind of a Communist front or front organization, and many others.

Their national headquarters, as the committee now knows, is Sarasota, Fla. They are active, according to our report, in 30 American cities, including New York, Philadelphia, Chicago, Detroit, Baltimore, Miami, Dallas, Kansas City, Indianapolis, Wichita, Sacramento, and a number of cities in the Los Angeles area.

In addition we are advised there are facilities in Decatur, Bedford, and Calumet City, Ill.; Jacksonville, Sarasota, and Clearwater, Fla.; Knoxville, Tenn.; Boulder, Colo.; Port Arthur, Tex.; Long Beach, Calif.; Brockton, Mass.; Summit, N.J.; Nashua, N.H., and Southern Pines, N.C.

That is about the net of it.

The messages, we are told, of "Let Freedom Ring" are used by 36 subscribers in the Bell telephone chain, and by four subscribers using independent telephone services.

Some examples of what is a broadcast, anonymously, are the following:

On January 26, 1965, one telephone message stated:

> America will soon be in a position of hopeless military inferiority to the beasts of Russia because of the deliberate disagreement by traitors in the Johnson administration.

And a report of September 6, 1965, in the Miami Herald, indicated that the then current "Let Freedom Ring" recorded message called the Peace Corps, "Something akin to the Hitler youth movement with a Communist twist."

I also contain in my testimony from May 1964 an excerpt from an anti-civil-rights statement which is really a most rabid and exciting kind, accusing the National Council of Churches of, "openly promoting bloodshed through armed revolution by Negroes."

Mr. Chairman, this is something of a sample of the situation which we face.

I would like, if I may, to introduce in the record, in tribute to a great newspaper, an editorial entitled "Unmasking the Hate Mongers" which appeared following the introduction of these bills in the Washington Star on November 4, 1965. I would like very much to endorse their statement. They are very gracious to me in respect of the bill which I introduced.

Senator PASTORE. Without objection, it is so ordered.

Senator JAVITS. Thank you.

They say in relation to the statements—

The whole tone echoes what one political scientist has called the paranoid style in politics.

THE PARANOID STYLE IN POLITICS

So I believe, Mr. Chairman, that with the exception which the telephone company has asked for, which I think is very proper, to deal with these so-called factual public announcements—time, weather, stock market returns—we should pass this bill for three reasons.

One, it is a definite loophole in the law which has been taken advantage of by men I call anti-American, advisedly, but nonetheless who have as much a right to express as I or anyone else within the confines of the law.

Two, so that we may know who is speaking, so that whoever is speaking may be responsible.

And three, the failure to disclose shall not imply termination of a service, which is mighty small potatoes, but shall require criminal penalties, and only we can do that.

For those reasons, Mr. Chairman, I hope that the committee will give favorable consideration to Senator McGee's bill and mine.

Senator PASTORE. Thank you very much, Senator Javits.

Senator MCGEE. May I ask a question or two in the comparison of the two bills?

Senator PASTORE. Yes.

Senator MCGEE. They are educated ventures to get as much information as we can on the various issues that are raised. In your bill, Senator, you likewise would require the identification of the person fully responsible, not just the organization or the corporation or the general group, but the particular person responsible for script. And the advantage of that over leaving it the other way is what?

Senator JAVITS. The advantage is that you fix it upon a person who is then liable equally with what may be a bankrupt corporation, or a corporation without assets, or some committee with some irrelevant name.

Senator MCGEE. The suggestion has been made that this may jeopardize the position of that individual if he is so personally identified. There may be crackpots go after him; he may lose his job. Shouldn't he be protected?

Senator JAVITS. Senator Pastore hit that on the head. He jeopardized my position; didn't he? He called me a Communist or neo-Communist. That is pretty good jeopardy. At least I am entitled to equal treatment from the fellow who says I am.

Senator MCGEE. I think in our great country, if our patriotism has has been reduced to anonymity and secrecy, we are in a sorry state.

The other part of your bill is on the criminal penalty, a good point.

Senator JAVITS. Exactly.

Senator MCGEE. In my bill I also require that the telephone company assume personal responsibility for damages. We have had a good bit of testimony on this, to suggest that maybe that ought to be

transferred to the individuals involved. Would the Senator care to comment?

Senator JAVITS. Yes; I think so. I think that the telephone company should not be liable beyond the normal liability of broadcasting companies or television companies which have been well defined by the courts in terms of willfulness, intent, et cetera. I think these are media, but like the newspapers they are entitled to safeguards of media. I think we show our good faith and patriotism as to sustaining the rights to utter statements within the law, which we violently and thoroughly disagree with, so long as the responsibility is assumed for them by those who would utter them.

I do think that the telephone company, as well as our broadcasting media, are under adequate regulations. Their particular role, I do not believe, would be abused.

Senator MCGEE. If we were to remove this specification and not make them personally liable under those circumstances, what would be wrong with letting them take the total responsibility for seeing that this job was done the right way?

Senator JAVITS. I think what is wrong is the difference in State applications which may occur if you leave it on the tariff basis, and the absence of any criminal, really effective sanction to criminal action. That is why I pleaded for a Federal law. What I do say, what I would do about the telephone company, I wouldn't disturb the existing legal situation as far as they are concerned either way. In other words, I would leave them to the law the way it is now defined as we do for newspapers and other broadcast media.

Senator MCGEE. Those are all the questions that I have.

Senator JAVITS. Thank you very much.

(The article from the Washington Star, referred to, follows:)

[From the Evening Star, Nov. 4, 1965]

UNMASKING THE HATEMONGERS

America's rightwing extremist groups may have 18th century ideas, but they are adept at using 20th century techniques. One is the taped telephone message. You dial a well-publicized number and get 60 seconds of innuendo and smear, unsupported and with the identity of the speaker often unfurnished.

Senator Javits, of New York, has made a collection of scripts prepared for such taped bilge. The anonymous voice, secure from responsibility for possible slander, warns that the "Communist-lining National Council of Churches is is openly promoting bloodshed through armed revolution by Negroes," that there are traitors in the Johnson administration exposing us to the "beast of Russia." The whole tone echoes what one political scientist has called the paranoid style in politics.

To put the spotlight on such sick propagandists, Senator Javits has introduced a bill that would impose two modest requirements. Telephone companies would have to make public the identity of persons financing such taped messages. The sponsors also would have to identify themselves on the message itself.

There is ample precedent for such a law. Sponsors of radio and television advertisements must be identified now, and that includes those buying time for political messages. By extension, is not the telephone as much in the public domain as broadcasting? Should persons using it for propaganda have an objection to coming under the same rule?

Taped messages may not be a precise parallel to broadcasts. After all, one does have to dial the number, an act of free volition. But one must turn on a

radio and dial a station, too. The broad principle, it seems to us, remains the same. The Javits bill deserves a fair hearing in the next session of Congress. The hatemongers should not be permitted to operate under this cloak of anonymity.

U.S. SENATE,
Washington, D.C., December 14, 1965.

Hon. JOHN PASTORE,
Chairman, Subcommittee on Communications, Senate Commerce Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The November 22 letter to your committee from Dr. William Campbell Douglass, national chairman of "Let Freedom Ring," contains a transcript of a "Let Freedom Ring" broadcast of July 28, 1965, attacking me. The record of your hearings would not be complete without a statement from me regarding this attack.

The allegations in paragraphs 2 and 3 of this broadcast have long ago been repudiated. They were first made in 1956 in a political campaign in Nevada in an unsuccessful attempt to smear me politically. I was then attorney general of New York and insisted on a public hearing before the Senate Internal Security Subcommittee on September 16, 1956, at which I testified under oath. At the time, leading newspapers and public officials called the charges outrageous, tawdry, scurrilous, and sneaky; with age, they seem even more so. In that same election year, following the hearing, I ran for the Senate, was endorsed by President Dwight D. Eisenhower, and elected by a large majority. The voters of New York State have replied to the charges most eloquently by the successive votes of confidence they have given me at the polls.

In the context of the current investigation by your subcommittee, the transcripts of these broadcasts, including those which attack other public officials and organizations, such as the National Council of Churches and the Anti-Defamation League, underscore the lengths to which extremist groups will go to seize upon the flimsiest of pretexts in order to discredit public officials and public service organizations, and to challenge their loyalty. The transcripts of these broadcasts also emphasize the need to remove the cloak of anonymity from those responsible for such scurrilous attacks. For, smears of this kind cannot survive the full glare of public knowledge and scrutiny and those subject to them must be the first to expose them.

Sincerely,

JACOB K. JAVITS,
U.S. Senator.

SARASOTA, FLA., *November 22, 1965.*

SENATE COMMERCE COMMITTEE,
Subcommittee on Communications,
New Senate Office Building, Washington, D.C.

GENTLEMEN: There are a few corrections and observations that I would like to have added to my testimony before your committee on November 19, 1965, for the sake of clarity and completeness of the record:

1. Senator Jacob Javits misquoted our July 1965 broadcast on disarmament. He said, "Because of deliberate disagreement." He should have said, "Because of deliberate disarmament."

2. Mr. Marvin Berger, counsel for the Anti-Defamation League, said that "Let Freedom Ring" was an "invasion of privacy." Mr. Berger has certainly reached a point of hysteria when he makes such a ridiculous assertion. He has so little in the way of logical argument that he has to support his case with fantasy and misstatement of fact. It is fantasy to say that "Let Freedom Ring" invades anyone's privacy. "Let Freedom Ring" has to be voluntarily dialed in order to be heard. If this is an invasion of privacy then we must outlaw all radio and television which captures your mind involuntarily in any hotel lobby, any bar, and now even on the commercial airlines—where you can hardly escape short of suicide.

3. "Let Freedom Ring" is in 61 cities—not 30, as was reported by Mr. Javits.

4. The Pittsburgh Post-Gazette, a far left newspaper that could hardly be considered sympathetic toward "Let Freedom Ring," had, nevertheless, a well-

reasoned editorial in its issue of September 16, 1965. I would like to have it inserted as part of my testimony and it is included with this letter for insertion at this point.

"[From the Pittsburgh Post-Gazette]

"LET FREEDOM RING

"The air is ringing these days with protests over a program called Let Freedom Ring, which is being disseminated to listeners by way of recorded telephone messages in 30 cities, including Pittsburgh. The protesters complain that the messages are offensive and defamatory. And some of them have demanded, among other things, that the telephone company be required by the Federal Communications Commission to refuse messages containing defamatory statements known to be spurious, or when the sender is acting in bad faith or for the purpose of traducing another.

"We can't understand the reason for all of the wringing of hands over Let Freedom Ring. There are still laws to provide protection against slander. Moreover, no one can be compelled to dial the number. If he does, he's voluntarily subjecting himself to a dose of verbal poison—which is what he gets in these messages. Financed and promoted chiefly by members of the John Birch Society, these phone talks convey the wacky views that are the stock in trade of that extremist organization. Samples: Life magazine and the Saturday Evening Post dispense Communist propaganda. The National Council of Churches is participating in a campaign to deliver a coup de grace to the United States in order to create a Communist-controlled 'labor-theocracy.'

"We are more troubled about the rationality of anyone who would believe this kind of nonsense than we are about the effect of the messages on sensible listeners. But if others are worried by the messages, why don't they put on some records of their own? The telephone company will provide the wire service. Meanwhile, let freedom ring for the John Birchers or anyone else who wants to be a phone preacher."

5. It is my understanding that Senator McGee stated or implied to the press on November 18, 1965, that the chairman of Let Freedom Ring was getting rich through these activities. I would like it placed in the record that my auditor has estimated my loss in income, because of my anti-Communist activities, to be about $5,000 a year.

6. Mr. Gale McGee seems to consider anonymity some sort of sin. This is because he has not thought through the reason why many anti-Communist patriots today seek anonymity. The Federalist Papers were all written anonymously. This was because tyranny prevailed then as it does now. It was not safe to be a patriot then—and it is not entirely safe today.

7. As Senator Javits, the National Council of Churches and the Anti-Defamation League all testified in favor of legislation that would, in our opinion, be persecutive and in violation of our rights of privacy. I would like to have inserted into the record, as part of my testimony, the following Let Freedom Ring broadcasts which concern this individual and these organizations. The record will then show why this individual and these organizations are so eager to muzzle Let Freedom Ring.

Let Freedom Ring broadcast of July 28, 1964:

"Senator Jacob Javits, of New York, has announced that he cannot support Barry Goldwater for the Presidency. With a background like mainstreamer Jacob Javits, this should not surprise anyone.

"Jacob Javits has a 100-percent pro-Communist, America-last voting record. He ran as a Republican for Congress from the 21st District of New York. This was illegal because not only was he a registered Democrat but he didn't even live in the district from which he ran. Javits' brother has sponsored Communist fronts and Senator Javits has had many associations with notorious Communists and Communist sympathizers such as Frederic Vanderbilt Field and Louise Branston who has used her home to entertain Communist agents.

"Dr. Bella Dodd has testified before a congressional committee that she was instructed by the Communist Party to get Javits into the Republican Party and to get him elected. Javits received the all-out support of the Communist Party and thus a new, self-proclaimed moderate Republican was born.

"With a record like this, can you picture Jacob Javits hitting the campaign trail for Barry Goldwater?

"Mr. Javits appears unhappy in the new Republican Party. We suggest that he proceed to the United Nations Building, sit by the meditation stone, and reappraise his situation. Now honestly, Mr. Javits, wouldn't you be happier in a party whose mainstream flows to the left? Don't you think that Governors Scranton and Rockefeller could also benefit from a spiritual session with the big stone?

"To Barry Goldwater we quote from Demosthenes, the great patriot of ancient Greece. Demosthenes said:

" 'You must realize that you will never succeed in defeating the enemy outside the city walls as long as you do not vanquish those persons in the city who stretch out their hand to the enemy.' "

Let Freedom Ring broadcast of August 31, 1965:

"Liberals scream loudly about the separation of church and state when children bow their heads in simple prayer at a public school. But these pseudo-intellectuals are hypocritically silent about the involvement of the National Council of Churches in politics and foreign policy.

"The National Council of Churches is not a theological organization, but a tax-exempt political lobby. For instance, the NCC endorses the forcing of workers into labor unions by Federal legislation. Have you wondered why this so-called church organization is spending your tithe money to promote this totalitarian measure? It's very simple: The National Council of Churches has become a paid political arm of Walter Reuther's AFL–CIO and in 1954 the council received a payoff of $200,000 from that labor organization for its cooperation in union politics.

"Eight years ago the American Flag Committee of Philadelphia predicted that the Communists would, in 1965, amalgamate the Negro revolutionary groups, the labor unions and church groups into a powerful political coalition for the advancement of the Communist conquest of America. Right on schedule, the Reuther brothers, the National Council of Churches, and the Communist-directed Negro revolutionary groups have coalesced into a powerful phalanx for the purpose of giving the coup de grace to the United States of America.

"Dr. Eugene Carson Blake, of the National Council of Churches, said in 1964 and we quote: 'With prudent management, the churches ought to be able to control the whole economy in the predictable future.' Where are the liberal hypocrites who wail about separation of church and state? Why do they remain silent in the face of this unholy alliance of church, communism, racial revolutionaries, and Marxist labor leaders?"

"Let Freedom Ring" broadcast of September 7, 1965:

"The National Council of Churches has, from its beginning, been under the control of Communists and Communist fellow-travelers. Among the NCC's most vicious and anti-Christian spokesmen are:

"Dr. Franklin H. Littell, of the Chicago Theological Seminary. Littell was on the executive committee of a Communist-front called the Methodist Federation for Social Action.

"Rev. Edwin Dahlberg, former president of the National Council of Churches, has been supporting Communist causes for 20 years.

"Dr. Harry Ward, one of the founders of the original organization called the Federal Council of Churches, has been identified under oath as a Communist.

"But this is only a sample of the NCC's pro-Red leadership. Let us quote from hearings of the House Committee on Un-American Activities: '* * * of the leadership of the National Council of Churches * * * , we have found over 100 persons * * * with * * * records of service to Communist causes. The aggregate affiliations of the leadership * * * is now, according to our latest count, into the thousands * * *'

"With people like this in positions of power in the National Council of Churches is it any wonder that the NCC promotes literature so filthy that it cannot be sent through the mails and that they financed a revolutionary training school at which a convicted homosexual acted as instructor?

"If your church belongs to the NCC, we suggest that you make your next church pledge with the following restrictive statement: 'Payable within 1 year after date of withdrawal from the National Council of Churches.' "

"Let Freedom Ring" broadcast of April 13, 1965:

"It is a known fact that Jews are persecuted and are considered second-class citizens in Russia. Because of this, it seems paradoxical that the Jewish organization, the Anti-Defamation League of B'nai B'rith, would concentrate its attack on individuals and organizations in the United States who are not anti-

Semitic, but anti-Communist. The ADL has even joined the Communists in attacking the House Committee on Un-American Activities. This committee of Congress was in the forefront in the fight against Jew-hating Nazis during World War II and under no stretch of the imagination could it be called anti-Semitic. It is startling, in fact, to note how often the Anti-Defamation League follows the Communist line.

"The Anti-Defamation League, hiding behind the good name of B'nai B'rith probably causes more anti-Jewish feeling than the American Nazi Party could ever hope to achieve. The American Nazi Party is obviously anti-Semitic and simply does not appeal to Americans. But the ADL implies that good Americans are anti-Semitic when those Americans don't conform to the ADL's political beliefs. This is the foulest form of slander and hurts the Jewish cause.

"There are many patriotic, anti-Communist Jews in the United States and a few years ago a rabbi actually led the invocation at a meeting of the Christian Anti-Communism Crusade in Los Angeles. The ADL doesn't like the Christian Anti-Communism Crusade and, according to their definitions, this rabbi would have to be considered anti-Semitic. How ridiculous can you get?

"We urge Christians and Jews alike to learn more about the Anti-Defamation League."

"Let Freedom Ring" broadcast of April 20, 1965:

"It was with a heavy heart that we began this two-part series on the Anti-Defamation League, for we too wish to avoid the ugly label of anti-Semitism. But the idea that patriotism has hidden anti-Semitic motivations must be countered and the way to counter it is to expose those who use this dirty tactic.

"At the forefront in this vicious campaign against American patriots are the Communist press and the Anti-Defamation League. The ADL, which is supposed to fight anti-Semitism, spends most of its time fighting anti-Communist patriots. In fact, the Anti-Defamation League follows the Communist line on most issues.

"In a recent book, the ADL engaged in vicious smears against some of America's outstanding anti-Communists. It is puzzling to see an organization that professes to be protecting the Jews, attack the very people who are diligently fighting the most anti-Semitic government in history—the slave masters in the Kremlin.

"B'nai B'rith, an honorable and highly laudable Jewish service organization, sponsors the Anti-Defamation League. We would like to suggest respectfully that the venerable B'nai B'rith take a close look at its strange offspring because the ADL is sowing seeds of hatred where none need exist—and this is bad for America.

"The famous columnist, George Sokolsky, himself Jewish, had this to say about the ADL, and we quote: 'I disagree with them that the solution to the problem is hit-and-miss smearing, lying about people, filthy press campaigns, and similar evidence of hysteria.'

"We wish our Jewish countrymen well and we urge men and women of all faiths to join us in fighting the common enemy: the anti-Christian, anti-Semitic Communist conspiracy. We also urge Christians and Jews alike to learn more about the suspicion mongers of the Anti-Defamation League."

Thank you for including these additional remarks in these preceding pages of this letter into the record of the hearings.

Yours sincerely,

"LET FREEDOM RING,"
WILLIAM CAMPBELL DOUGLASS, M.D.,
National Chairman.

Senator PASTORE. Mr. Berger.

STATEMENT OF MARVIN BERGER, ON BEHALF OF THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

Mr. BERGER. Senator Pastore, Senator McGee, gentlemen——

Senator PASTORE. Mr. Berger, I seek your indulgence.

I might have to leave for very personal reasons about 11 or 11:05. When I do leave, Mr. McGee will assume the chair. But I hope that you don't consider this in any way a slight to you.

Mr. BERGER. Not in the least, Senator.

In fact, before you leave, may I take at least the opportunity of setting the record straight in one respect.

I'm sorry, it grieves me to report that your home State is not entirely free of "Let Freedom Ring" stations. There is one at Westerly, R.I.

Senator PASTORE. There is one at Westerly, R.I.,

Mr. BERGER. Yes, sir. To get the record straight, however, let me point out by way of balancing the score, that one of your fine newspapers, the Providence (R.I.) Journal, has published in its issue of September 14 a very fine statement endorsing the objectives of this committee, or at least the legislation which this committee is considering.

It states, if I may quote:

> Victims of libel would have a better chance of seeking legal redress under a policy of publicity. And the extreme right would be forced to remove its cloak of secrecy and play fair and square in the American tradition, something it abhors doing.

Senator PASTORE. At the same point we ought to put in the record a similar editorial by the Woonsocket Call.

(The document follows:)

[The Woonsocket Call and Evening Reporter, Nov. 2, 1965]

"HATE MESSAGES" SHOULD BE CONTROLLED

Rhode Island's Senator John O. Pastore will conduct hearings in Washington, starting November 18, on bills designed to control the use of recorded "hate messages" over telephone lines.

The hearings will be held by the Senate Communications Subcommittee, of which Senator Pastore is chairman. E. William Henry, Chairman of the Federal Communications Commission, will be the first witness. Telephone officials and other communications experts are expected to be called.

What is under consideration is legislation likely to be acted upon by Congress during its second session which would require recorded telephone messages to include identification of the caller.

Such legislation is needed, particularly since dial phoning has made it difficult to trace calls. In recent years, hate messages and personal smear campaigns have been reported with increasing frequency. Even such a respected organization as the PTA has been victimized by recorded phone messages, inferring that the PTA is Communist-controlled and is brainwashing both parents and children.

Probably the most vicious type of call is made to widows of Vietnam victims. The caller informs the widow that he is "glad" her husband has been killed by the Vietcong because we have no business being over there and our young men are losing their lives needlessly.

It does not take much imagination to guess what such a message does to a young widow, already in despair over the loss of her loved one. Whatever strength she still maintained is sapped.

Those sponsoring the legislation to control recorded messages believe most of the hate messages are sponsored by extreme rightwing organizations. Usually, the person picking up the phone hears a smooth, sirupy voice at the other end of the line, subtly implying that a certain group of persons is harmful to the American way of life.

Often a few bars of the Star-Spangled Banner are heard, there is the usual flag waving, and sometimes a quotation is inserted from some national figure. Frequently the listener does not fully realize influence peddling is at work. But the seed has been planted.

That is why it is so necessary to control such messages over telephone lines. Too many are hiding behind a cloak of anonymity to spread hate and discord.

Senator Pastore's hearings should divulge some startling information.

Senator McGee. You speak of the extreme right. What we are saying here applies equally to the extreme right, extreme left, extreme anything, or the middle of anything.

Mr. Berger. I couldn't agree more.

What we are talking about is merely examples. I would say the same thing if we were faced with something from the extreme left, assuming that they indulge in this method of operation.

Senator McGee. Or even from Republicans and Democrats.

Mr. Berger. Of course.

Senator Pastore. Or anybody.

This is not aimed at any one organization or any one individual. The question has been raised of discrimination. No discrimination is intended. Once this law is passed it applies to me, to you, it applies to everyone who subscribes for this kind of equipment, and puts this kind of a message over the telephone.

Mr. Berger. Certainly, sir.

Senator Pastore. We are not suggesting any censorship. We are not trying to impinge on anybody's right to say what he feels he would like to say. All we are saying is, you have the privilege of saying it, but you ought to come forth and identify yourself, and that means me, you, or anybody else.

Mr. Berger. Of course.

Senator, in order to establish my qualification and the identity of my organization, may I read for just a brief moment something preliminary?

My name is Marvin Berger. I'm a member of the bar of the State of New York and have been a member of the bar of that State for 35 years.

I am associate publisher of the New York Law Journal, the largest and most widely circulated legal daily newspaper in the United States.

I am a member of the National Civil Rights Committee of the Anti-Defamation League of B'nai B'rith. For upward of 25 years I was associated with a great newspaper, the New York Post, and for the last 15 years I was its general counsel, specializing in the fields of libel and copyright.

During part of that period I was a member of the Executive Committee of the Publishers Association of New York City, representing all the major newspapers of that city.

I am a member of the American Bar Association and the New York State Bar Association, I am chairman of the board of publishers of the publication of the State Bar Association of New York, the New York State Bar Journal. I am a member of the Association of the Bar of the City of New York, the New York County Lawyers Association, the New York Law Institute, and the Queens County Bar Association.

I have served as chairman or as vice chairman or as a member of the committee of public information or public relations of every one of these bar associations, with the exception of the American Bar Association. I was recently appointed a member of that association's advisory committee of the public relations committee.

The Anti-Defamation League, in whose behalf I appear, was established in 1913 as the educational arm of B'nai B'rith, America's

largest and oldest Jewish service organization, founded in 1843. The ADL seeks to promote good will and understanding among Americans of the various religious, ethnic, and racial groups and to prevent discrimination against any of them. To this end it has developed a vast library of educational materials and programs widely used by the schools and the mass media of America.

The ADL program has its roots in the religious teachings of Judaism that man is a creature of God, that all men are equal before the Almighty, and that the dignity of the individual is God given and must not be violated—teachings which are shared, of course, by all great religions.

As part of its activities, the ADL has concerned itself with manifestations of extremism which threaten democracy and our American way of life. As a result of this concern, the ADL has engaged in a study of the most important and widespread extremist organizations, both on the left and on the right.

One of these, on the right, Let Freedom Ring, has lately engaged in an increased use of anonymous recorded telephone messages for abusive and extremist attacks and libels on individuals and institutions. We believe the widespread use of this new device warrants action by the FCC to require telephone companies to revise their practices and tariffs in order to curb this misuse of the recorded message service.

At the outset, let me say that the Anti-Defamation League, and here I am addressing myself to the statement Senator McGee made—that we don't champion any measure which would suppress the claim of any citizen to speak his mind.

We insist, however, that the person acting as a source for the dissemination of libel be identified, and that he be prepared if challenged by the man whose name and reputation he has impugned, to prove the truth of what he says, or to be prepared to compensate him in damages.

General Walker can successfully sue a reputable news gathering agency like the Associated Press for libel, should not others be accorded this same right and, an important as the right, the unhampered ability to sue for defamation? Should the person defamed not be privileged to have the source of the defamation clearly and unmistakably identified? Should he not be able to subject to liability any facility that assists in knowingly spreading the defamation—be it a news service, a newspaper, or a telegraph or telephone company?

We insist that even as a writer, news agency and publisher are all held responsible for the spread of written defamation, that the originator, script writer, packager and finally, the public utility responsible for diffusion of organized telephone defamation, be held responsible for the consequences of their acts.

The use of the anonymous recorded telephone message for such attacks was originated less than 3 years ago in Sarasota, Fla., by a Dr. William C. Douglass, a member of the John Birch Society. While the device has been used by others, Dr. Douglass' network of "stations" as he calls his message outlets is perhaps the most notorious and most extensive.

By the summer of 1965, Dr. Douglass' network of telephone "stations" has spread to many of the major cities across the Nation. Let Freedom Ring message stations now operate or were operating as of several weeks ago in New York, Philadelphia, Chicago, Detroit (which

boasts 10 tape machines with 10 telephone numbers), Baltimore, Miami, Dallas, Kansas City, Indianapolis, Wichita, Sacramento, and in several cities in the Los Angeles area. In addition, there are stations in Dacatur, Bedford, and Calumet City, Ill.; Jacksonville, Sarasota, and Clearwater, Fla.; Knoxville, Tenn.; Boulder, Colo.; Port Arthur, Tex.; Long Beach, Calif.; Brockton, Mass.; Summit, N.J.; Nashua, N.H.; and Southern Pines, N.C. A number of additional franchise applications are said to be pending.

Each week, each of these outlets presents one or two "patriotic messages" to callers in its area—each spoken calmly but so worded as to arose suspicions, fear, and anger, or the urge to enlist in organized radical right activity.

Each message is recorded on tape and played automatically to anyone who dials a widely advertised phone number. This is done by using the Bell Telephone System's automatic announcement service equipment, an apparatus incorporating recorder, playback, and telephone connections in a single unit. This equipment can be rented from local telephone companies at costs varying from $20 to $45 monthly (multiple numbers and other optional devices being available). All such arrangements are made and paid for by the local Let Freedom Ring subscriber.

The automatic phone-tape service is available to anyone, is easily installed, and is cheap enough to make it an economical medium for propaganda. The scripts are supplied by Dr. Douglass—his single responsibility under the franchise agreement—and they cost the subscriber $24 the first year, $12 a year thereafter. The local outlet agrees to use at least 40 of the 52 scripts supplied each year. This leaves an average of one broadcast per month for the subscriber to air local issues in his immediate area.

Dr. Douglass explains his operation in his prospectus as follows:

> Let Freedom Ring is an nonprofit corporation established to disseminate anti-Communist, anti-Socialist, pro-American broadcasts via a telephone tape recording. Your "customer" dials a number (just like time and weather) and gets 2 minutes of anti-Communist dynamite * * *.
>
> Let Freedom Ring brings to your area a hard-hitting, often shocking program that is "on the air" 24 hours a day * * *. You will be amazed at the frantic reaction that you will get from your enemies—they will hate it.

Let Freedom Ring scripts are lurid visions of a "Communist conspiracy" allegedly lurking behind civil rights, the United Nations, the U.S. Supreme Court, the last three U.S. Presidents, the State Department, the press, the National Council of Churches, the American Civil Liberties Union, and others. Excerpts from typical scripts are as follows:

> America will soon be in a position of hopeless military inferiority to the beasts of Russia because of deliberate disarmament by traitors in the Johnson administration (Jan. 26, 1965).
>
> Another fact ignored by the press is that the Communist-lining National Council of Churches is openly promoting bloodshed through armed revolution by Negroes. There is documented proof that Negroes are being armed for open revolution this summer (May 12, 1964).
>
> At the forefront in this vicious campaign against American patriots are the Communist press and the Anti-Defamation League * * *" (April 1965).
>
> How long will the American people put up with treason right in the White House itself? How long before the American people demand the impeachment of John F. Kennedy? (October 1962).

From these "scripts" it is easily understandable that Let Freedom Ring has been recommended by Robert Welch, founder of the John Birch Society, as a worthwhile interest for his members. Dr. Douglass writes the LFR scripts, compiling his data from "intelligence reports" and other esoteric-sounding sources which he says are "not generally available." The usual Birch line is discernible in much of the material although Let Freedom Ring has on occasions unearthed a "conspiracy" the nature of which suggest that at least some of the doctor's "intelligence" has been derived from the more excited bulletins and tracts of the far-out fringe.

In his script for the week of April 28, 1964, for example, Dr. Douglass stirred some of his callers' deeper fears (emphasis retained from the original script) :

> The *pro-Communist* toadies within the Johnson administration must at all costs keep the truth from the American electorate. If they win the election, they will no longer care what you think, for by 1966 America will have ceased to exist * * *. There are only three possible answers to Lyndon Johnson's *criminal neglect* of these problems that bear so heavily on our very survival:
>
> One: *Ignorance* * * * With our multimillion-dollar intelligence establishment this would seem hardly possible.
>
> Two: *Cowardice* on the part of the President and his State Department pink ladies in striped trousers.
>
> Three: *Treason,* with the President being a captive or willing tool of the Communist conspiracy.
>
> Americans can no longer trust the executive branch of our Government.

Such seeds of distrust have been spread by the recorded telephone voices through ever-widening circles. During the week of May 12, 1964, the unseen patriotic "experts" parroted the following dire warning of Dr. Douglass. [Emphasis again retained from the original] :

> The Communists, working through their errand boys in Congress and the White House, are working feverishly to have passed a bill that will outlaw the ownership of guns by private citizens while at the same time they are urging *armed rebellion* by Negroes. These carefully coordinated drives are aimed at simultaneously disarming the American people and overwhelming them through Communist-controlled revolts * * * and we also urge our listeners to purchase a rifle or pistol for home defense. We are *not*—we repeat—we are *not* promoting insurrection as does the National Council of Churches. We are merely urging you to exercise your constitutional and God-given right to protect yourself * * *.

The incitement to "anti-Communist" arms gathering has been buttressed by tales of a weird government plot against such "God-given" rights (LFR broadcast in February 1964) :

> At the University of Michigan a plan is being developed for the systematic house-to-house search of the entire United States for arms of any kind. The search is to be made by the U.S. Army by blocking off five States at a time, beginning in the western part of the country. The entire civilian population is to be disarmed by the end of 1965.

That horror story so incensed Senator Jacob K. Javits of New York, that he queried officials of the Defense Department to establish the truth as a matter of public record. The Senator inserted the following official Department reply in the Congressional Record of October 2, 1964 :

> This charge is absurd, completely false, and reflects the hallucinations of an aberrated mind.

Senator Javits added an interesting note: The story appeared to have been taken bodily from the October 1963 issue of On Target, official publication of the paramilitary "Minutemen" organization.

Let Freedom Ring services the radical right, from its isolated ax-grinders to its largest national membership organization, with a weekly propaganda scare available around the clock. This, as Dr. Douglass has pointed out, makes the LFR message a broadcast scheduled at the caller's convenience—and it is one with a personal and, therefore, more persuasive touch. Moreover, the telephone message is a quick exhortation which is just as quickly finished, affording the caller no chance for rereading or analysis. This allows the use of some of the bluntest of propaganda tricks. On May 23, 1965, for example, Dr. Douglass' script read, in part:

> Under the provisions of the Civil Rights Act, a convicted rapist applying for a job in a girls' school could file suit against the school if they requested a picture with his application * * *. Does this sound crazy?

Crazy, no—but clever, perhaps, in that the caller has no time to evaluate the words spoken to him so quickly and in so sincere a voice. He hangs up—the LFR equipment has an automatic cutoff, anyway—and all that remains is the image of a rapist roaming the corridors of a girls' school, plus the seeds of confusion and hate.

A further element of LFR's appeal lies in the fact that the subscriber's name and address can often remain a secret, buried in the telephone company's files. His number, though widely publicized, is technically an unlisted one, its holder, therefore, a legitimate albeit hypocritical claimant to anonymity. Such anonymity—and the ironic "privacy" of telephone messages—insulates the local LFR sponsor against personal responsibility. (Contrast this to the identification and responsibility demanded of publishers and broadcasters.) Let Freedom Ring's nameless voices change from week to week, spreading messages of fright and suspicion that no individual person need answer for.

The question of responsibility nettles many who are concerned about the use of a public communications medium for the spreading of hate. The telephone companies, passive and unquestionably unwilling partners in Dr. Douglass' operation, have pointed to the dilemma posed by a too restricted view of the civil liberties question. Their position prior to ADL's complaint to the FCC filed last September (to be mentioned later) was succinctly stated by the Bell Telephone Co. of Pennsylvania in a letter to the city of Philadelphia Commission on Human Relations:

> 1. It is the duty of the telephone company to furnish services and facilities to anyone who will use the service in a lawful manner * * *. The Pennsylvania Supreme Court has made it clear that public utilities are not censors * * *
>
> 2. Automatic announcement service is a regular telephone service which is available to any customer * * *. A user of automatic announcement service determines for himself the content of the messages handled by the service.
>
> 3. Regardless of its views on the contents of recorded messages, the telephone company is prohibited from interfering with the lawful exercise of a customer's right of free speech.

Bell System officials pointed out that public utilities are prohibited under Federal statutes from discriminating—that is, in offering preferential service or in withholding services at will—and further, that they are forbidden to censor or even to monitor private calls. True, the telephone company may intervene in the case of messages which violate criminal laws—for example, bookmaking operations or obscene

calls—when requested to do so by police agencies. Various courts have held, in addition, that the company may act when it has reasonable cause to believe that the telephone is being used for illegal purposes, even without a specific police request.

In the present case, this would necessitate a reasonable cause for belief that the material of the "Let Freedom Ring" tapes constitutes criminal libel. Telephone officials are hesitant to admit that such reasonable cause exists. Mindful that evidence of criminal libel must usually show a tendency to create a breach of the peace, and fully aware that the courts extend the broadest protection to freedom of speech, these company officials say that they would take action only if advised by law enforcement agencies of the existence of criminal libel in specific cases.

One remedial suggestion that has been offered is to extend to this type of telephonic public announcement the law applicable to radio and television broadcasting, which provides for the grant of a license only if the public convenience, interest, and necessity would be served thereby. Is there not, in the telephone company's automatic announcement service, a potential that is profoundly similar to that of a radio station in that such service provides for the increasingly public use of a public communications medium? The promoter so believes, since he speaks of "broadcasts via a telephone tape recording" and of a "program that is 'on the air' 24 hours a day."

The telephone company's answer is that phone messages reach only those persons who wish to hear them, thus limiting the broadcast nature of Dr. Douglass' programs. But no one is forced to listen to radio or TV broadcasts, either.

Such arguments, of course, would not invalidate suggestions of the possible need for new Federal legislation or for a whole new approach, considering the expanding electronic possibilities in the area of telephone communications. For, such arguments do not answer the possibility that wide publicity and advertising of the appropriate phone numbers have given the "Let Freedom Ring" anonymous broadcasters a greater daily audience in some cities than many a radio news broadcast. Here, the case for privacy may indeed be a shaky one.

Dr. Douglass feels confident, from seeing the recent impact of his operation in various key cities, that LFR cannot be stopped and that it will become one of the major rightwing influences within the next 2 years.

"You will be amazed at the influence that you have on public opinion almost immediately," he states in his prospectus. "Last year, for instance, we were given credit for having killed the UNICEF Christmas card drive locally—an accomplishment of which we are very proud."

Against the doctor's pride stands a growing indignation among persons and organizations who recognize the perils inherent in the LFR technique, which Senator Javits has called a pushbutton approach to mass libel.

Senator Javits warned in the Senate on October 2, 1964, that the Douglass network was "a nationwide organization not run by professionals but by enthusiastic amateurs and apparently inaugurated and dedicated to bringing hate and fear within the reach of all."

The usually conservative California Federation of Republican Women, on May 13, 1965, adopted a resolution calling the "Let Freedom Ring" messages false and treacherous propaganda and asked the FBI to look into the "origin, sponsorship, and objectives of this vicious activity." The federation has been particularly angered by an LFR script labeling General Eisenhower "pro-Communist" and accusing the former President of having attended a meeting at which he supposedly had joined in a discussion on "the best way to surrender you and your family to the Reds."

The question of free speech is bound to arise in any discussion of LFR's gross misuse of public utilities. It is noteworthy, then, that a strong statement on the issue of Dr. Douglass' operation has been broadcast by a leading radio station, for broadcasters certainly have a special interest in the preservation of freedom in communications. WCAU, an important radio voice in Philadelphia, has stated:

> WCAU believes that such hate messages * * * are feeding the fires of race hatred and possible violence. And we call upon all decent people to renounce such tactics * * *.

On September 3, 1965, the Anti-Defamation League filed a complaint with the Federal Communications Commission against the use of anonymous recorded telephone messages which make "abusive and extremist attacks and libels on individuals and institutions." The Commission was asked to initiate proceedings requiring telephone companies to curb "such flagrant misuse" of their recorded message service.

The complaint, submitted by Arnold Forster, general counsel of the league, specifically cited "Let Freedom Ring." It asserted that although much of the operation involves local calls, "Let Freedom Ring" numbers can be, and are, dailed from one State to another, making the calls interstate in character and, therefore, under FCC jurisdiction. It also said that any action taken by the Commission would furnish a standard for State and other local regulatory agencies to follow in dealing with intrastate calls.

The league pointed out that the regulation of the recording services would not be an invasion of the free-speech principle which it regards as a cornerstone of the American constitutional system.

What was sought by ADL, as protection to a democratic society which prizes freedom of speech, is a cessation of reckless, malicious, and libelous statements made possible through the abuse of facilities furnished by public utilities, the complaint asserts.

The league made clear that legitimate uses of the recording service, such as time and weather reports and religious messages, should not be burdened to meet the evil posed by unidentified extremists. It went on to say that elementary principles of fairness and justice made it imperative, however, that persons and groups defamed by these reckless accusers be able to ascertain the identity of those responsible and to obtain the full text of the message so they can seek legal redress. Denying easy access to that information, the league said, is unjust and unreasonable, contrary to sound public policy, and in violation of Federal law.

The ADL complaint made the following suggestions to the FCC:

> That telephone companies be required to include in their interstate tariff a condition calling for disclosure of the name and

address of the true sponsor of record messages which discuss public issues, or contain defamatory attacks on individuals, groups, or institutions.

That the tapes of such messages be deposited with the telephone company and made available upon reasonable request.

That the civil liability of the telephone companies be established for "knowingly and repeatedly carrying a plainly libelous recorded message."

That telephone companies be required to amend their tariff relating to abuse or fraudulent use of service to include a provision similar to the one in the Western Union Telegraph Co. tariff.

The league pointed out that the potential for harm of Western Union messages is more restricted because those messages are usually sent to a single or very limited number of recipients. Courts have indicated ADL said that Western Union is responsible for the transmission of a defamatory message with knowledge that the message is spurious or that the sender is acting in bad faith to traduce another. Telephone companies, on the other hand, claim that they are not liable for knowingly transmitting such messages despite the fact that in some cities they have a greater daily audience than many radio broadcasts. We submit that, because of the widespread publication of these messages from a public policy point of view, it would be even sounder to have the telephone company liable in such cases.

The step taken by the league in bringing the "Let Freedom Ring" operation to the FCC's attention has been hailed by newspapers and radio commentators all over the country. I have attached to the statement I am submitting to this committee representative samples of such editorials and comments.

On September 28, 1965, the FCC informed the league that A.T. & T. had reported to it "steps to eliminate the problem." Names and addresses of subscribers to the automatic announcement service of all Bell System companies will be given out "as promptly as possible" on request, the league was told.

The A.T. & T. response to the Commission asserted that "the possibilities of abuse of this service will be mitigated by our action in eliminating anonymity of the users, which in turn should facilitate recourse to the courts by those who consider themselves defamed."

A.T. & T. said the company was aware of "public irritation resulting from the activities of those who sponsor 'Let Freedom Ring' announcements."

"We deplore the use of our facilities for the dissemination of disparaging remarks," the company said.

On October 19, 1965, in response to the A.T. & T.'s reply to the league's complaint, ADL through its general counsel, Arnold Forster, stated that it was pleased with the action taken by A.T. & T. instructing its member companies that subscribers to the automatic announcement service be placed on notice that their names would be available on request.

However, this was only a first step, ADL told the FCC, and merely agreed in principle with the necessity to strip the cloak of anonymity from those who used the service to disseminate abusive attacks and libels on individuals, groups, and institutions. Moreover, it was a

step taken by A.T. & T. only after it had repeatedly claimed it was powerless to do anything about this abuse of its service.

The league also pointed out to the FCC that the use of a meaningless corporate name or an irresponsible person as dummy could frustrate the effectiveness of this first step. It added that the inclusion of the names of true and actual message sponsors in the messages themselves would provide the possibility of redress in the courts to those attacked.

The league again cited Western Union to the FCC as an agency that will not knowingly accept messages containing "profane or obscene language or defamatory statements" and urged that there was no reason why the telephone company should not be equally responsible in its operation and be held liable if it continues to transmit a message once it is made aware of its libelous contents.

It was important, too, the league declared, that the person or institution libeled by a recorded message should not be required to pursue the will-o'-the-wisp of having to record for himself what the announcement says.

ADL suggested, therefore, that a record of messages that might contain defamatory statements be kept by the telephone company and made available to inquirers.

If the telephone company is not willing to keep a record of such recorded announcements, the league suggested that all users of the service be required to retain the texts of announcements which contain anything other than simple statements of fact for 30 days.

Another alternative suggested by ADL to the FCC is that all users of the automatic announcement service who use the same recorded message for more than 12 hours be required to retain a copy of the text.

The league stated to the FCC that it disagreed with the view of A.T. & T., that the inclusion of the names of the true and actual sponsors of recorded messages would impose an undue burden on users of the service. ADL maintained that the majority of users of the service identify themselves now. It is only those who make malicious defamatory attacks who decline to do so, it declared.

In response to the claim of A.T. & T. that determining whether a message was libelous or not would put it in the position of a censor, the league pointed out to the FCC that the existing tariffs forbid the telephone company to allow its facilities to be used to frighten, abuse, torment, or harass another or for obscene or profane calls.

Let me now comment briefly on bills recently introduced in Congress which seek to deal with some of the problems resulting from the abuse of recorded telephone messages. S. 2693 introduced by Senator Gale W. McGee, of Wyoming, would make it unlawful for any telephone company to permit the transmission of any recorded message unless the message states the name and address of the subscriber of the telephone used. Also, the bill would require each telephone company to maintain a file for identification of the name and address of each subscriber of such a telephone which uses recorded telephone messages.

S. 2713, introduced by Senator Jacob K. Javits, of New York, contains similar provisions as S. 2693. In addition, it would provide criminal sanctions for knowing violations of any provisions of the

bill. As I noted before, the A.T. & T. has taken voluntary action looking toward the attainment of the objectives of these bills within the companies it controls.

Bills dealing with the problem have also been introduced in the House of Representatives. H.R. 11605 introduced by Congressman Benjamin S. Rosenthal, of New York, contains provisions similar to the bills mentioned above requiring identification of each subscriber of a telephone which uses recorded telephone messages. In addition, H.R. 11605 would require each telephone company to maintain a transcript of each recorded message which would be available to the public. This bill also provides for criminal sanctions against violators.

We support the objectives of these bills to strip the mask of anonymity from those who misuse the automatic announcement service. Of the bills mentioned, we prefer H.R. 11605 because it not only requires identification of users of recorded messages but also requires the preservation of the tapes used in such recordings.

In the course of my testimony, I pointed out the similarity of the recorded telephone announcement to radio broadcasts. I also pointed out that the latter are under Federal license control and must serve the "public convenience, interest, and necessity." We recommend that this committee consider whether this statutory standard currently applicable to radio broadcasts should not be also made applicable to the automatic announcement service disseminated over telephone wires.

One of the recommendations made by the league to the FCC was that the telephone companies be required to amend their tariff relating to "Abuse or Fraudulent Use of Service" by including a provision which would authorize the telephone company to refuse the use of the automatic announcement service for messages which to the knowledge of the telephone company contain defamatory statements. I hope that this committee will study this recommendation for a change of the tariffs governing the telephone companies. I am convinced that any expression of interest on the part of the committee in this matter will be of assistance to the Federal Communications Commission in considering this suggestion.

Senator McGee. Doesn't this inhibit his freedom to speak if he thinks he is going to lose his job?

Mr. Berger. No, sir; I don't think it does in the least, because a person, if he believes in what he says, should not indulge in what used to be the label of Presidential assistants, a "passion for anonymity." I think in any case where a person is addressing himself to public opinion, he owes the public at least the obligation of saying who he is.

If I may for a moment summarize this part of my testimony, I would say that the Anti-Defamation League is asking that we add a sentence to the famous statement of Voltaire who, you recall, said or is supposed to have said, "I disapprove of what you say, but I will defend to the death your right to say it." We ask that you add one sentence: Who am I talking to?

Senator Pastore. What do you have to say, and you're an expert in law, especially in this area; you heard the testimony of Dr. Douglass.

Mr. Berger. I did, sir, and I might say I also read over last night the testimony given to this committee yesterday, and I'm prepared to comment on all of it.

Senator PASTORE. He suggested that he would be perfectly willing, inasmuch as he is the writer of these statements, to have his identity revealed in the telephone conversations, but that it isn't necessary for the utterer of the statement to have his identification revealed. What is your observation on that?

Mr. BERGER. There are two items that Dr. Douglass fails to understand, and I don't think as a layman he would necessarily understand them.

The first is a fact that in the case of a newspaper—and I use the newspaper as an illustration only because I am most familiar with it, but it is typical of any other facility for communication—that Mr. Drew Pearson is not required to have his home address on his column, because the fact remains that everybody knows where the newspaper publishing that column is situated, or where the syndicate which distributes the column is located. At the bottom of every column appears the name McClure, Hearst, or the Hall Syndicate or the name of the syndicate sending out this particular column. So identification is possible. And you also get at the transmitter of the column.

The fact that Dr. Douglass is available is fine, and I'm glad that he at least comes forward and doesn't claim the same cloak of anonymity with which he seeks to surround his outlets.

But the fact remains that the outlets also play a part, and an important part, in the transmission of his statements. If Dr. Douglass were to write his statements in Sarasota, Fla., and to broadcast them in Sarasota, nobody could complain in Sarasota that there was anonymity.

But when he gives them to somebody in Westerly, R.I., or out in Casper, Wyo., at that point he is then throwing a cloak of anonymity around the person who, by operating the announcement service locally, plays a very important part in carrying that message forward. That is the first point.

The second point is this: In the light of some of the experiences about which we have read lately in which actions of juries seem to have been influenced by sectional prejudices, I rather doubt that if I, a citizen of New York, were defamed and went down to Sarasota, Fla., which is the only place I could get jurisdiction of Dr. Douglass, and if Dr. Douglass were then to ask for a jury trial, I doubt very much whether a jury of his friends and neighbors would necessarily feel that I, Marvin Berger, had been defamed by anything he said, no matter how extreme it was, even if it went beyond the utterly scurrilous statements made here today and yesterday.

Senator PASTORE. Not if we made that a requirement of Federal law.

Mr. BERGER. Exactly. We could require the person who disseminates this information to put his name on the thing he disseminates, so that he, too, would be available for process himself in the very jurisdiction in which the message is being disseminated.

Then we would have something tangible. We would have, one, education; two, we would have a person whom we know can be sued in the local courts; and finally, if some of the other measures that are before your committee are adopted, particularly Congressman Rosenthal's bill, we would also then have a written record.

I have heard Admiral Mott talk this morning about not facilitating suits for libel. As a libel lawyer of many years' experience, let me say it is not as simple as he suggests; namely, that you go ahead and call the telephone company or subpena its records. You have to know what message you are talking about. How in heaven's name do you know what the person, whom you want to sue is talking about, unless you know in advance that he is going to say something defamatory about you and unless you are in position to tape it.

Senator PASTORE. I follow you, but you haven't completely answered my question, and I'm not challenging you. I am clarifying the record.

Dr. Douglass said he has no objection, for instance, if I uttered the statement at the conclusion of the statement to say, "This is a statement that was prepared by Dr. Douglass, of such-and-such address, Sarasota, Fla." In other words, I give you the source of the originator of the statement.

Mr. BERGER. Right.

Senator PASTORE. Do you find fault with that?

Mr. BERGER. I do, sir.

Senator PASTORE. For the reasons that you have given?

Mr. BERGER. Certainly.

If Drew Pearson doesn't put his address on his column, it doesn't matter very much because you have, first, the masthead of the newspaper in which it appears; second, the syndicate, the name of which appears at the bottom of his column; and third, Drew Pearson himself.

As very often happens, and as must be known to every Member of Congress, when a suit for libel is brought, it is generally brought against all three, newspaper, syndicate, and columnist.

Senator PASTORE. In other words, Mr. Berger, you are saying that regardless of who wrote the statement, the person who utters the statement then gives it life, he becomes a party thereto and should identify himself as well.

Mr. BERGER. Exactly so.

Senator PASTORE. Is that the argument that you make?

Mr. BERGER. Yes. Because right now, right now, let me say to you, that newspapers, which after all have recognized this responsibility for 200 years, being answerable for libel and having been sued for libel, do just that. They hold themselves out not as the originators of some of the material that appears in their columns but as the people responsible for disseminating it. And that is no less a responsibility than that of the person who originates the defamation. You have to be prepared if you are going to spread a libel to meet the consequences of spreading it.

When Senator Javits talked about leaving the legal situation where it stood, I don't know whether he quite realized that this responsibility extends beyond the man who utters the original statement. It extends right now, under the tariffs filed with the FCC, to a telegraph company which disseminates a defamatory message. They are not often sued, but their liability is there and it has been recognized by the courts. It extends to radio stations which otherwise might say, "We are merely putting a microphone before a man. We are not responsible for what comes out of the microphone."

That argument is nonsense. The person who spreads a libel is just as responsible as the person who originates it. I think legislation

should recognize or make clear the responsibility of every disseminator of defamation. Only when that responsibility is established will, I think, phone companies and others find themselves meeting the responsibility which I think is theirs in the light of their monopoly of a very important source of transmission of information.

Senator PASTORE. You see, it is our responsibility to develop a record in all of its aspects. But now you realize that in editorial writing the name of the person who writes the editorial is not revealed and that is accepted in American journalistic activities.

What if this individual took the position that all that is necessary is for me to say is that this is "Let Freedom Ring," with such-and-such an address.

Mr. BERGER. The difference is this: First of all as you point out, the practice of editorial anonymity has been established for very many years. I think the responsibility is even greater with the omission of the name, in the case of a newspaper. One person, the editorial writer, undertakes to be the voice of the entire newspaper. His responsibility, one senses, is greater than that of a columnist. A newspaper publishing a libelous column can say to a plaintiff suing it, "We carried this column, we thought it was true—we didn't know this fact or that fact which now makes this statement defamatory."

However, when an anonymous editorial writer speaks he does so with the full voice and authority of the newspaper. The man who wrote the lead editorial in the New York Times is the New York Times, for that purpose. You don't have to worry about this individual because the newspaper said, "This is our voice talking." For that purpose I think the newspaper is taking on a liability, which perhaps may be even greater than that of carrying a column by a signed columnist.

Senator MCGEE. Is there another difference, as a lawyer, that we are talking here now about a medium of communication that is in itself a monopoly?

Mr. BERGER. Exactly so.

Senator MCGEE. Isn't that differentiating it from a newspaper as such?

Mr. BERGER. You made an excellent point, Senator. Because after all these companies—phone companies, telegraph companies, broadcast companies—are all operating with facilities which have been given to them by the Federal Government, by the people as represented by the Federal Government. Anybody can start a newspaper. No license is required. These people, however, require both licenses, facilities, and inspection and supervision.

Senator MCGEE. Suppose you take the situation of having "Let Freedom Ring" be the signoff as the identification, or Dr. Douglass' name as the identification. As a lawyer, what happens to the case if there is any defamation or any basis for suit if the purveyor of the message changes the message in any way?

Mr. BERGER. Then I would say this: If the purveyor of the message made it defamatory, where before it was not defamatory, Dr. Douglass is home, free. Nobody can hold him responsible for something he didn't say. And it is, of course, entirely possible that local people may change it. I don't think it happens nearly as often as we are led to believe. But I do think it is possible.

In that case certainly a copy of the message or some record of it to permit distinguishing between the original message and its altered form should be available to the person who has been defamed.

Senator McGee. What would be the difference between, say, somebody reading Dr. Douglass' statement and reading some epithet or tirade from Gus Hall, and claiming that is Gus Hall's statement and not his? Should that exonerate the person who reads that diatribe?

Mr. Berger. No, because again, you come down to the question of fact. Normally I would assume that whoever reads a statement is reading what in fact is the statement of the person to whom he attributes it. If he departs from it, then there is a question of fact.

Did Gus Hall say this? Did Dr. Douglass say it? You have a question there. If the person defamed believes this statement was made by Gus Hall or Dr. Douglass, when, in fact, someone else said it, they would be in a position to investigate that and to try to establish the true authorship of that statement.

Senator McGee. By the same token, they could take anything from Mao Tse-tung, Mr. Sukarno, or somebody else we might select within our own ranks here at home——

Mr. Berger. And put it in your mouth.

Senator McGee (continuing). And read that statement. This does not and should not in your opinion exonerate the peddler of that message?

Mr. Berger. No, sir. Because we are making a public facility available to a person whose responsibility should measure up to the right he has under our system of obtaining a facility of communication.

Senator Pastore. I think it is a little more than whether you are exonerating anyone. Here we are dealing with a media that does come under State and Federal supervision. It is for that reason that we have the Communications Act, and I think here we are touching on the question of public policy. We are now drifting into a widespread custom of using these telephonic messages to discuss issues, political and otherwise, and also individuals.

The serious question here is, I think, in the process of protecting the public interest, because fundamentally I think that is what it is at issue; it isn't a question of whether you can sue easily or whether it is more difficult. The question here is public interest, whether in the public interest we have the right as a Congress within the framework of the Constitution to provide that in matters of this kind it would serve the public interest if the utterer of the statement were identified himself. I think that is the only question before us.

I realize that it makes it easier, or harder, one way or the other. But the fundamental question here, the crux of the issue, is if in the public interest, in the use of this media, the Federal Commission has authority under existing law to make regulations that would require the identity of the utterer of the statement, and if it doesn't have that authority. whether at this time the Congress of the United States should implement the law by giving it that authority in the public interest.

I think the only question here is the public interest.

Mr. Berger. Of course, sir. But in the public interest I think perhaps we should go a little further than merely requiring identification. I can't be blind to the fact that it wasn't until the Anti-Defama-

tion League and the National Council of Churches of Christ started a little prodding, that the phone companies responded.

I think the committee cannot ignore the statement of Chairman Henry that some of these devices are now well on their way to invading your home and your right of privacy, the same right of privacy Dr. Douglass is concerned about. These devices will force the message on you willy-nilly, because if you cut off the message, it will continue.

Senator PASTORE. No matter how you say it, we are still talking about the public interest.

Mr. BERGER. Of course, we are.

Senator PASTORE. The public interest of protecting the privacy.

Mr. BERGER. In protection of that private right we have to go further than merely requiring identification. We have to have a record of what was said. That is awfully important, whether you consider it as a means of facilitating suit or otherwise. I think in order to have——

Senator PASTORE. That is where you and Senator Javits part company.

Mr. BERGER. Possibly so. I say this: I admire Senator Javits' bill and I think it goes further than yours, Senator McGee, in that at least it takes away an additional loophole which permits a man to use a post office box or something else.

Senator PASTORE. We had quite a discussion about that this morning, when you were here. Why do you want to require the rendering of the text?

Mr. BERGER. Because, sir, otherwise, knowing how some of these texts can be changed and distorted, it becomes awfully difficult to know what was said. You can listen to phone company people insist from today to tomorrow that the text is always available, or to the radio companies, who say that you can have a script. You don't have it. It is hard to find.

It would amaze you if I were to tell you that in my practice, or at least the practice of some of my associates, we have found great big broadcast companies making access to a script very, very difficult. It hasn't been quite that easy. It is not that facile. You really have to dig for it.

I say if it is that difficult with respect to a broadcaster, how much more difficult is it with respect to a small person who changes locations, who changes scripts, who changes other things which make the record of what he said so difficult to trace?

Senator MCGEE. The problem of script has been raised in other ways. How would you determine that the script that was filed was the one read?

Mr. BERGER. Again you come down to the question of proof. We say that in the first instance we must assume that a person is going to say what his script says. Finally, of course, if there is any evidence that a person has departed from the script, I think anything from either the mild, benign penalty of cutting off service to Senator Javits' suggestion of criminal penalties, might apply. In other words, we at least require of a person that after filing a script, and doing whatever else is required, that he at least stick to what his script says, and perhaps provide a penalty if he departs from it.

Senator MCGEE. You would have to include something to that effect in the penalty, wouldn't you?

Mr. BERGER. Certainly.

Senator MCGEE. Otherwise, it would be simple to file a harmless script and go ahead with your diatribe that you intended all along.

Mr. BERGER. Senator, you already have taken the part of a lawyer representing a plaintiff in that case, and figuring out what the loopholes are.

Senator MCGEE. After what I said about lawyers sometimes, you ought to smile when you say that. [Laughter.]

The filing of the script likewise would still raise—would it raise the legal question of what actually came over the air? Would you have to have a monitoring system?

Mr. BERGER. Not necessarily, sir.

Let's assume that a man filed a harmless statement and departed from it in the course of his telephone message. At that point plaintiff comes in and says "I have a tape of this telephone message; this is what was said." The defendant station, or whatever you call him, says "Oh, no, no, no. What I filed with the phone company is in fact what I said." You have a question of fact.

I don't think it is too likely that any person is going to continue long in this kind of evasion. First of all, it takes a lot of footwork. We suggest from what we heard Dr. Douglass say about the problems of compressing some real good message, a real tough message, in 2 minutes, that it is not going to be easy to change that message very often. First, I don't think station people can do it.

Senator MCGEE. Theoretically, if he does it once, the damage has been done.

Mr. BERGER. Right.

Senator MCGEE. What are you going to do about that? Repetition I can understand. You can catch up with him.

Mr. BERGER. Certainly. Once is sufficient. If you can do it once, I suppose that in the measure of damages sustained by the person defamed, it is perhaps not as important as when it is repeated and repeated and repeated.

I don't think really that the problem of a once-stated libel is as important as the repetition of it, and the accessibility of the message to persons——

Senator MCGEE. I think libel is libel, isn't it? If somebody makes a speech before a group in a libelous way, and it is reported once, that is the damage.

Mr. BERGER. You might—again I don't want to get the committee involved in distinguishing between libel and slander and the extent of defamation.

Senator MCGEE. I am getting at how you would police this filing of scripts and what was actually said, what came out over the air.

Mr. BERGER. I would be satisfied, sir, at least in the first instance, until we found abuse of it, to rest with the filing of the message and then, if you find that there are abuses in departing from the text of the message, at that point I am sure the committee, the FCC, or whoever else was concerned, could address itself to that problem.

Senator MCGEE. It would be your position it would have an inhibiting effect in its very existence in terms of what might be said?

Mr. BERGER. Certainly, sir. Then, too, you must look at the possibility that the message might be frozen by the filing of a tape.

There are organizations today as now that monitor radio stations all the time. It is not much more difficult, believe me, despite all the concern of the telephone companies about the cost, to monitor this kind of telephone announcement. Believe me, it is not difficult to make a distinction, despite Mr. Henry and despite the phone company, between a propaganda message and the statement that it will rain tomorrow.

Senator McGee. This is one of the things that mystifies me, why this suddenly became a tremendously burdensome bookkeeping or administration operation, to try to find out what they were purveying on a monopoly communication device.

Mr. Berger. Sir, I would say the same ingenuity that the phone companies developed in perfecting this apparatus could be applied to the problems of storage and all these other problems. I think what the phone companies should be concerned with is the problem of loading down wires with canned messages so that when you have a blackout as you had in New York City last week, you then don't have phone facilities being made unavailable to the police, to the National Guard, to people who can't get home because the propaganda messages are flooding the wires.

That is what the phone companies should be concerned with, in my opinion.

Senator McGee. That is theoretically possible, particularly with the mass dialing mechanical instruments that are now emerging.

Mr. Berger. That's right.

Senator McGee. This poses a new frontier in this potentiality that has not been fully developed up until now.

Mr. Berger. And then, too, sir, as I said before, I think it is time that the phone companies, or any other facility which is in a similar position, should perhaps for a change try to lead rather than follow, follow with its heels dragging, and screaming about the cost of this improvement.

I think it is time that they recognize their responsibility as a concomitant of their monopoly.

They have a monopoly. I agree entirely with what Senator Pastore said. I haven't found many phone companies going into bankruptcy.

Senator McGee. Would you continue with your statement. We are interested in raising these other points as they had arisen in terms of some of the other problems we might stand to face here.

Would you address yourself in this informal way, then, since we will have your full statement, to the question that we put to Senator Javits at the conclusion of his remarks, why not give this a try through the filing of the tariffs with the State commissions, and the action now taken by the telephone companies. Let's give it a try they have suggested to the committee, and this doesn't require this kind of action at least yet.

Mr. Berger. In principle, this is fine. I think in practice it is not quite so fine. For one thing, where the lead is taken by legislation by an act of Congress, you then find that the response is so much more widespread. I am concerned, I am seriously concerned about the possibility that the States will not, the regulatory commissions and the States, will not all follow the examples set by an enlightened com-

mission in one place. In fact, as I read the statement of the representative of the Commission, I got the impression that he was more inclined to go along with the position of the companies of "Let's wait and see; perhaps this thing isn't quite so bad; let's experiment."

I think that if the phone companies don't take the lead, and they haven't shown any great pioneering zeal so far, I don't think that they should necessarily be permitted a period of experimentation. And I don't think that the local agencies, the State agencies, have shown themselves much more advanced or far in advance of the communications companies in that respect.

I am sorry to say I think they do not in a great measure concern themselves with the public welfare except in a limited area such as ratemaking. I think they lose sight of the bigger issues which necessarily occupy the attention of yourself, Senator Pastore, and some of the agencies concerned with civil rights, such as the Anti-Defamation League.

Senator McGee. Yesterday I raised the point with the spokesman for the telephone people that it is my feeling that it is even wrong, from the standpoint of our public responsibility, to impose this, or transfer this responsibility to the private sector.

The Federal Communications Act was created because there was a void there that was felt to have been neglected in the public interest. That the very nature of the monopoly type service that telephoning is necessarily requires vigilance if we are to look after the public responsibility. And all of it seems to me to reflect a history that we have lived through, and already learned from, I would trust, that in terms of the public interest, as Woodrow Wilson said, nobody can look after the people better than the people themselves.

And that is why we are here. So this raises the next question, not the logistics of whether the telephone company really would enforce it, or whether this is good enough or whether the State commissions can do it, but haven't we a public responsibility to take this obligation and this responsibility on our shoulders here at this level.

Mr. Berger. Senator, you are, of course, correct.

The only question, as so often happens, is where does that responsibility begin and end. There is no question that the public, as represented by you and your colleagues in the Senate and the House of Representatives, have a broad responsibility. But I think historically you would agree with me, that that responsibility has been discharged more in permitting a certain degree of latitude on the part of the people whom you regulate to find their own way and you come in only where it becomes apparent that that freedom has not been fully exercised in the interests of the public.

At that point, quite properly I think that the Government should intervene.

We have to be aware, as I am sure you are made aware every day in the week, by those who charge that you are going far beyond the bounds of your responsibilities as representatives of the public, and say you are trying to regulate business day by day.

I know you are not trying to do that, and I think any fairminded person would admit that that is not the case. Nevertheless, my concern as a citizen with the agencies of my Government, would dictate that we permit the Government to have the broad overall responsibil-

ity or overseeing responsibility and where that responsibility is not properly exercised by the person to whom it has been deputized, the companies, the phone companies in this case——

Senator McGee. Or the State commissions.

Mr. Berger. Certainly. I think the Government should step in.

I think occasionally it becomes necessary, and I think we have reached the situation, where unfortunately the operations of "Let Freedom Ring" and similar organizations have outstripped our attention or our concern with it. And I think at this point some corrective action is necessary in order to redress the balance.

Senator McGee. The substance of it, then, really is that Federal legislation, as they have all tended to agree, in this instance, wouldn't remove from any one of them an action or a step they have taken to solve this problem. It costs them nothing in terms of their rights or whatever it is; that it would only operate if they failed or forfeited or forgot about this, or sought to change it.

Mr. Berger. Certainly, sir. I say that the quickest way, the most effective way, of making sure that the companies discharge their responsibilities is to know that the Commerce Committee, behind it the Senate, and ultimately the people, are watching what they do. They have forfeited in the past, at least with respect to the operations of this particular organization, they have forfeited to some extent public trust in their operations.

A telephone company should not have to be pushed into doing something it should have done right along. It should not take credit for now making the names of the person, in their records available or now claim credit for making those names now a part of the message. This is not enough, it would have been enough perhaps a year ago. It is not enough today.

Senator McGee. Again it is a case of having exhibited a little foresight which may have made it unnecessary to bring this to a head.

Mr. Berger. Exactly so.

Senator McGee. That is the lot of our commissions. Nobody sat up all night trying to figure out some bureaucratic operation trying to meet this problem.

Mr. Berger. Of course not.

Senator McGee. Rather, they should have moved into the area that should have been alert to development earlier.

Mr. Berger. The public became aware of it before the company became aware of it or chose to become aware of it.

Mr. Zapple. Mr. Berger, yesterday when the Chairman of the FCC appeared before the committee, he commented on the two bills. He said it was a question of constitutionality, if you recall.

Mr. Berger. Yes, sir.

Mr. Zapple. Do you have any observations you would like to set forth in the record on the question?

Mr. Berger. I tell you now there is no question in my mind as a lawyer, speaking on the record, there is no question of constitutionality in any of the bills we are now considering, whether Senator McGee's bill, Senator Javits' bill, or Congressman Rosenthal's. I call your attention to a statement appearing in the opinion of the Supreme Court of the United States in *Talley* v. *the State of California*, decided on March 7, 1960. The majority opinion is by Mr. Justice Black.

The Court found the ordinance which in that case barred distribution of an anonymous handbill in any place and under any circumstances was too broad and unconstitutional. The Court states there was nothing to indicate in the legislative history that the purpose of the bill was to prevent fraud, libel, or false advertising. And the Court made plain it was not passing on the validity of an ordinance so limited.

It is suggested in the majority opinion and spelled out, of course, in the minority opinion even more clearly, that if that ordinance had made it clear that the purpose of the bill was to prevent fraud, libel, or false advertising, there would have been no question that the ordinance would have been held constitutional. Unfortunately it was too broadly framed.

There is no question at all in the light of what is said by Mr. Justice Clark, in the dissenting opinion. that there have been laws requiring identification, which have been held constitutional in the same area.

For example, in *Lewis Publishing Company* v. *Morgan*, 229 U.S. 288, the Court upheld an act of Congress requiring any blue paper using the second-class mails to publish the names of its editor, publisher, owner, and stockholders. The Federal Regulation of Lobbying Act has required those engaged in lobbying to divulge their identities to Congress (*U.S.* v. *Harris*, 347 U.S. 612). Finally, some 36 States at the time of the *Talley* case, and I think it is more now, have corrupt practice acts which require that anybody distributing publications with reference to political candidates identify himself as the source.

Mr. ZAPPLE. Then you don't agree with Chairman Henry's analysis that he thought that the bills were too broad. If you recall correctly——

Mr. BERGER. No, sir; I don't agree with him at all.

Mr. ZAPPLE. You think an adequate legislative history has been developed here though to pinpoint the significance and the meaning of this legislation to meet the criteria set out in that *Talley* v. *California* case?

Mr. BERGER. Mr. Zapple, I am satisfied that the record created here yesterday and today, by the very incisive questioning of the committee, is sufficient to establish and to undergird any question about the constitutionality of any of three statutes you are now considering. I think the record has been made adequately. I think as you continue it will even be expanded. But there will be no question at all that what you are concerned with here is, one, removing the cloak of anonymity from defamation, and two, going a step further perhaps, if you go that far, and making it possible for the actual text of what has been said to be made available to whoever is concerned with it.

Mr. ZAPPLE. To close this line of questions, is there anything you can add to make the legislative history more precise to underscore the significance of this legislation?

Mr. BERGER. The only thing I can suggest in that respect, Mr. Zapple, is if the committee, and the very patient Senators and staff who help it, are so minded, perhaps to hold hearings on this matter in various parts of the country. I think that the interest of the newspapers and the other media you have aroused today would be repeated and emphasized if you were to hold hearings in these other places.

This would underscore your concern with the public interest as you have so very beautifully shown up to now.

Senator McGEE. We have also learned negatively where it wouldn't strengthen the legislative history, and that is in the Congressional Record. There have been those in positions of responsibility that claim never to have heard of this thing, even though we have been talking about it on the floor of the Senate for over a year. So perhaps we have got to find some other media. That isn't the most widely-read publication in the land, I guess.

Mr. BERGER. As a matter of fact, the only publication that prints in type of a size comparable to that of the Congressional Record is the New York Law Journal. I am sorry to have to make that admission.

Senator McGEE. Those are the questions that I have. Thank you very much.

Mr. BERGER. Thank you, sir.

(Additional material follows:)

[From the Philadelphia Inquirer, Sept. 26, 1965]

ANTI-DEFAMATION UNIT SEEKS ORDER TO UNVEIL "SMEAR CALL" SOURCES

The Anti-Defamation League of B'nai B'rith plans to ask the State public utility commission to adopt new rules to deny anonymity for backers of Let Freedom Ring, the rightist telephone message service.

The recorded talks regularly smear as Communist a wide spectrum of American officialdom. Its targets have included Presidents Eisenhower, Kennedy, and Johnson, and civil rights, poverty, and disarmament programs.

However, the peals of Let Freedom Ring don't reveal who is tolling the bell. And ADL thinks that persons with such defamatory opinions should be required to identify themselves.

Request to PUC

Papers being drafted by David Berger, former city solicitor and chairman of ADL's metropolitan Philadelphia advisory board, would ask the PUC to require that:

> Recorded messages discussing public affairs or attacking individuals, groups, and institutions must disclose in the message the name and address of the sponsor.
>
> The tape recorded message be deposited with the telephone company and made available to inquirers.
>
> The sponsor, as an alternative, list his name and address with the phone company, such information to be available upon request.

Sought FCC curbs

ADL earlier this month launched a national attack on Let Freedom Ring by asking the Federal Communications Commission to set similar rules for interstate phone messages.

In its complaint to the FCC, ADL referred to "abusive and extremist attacks and libels on individuals and institutions."

It called the messages "lurid visions of a Communist conspiracy allegedly lurking behind civil rights, the United Nations, the Supreme Court, the State Department, the press," and other groups, including ADL.

The recordings are available locally through two numbers which have been publicized by word of mouth. Last October the Inquirer revealed that John Birch Society members wrote and recorded the tapes, and also rented the post office box through which listeners ordered transcripts.

Bell Telephone Co. of Pennsylvania officials said then that anyone can use the automatic announcement service "so long as he pays the tariff," and that as a public utility Bell must provide facilities to any applicants.

Asked rule change

The national ADL asked the FCC to require telephone companies to amend their regulations to oblige them to refuse messages containing defamatory state-

ments, known to be spurious, or when the sender is acting "in bad faith and for the purpose of traducing another."

Plans for the local ADL branch were revealed by Berger and Samuel Lewis Gaber, regional director. Berger termed "Let Freedom Ring" a "rank violation of freedom of speech," and called it vicious rightwing propaganda.

"Let Freedom Ring" has outlets in more than 30 cities. It was conceived by Dr. William Campbell Douglass, a physician in Sarasota, Fla., who is a Birch member.

Twenty-four dollars a year

Dr. Douglass sells the service to local groups for $24 for 1 year and $12 thereafter. Subscribers must buy 40 of 52 scripts anually, and are allowed to devote their remaining broadcasts to local issues.

The purchaser arranges for installing the necessary recording equipment through local phone companies.

ADL said the "elementary principles of fairness and justice" make it imperative that persons attacked by "these reckless accusers" be able to identify those responsible "so they can seek legal redress."

[From the Philadelphia Daily News, Sept. 29, 1965]

LET FREEDOM RING OPENLY

The Anti-Defamation League of B'nai B'rith is performing a public service in its campaign to persuade the State public utility commission to adopt regulations that would strip the cloak of anonymity from those using recorded telephone messages to smear individuals and organizations.

Principal target of the effort is the "Let Freedom Ring" telephone messages of the far right that warn of Communist influence in nearly every phase of American life, except possibly among the Daughters of the American Revolution, and even they are not above suspicion.

Members of the John Birch Society have made wide use of the "Let Freedom Ring" messages.

David Berger, former city solicitor and chairman of ADL's Metropolitan Philadelphia advisory board, is reportedly drawing up papers that would ask the PUC to require the following:

Recorded messages discussing public affairs or attacking individuals, groups, and institutions must disclose in the message the name and address of the sponsor.

The tape-recorded message be deposited with the telephone company and made available to inquirers.

The sponsor, as an alternative, list his name and address with the phone company, such information to be available upon request.

Few Americans would disagree with ADL's contention that "elementary principles of fairness and justice" make it imperative that persons attacked by these "reckless accusers" should be able to identify those responsible so that they can seek legal redress.

[From WCAU radio (Editorial No. 65–83), Oct. 4, 1965]

LIFT VEIL ON SPONSORS OF SMEAR GROUP

More than 1 year ago, WCAU radio disclosed the vicious smear campaign of recorded telephone messages in Philadelphia.

The oral tar and feathers were applied to former President Eisenhower, Chief Justice Earl Warren, the National Council of Churches, and many others.

Sponsors of those attacks operated in secrecy. They hid behind a cloak of patriotism by calling their group Let Freedom Ring.

But the purpose of the smear campaign was to denounce patriotic people as consicous agents of the Communist conspiracy.

The smear messages also are racist in content, and accuse the National Council of Churches of fomenting armed revolutions among Negroes.

One of the basest features of the continuing attacks is the secrecy involved.

Those who are maligned and perhaps even slandered couldn't even learn who was responsible for the attacks.

The telephone company, by law, was forced to protect the identity of the sponsors.

Nothing was done to flush these hatemongers out into the open.

But now, the Anti-Defamation League of the Philadelphia B'nai B'rith is acting. The league's attorneys are drafting proposals to the public utility commission for new regulations. They suggested new regulations would allow the telephone company to make public the names of sponsors of such messages, upon request.

Another proposal would force producers of such recorded messages to disclose in the message the name and address of the sponsor.

The Anti-Defamation League says the elementary principles of fairness and justice make it imperative that persons attacked by reckless accusers should be able to identify those responsible, and seek legal redress.

We heartily endorse those proposals to the PUC. One of the fundmental rights provided by the U.S. Constitution is that of being able to face one's accusers and confound them in a court of law, if need be.

It's way past time to put an end to anonymous attacks by faceless, irresponsible, and perhaps even mindless slander against decent Americans.

[From WCAU radio (Editorial No. 65–86), Oct. 13, 1965]

LIFTING VEIL ON HATE MESSAGE SPONSORS

The New Jersey Board of Public Utility Commissioners today is authorizing the New Jersey Bell Telephone Co. to disclose the identity of sponsors of prerecorded telephone messages.

William F. Hyland, president of the board, said that improper use of announcement service has opened the door to an abuse of important public utility services. He pointed to current campaigns of hate, vilifications, and smear.

Hyland agreed with New Jersey Bell Telephone Co. when it asked the commission to allow disclosure of the names of sponsors of those messages attacking individuals and groups. Among targets of those attacks were former President Eisenhower, Chief Justice Earl Warren, and many other patriotic men of unimpeachable character.

We congratulate New Jersey Bell Telephone as well as Pennsylvania Bell for taking similar action. And a bow is in order for the Philadelphia Anti-Defamation League of B'nai B'rith, for its campaign to flush out the sponsors of anonymous hate messages. The league asked the Pennsylvania Public Utility Commission to allow disclosure of the names of the sponsors of such recorded messages.

We are pleased that we were able to contribute to these deveolpments. Way back on August 14, 1964, John Downey disclosed, in a WCAU radio editorial, the existence of these hate messages. This station called on the telephone companies at that time to restudy policy regarding the anonymous messages.

And we were pleased to send copies of our editorials on this question to the New Jersey Public Utility Commission for study as the commission pondered the New Jersey Bell request for open disclosure of hate message sponsors.

As New Jersey PUC President Hyland pointed out, the commission directive is consistent with recent legislation dealing with the public's right to know; the basic right to confront one's accuser.

Commission President Hyland also cited the 1963 New Jersey law requiring full identification of sponsors of election campaign literature.

And to quote Hyland: "This clear articulation of the right to know should extend to the public and should extend to the identity of those who attempt to influence the public mind and morals through prerecorded telephone messages."

Thus, at least in Pennsylvania and New Jersey, the ambush attack by anonymous character assassins over telephone lines will not be possible without the perpetrators being made to face the consequences. Anyone slandered by such messages in the future will know and be able to confront his accusers, in a court of law if need be.

And WCAU Radio is grateful for the opportunity to help bring this to pass.

[From the News of Delaware County, Oct. 14, 1965]

SHOULD WE LET FREEDOM RING?

"They're asking for thought control and abolishment of free speech" insisted the anonymous voice in a recent week's telephone gospel "Let Freedom Ring," a source of daily enlightenment for those who are so far right that they believe Barry Goldwater was slightly left of center.

The voice was referring to recent action taken by the Anti-Defamation League (of B'nai B'rith) in asking the Federal Communications Commission to force "Let Freedom Ring" to identify its sponsor in each message.

The action was successful in as far as the Bell Telephone Co. Saturday announced it would indeed identify the sponsor of such recorded messages as those of "Let Freedom Ring." One of the Philadelphia numbers, CO 3-6520 is listed in the name of Robert Moore, 1923 Brandywine Street, the company reported. It should be congratulated on its decision which was not an easy one to make.

It may be a coincidence, but Monday morning, some 48 hours after the sponsor of last week's messages (which identified Martin Luther King as a "Communist stooge") was thus identified, the recorded messages were at least temporarily discontinued. Callers Monday were connected with a Bell telephone operator who said "the party is moving and the new telephone has not yet been connected."

The purpose of the Anti-Defamation League's action (which later was joined by the Council of Churches) would be to give those individuals who are viciously attacked by the telephone message an opportunity to reply to the charges or take court action when they get as close to criminal libel as they sometimes do.

The recent message ("They're asking for thought control and abolishment of free speech") is typical of the propaganda spewed forth by "Let Freedom Ring." Here's how it is operated: An unlisted phone number is advertised widely among people believed to be sympathizers with the extremist group. A recorded message is presented to callers and because of the very nature of the gadget—the intimate person-to-person character of a phone call; the absence of any argument—the caller's inability to ask any questions or question any statement offered—all this helps make the caller believe he is hearing gospel truth and nothing else. "Abolishment of free speech" rings in the caller's ear as he hangs up when the message is completed. Little does he realize, for example, that what the ADL and the Church Council are asking for is not to curb the messages in any way but merely an identification of the sponsor so that remedial action may be taken if direct lies or libelous statements are presented.

Here are some tidbits from "Let Freedom Ring"—messages presented from over 30 cities from coast to coast. (Philadelphia has two numbers now with different "sermons.")

"America will soon be in a position of hopeless military inferiority to the beast of Russia because of deliberate disarmament by traitors in the Johnson administration" (January 1965).

"How long will the American people put up with treason right in the White House itself? How long before the American people demand the impeachment of John F. Kennedy?" (October 1962).

Whatever personal opinions one might have of the political philosophies of those sponsoring "Let Freedom Ring," it would hardly be asking too much to insist that the sponsor be identified in each message. Responsible comments from responsible sources should never be curbed. But an anonymous mass production of hate propaganda is something we can do without.

[From station WDAS—News department editorial]

PHILADELPHIA, PA., *October 11, 1965.*

Subject: "Let Freedom Ring"—Bell Telephone Co. removes secrecy from hate messages.

Editor: Jim Klash.

The Bell Telephone Co. of Pennsylvania has taken a long stride toward removing the cloak of secrecy that has surrounded the series of hate messages directed at national leaders, Negroes, and Jews.

Under a new policy just announced, the company will disclose the names of subscribers of recorded announcements on request. Previously, the company had refused to reveal these names.

The change in policy was adopted after numerous organizations and individuals had lodged complaints against the character assassinations being delivered on a program mislabeled as "Let Freedom Ring."

For more than 1 year the program has spewed forth daily attacks against such national leaders as President Johnson, Chief Justice Earl Warren, former President Eisenhower, and U.N. Ambassador Goldberg. Other special targets of the venomous messages have been the Reverend Martin Luther King and the Southern Christian Leadership Conference, all of whom the "Let Freedom Ring" hate campaign has been tarring with the brush of communism.

Taking an example out of the hate book of the Ku Klux Klan, "Let Freedom Ring" sponsors have also directed their campaign against members of the Jewish faith.

WDAS considers the policy change by the Bell Telephone Co. a victory for Philadelphia and America. We congratulate the Anti-Defamation League of B'nai B'rith and other patriotic organizations who have led the battle to force the telephone company to unmask these advocates of intolerance.

Perhaps, now that they will have to come out into the open—reveal their true identity—the sponsors of "Let Freedom Ring" and other such vicious hate-mongering programs will have second thoughts about having it known that they are associated with such campaigns. * * *

[From the Miami News, Oct. 28, 1965]

[From the Washington Star, Nov. 4, 1965]

UNMASKING THE HATE MONGERS

America's rightwing extremist groups may have 18th century ideas, but they are adept at using 20th century techniques. One is the taped telephone message. You dial a well-publicized number and get 60 seconds of innuendo and smear, unsupported and with the identity of the speaker often unfurnished.

Senator Javits of New York has made a collection of scripts prepared for such taped bilge. The anonymous voice, secure from responsibility for possible slander, warns that the "Communist-lining National Council of Churches is openly promoting bloodshed through armed revolution by Negroes," that there are traitors in the Johnson administration exposing us to the "beast of Russia." The whole tone echoes what one political scientist has called the paranoid style in politics.

To put the spotlight on such sick propagandists, Senator Javits has introduced a bill that would impose two modest requirements. Telephone companies would have to make public the identity of persons financing such taped messages. The sponsors also would have to identify themselves on the message itself.

There is ample precedent for such a law. Sponsors of radio and television advertisements must be identified now, and that includes those buying time for political messages. By extension, is not the telephone as much in the public domain as broadcasting? Should persons using it for propaganda have an objection to coming under the same rule?

Taped messages may not be a precise parallel to broadcasts. After all, one does have to dial the number, an act of free volition. But one must turn on a radio and dial a station too. The broad principle, it seems to us, remains the same. The Javits bill deserves a fair hearing in the next session of Congress. The hate mongers should not be permitted to operate under this cloak of anonymity.

[From the St. Louis Post-Dispatch, Nov. 1, 1965]

LETTING FREEDOM RING

In asking its Bell System affiliates to require identification of sponsors of recorded propaganda, the American Telephone & Telegraph Co. has directly decided that "Let Freedom Ring" should ring more clearly. Let Freedom Ring distributes recorded propaganda messages in more than 50 cities to 30,000 to

50,000 persons daily, according to its leader, a member of the John Birch Society.

When the Anti-Defamation League first urged an end to anonymity in the recordings, A.T. & T. held that identification would be an undue burden to its automatic answering service. Later Senator Javits of New York suggested legislation to require identification in telephonic hate messages. A.T. & T. now has changed its mind, and notified the Federal Communications Commission of the new policy.

It is the right policy, certainly. Freedom of speech is served and not curbed by denying electronic invisibility to the speaker. Let freedom ring, we say, and let all know who pulls the clapper.

[From the Hammond Times, Oct. 13, 1965]

CRITICS MUST BE RESPONSIBLE

For some time now, an anonymous group in Hammond and Calumet City has been sponsoring a telephone propaganda service. A telephone number is circulated by various methods. The curious call the number and are given a 90-second tape-recorded message against some organization, person, or political party.

It is like a radio newscast in that the listener takes the message by ear without having a chance to study it over, as he would if the message were in print. Thus the system is ideal for spreading fear and suspicion.

Now the Anti-Defamation League of the B'nai B'rith, the later a Jewish fraternal organization, has filed a complaint with the Indiana Public Service Commission. It wants the commission to compel telephone companies to tighten up the procedures under which they lease automatic announcement service.

Specifically, the Anti-Defamation League asks that subscribers furnishing recorded messages which discuss public issues or contain attacks on individuals, groups or institutions, disclose the true name and address of the actual sponsors, along with the name and address of the person whose voice is heard.

The tapes for the telephone program, known as Let Freedom Ring, is obtained from a doctor in Florida who is a member of the John Birch Society. Hammond and Calumet City are among more than 30 cities where the messages have been put on the telephone wires.

So far, messages have been aimed at Negroes, the National Council of Churches, and the parent-teachers' association. The National Council has complained that it has been libeled in some of the messages. The last three Presidents of the United States have, at various times, been attacked.

The telephone companies complain that the numbers rented for the Let Freedom Ring service are technically unlisted, and point out that they are required to serve all comers who ask their service.

Right of privacy is a highly regarded American privilege. The right of privacy used to cloak anonymous attacks on others, however, puts these telephone broadcasts into the category of the "poison pen" letter. The person or organization attacked is helples to confront and refute his accuser.

It is the right of Americans to criticize. But criticism should be made openly, by indivduals who are prepared to defend their words. Hiding behind telephone regulations to keep the identity of irresponsible and inaccurate critics secret is not in the American tradition.

[From the Journal, Providence, R.I., Sept. 14, 1965]

A NEW WEAPON IN THE ARSENAL OF THE EXTREME RIGHT

Anonymous recorded telephone messages have become a new weapon in the arsenal of the extreme rightwing. Sponsored by an outfit called Let Freedom Ring, they specialize in distortion of public issues and scurrilous attacks on individuals.

Dial a Let Freedom Ring number in Staten Island, and a voice will tell you that the Peace Corps has been engaged in "treasonable" activity in the Dominican Republic. A Let Freedom Ring station in Summit, N.J., attacks the new mathematics.

Another station in Nashua, N.H., has been used for thinly disguished attacks on the city librarian and the Democratic women's chairman. One message was

entitled, "Snakey Jack, the Red Librarian," the other was called "Cecilia Cesspool."

"Snakey Jack"—actually a blast at Librarian Josephy Sakey—began this way:

"Hello there. I am 'Snakey Jack, the Red Librarian.' Extremists harass us Red librarians by asking for anti-Communist books."

The message was an oblique, childish reference to the fact that Mr. Sakey refused to clutter library shelves with John Birch Society propaganda.

Other Let Freedom Ring messages have been used for attacks on former President Eisenhower, Chief Justice Earl Warren, the Reverend Martin Luther King, and the National Council of Churches.

The Anti-Defamation League of B'nai B'rith—another target of Let Freedom Ring attacks—has filed a complaint with the Federal Communication Commission.

The organization has made several recommendations for controlling the recorded messages. One, which would have telephone companies refuse messages when the sender is acting "in bad faith or for the purpose of traducing another," could have the undesirable effect of making censorship of the companies. Judging motive is a tricky business at best.

Another of the ADL's proposals, which would require disclosure of the name and address of the true sponsor of recorded messages, should be adopted by the FCC, however. This would have the effect of disclosing the names of individual franchise holders of the recorded service, who buy scripts from Let Freedom Ring.

Victims of libel would have a better chance of seeking legal redress under such a policy. Also, the extreme right would be forced to remove its cloak of secrecy and play fair and square in the American tradition; something it abhors doing. Chances are that a franchise holder would think twice about his petty game if he were forced to start off by saying, "This is a Let Freedom Ring message, sponsored by * * *"

[From the Wyoming Education News, October 1965]

PTA ATTACKED

Recorded telephone messages, anonymous except that they are offered under the slogan "Let Freedom Ring," have made their appearance in 30 or more cities, attacking the PTA as "basically a lobby for leftwing educators who work closely with the Office of Education to federalize our schools in the Russian manner." Mrs. Jennelle Moorhead, president of the National Congress of Parents and Teachers, denounced the messages as "scurrilous and outrageous attacks," adding that they were "vicious, untrue, irrational, and venomous." As a stockholder in the American Telephone & Telegraph Co. she filed a protest with the board chairman of that firm. The Anti-Defamation League of B'nai B'rith has filed a protest with the Federal Communications Commission against earlier "Let Freedom Ring" messages. Telephone subscribers in the cities where they have been heard are invited by various means to call certain phone numbers and when they do they hear a 2-minute message whose sponsor is identified only as "Let Freedom Ring."

Founder and president of "Let Freedom Ring" is Dr. William C. Douglass, a physician of Sarasota, Fla., who says he is a member of the John Birch Society, but that the society has no connection with "Let Freedom Ring." Dr. Douglass was interviewed about the operation last week on Walter Cronkite's CBS evening news program. Douglass writes the scripts for the recorded messages and sells them to anonymous local sponsors for $24 the first year, $12 thereafter. A year's service provides 52 scripts. (Education U.S.A.)

[From the Portland Evening Express, Sept. 16, 1965]

SMOKE THEM OUT

The Anti-Defamation League of B'nai B'rith has registered a complaint with the Federal Communications Commission about anonymous recorded telephone messages.

These messages, often vicious and scurrilous, are used by extremists to attack public figures at local, State, or National levels. There is no more concern for truth than one might expect from any source which would resort to such methods.

Dialing a number listed by some of these outfits which pose as patriotic organizations is like plugging into a cesspool.

An outfit called Let Freedom Ring lists a number which one may dial for information on a host of subjects. The recorded messages may attack Chief Justice Earl Warren, the Reverend Martin Luther King, former President Dwight D. Eisenhower or the National Council of Churches. Another number may specialize in attacks on the Peace Corps. In Nashua, N.H., the city librarian and the Democratic women's chairman have been subjected to indirect attack.

Among the suggestions offered by the Anti-Defamation League is one which recommends the disclosure of the name and address of the people who maintain the recorded service. The FCC should give careful consideration to that proposal. Underground is the natural habitat for those who deal in lies and character assassination. Fresh air might either discourage them or be fatal and the method the league suggests for smoking them out would be effective.

[From the WFBM stations, Time-Life Broadcast, Inc., Indianapolis, Ind., Sept. 28, 1965]

FREEDOM RINGERS

Public attention seems to be focusing on a series of locally recorded telephone mesages which maliciously attack basic American institutions. These "Let Freedom Ring" messages blatantly and irresponsibly foster visions of Communist conspiracy behind your local church, PTA, and even the President of the United States.

They are written in distorted half-truths by a member of the John Birch Society in Sarasota, Fla. He sells his material to the Indianapolis branch of the American Opinion Library, and outlets of extremist literature in as many as 30 major cities. A nameless voice spreads the inflammatory charges to those who dial the right phone numbers. The speaker refuses to accept responsibility for what is said by not identifying himself. But each message ends with a request for donations to the local, rightwing American Opinion Library.

The hope is for frantic reaction. By confusing people with propaganda techniques and misleading information; doubt, uncertainty, anger, and fear may result. Well-meaning citizens, given wrong impressions, find themselves bewildered. They demand answers; too often can't find them; and are left with only negative suspicions.

The obvious result is certainly not constructive criticism, but a slow undermining of the very principles upon which our Nation was founded.

No one would deny the freedom ringers their right to say what they think. It is even unlikely their use of the telephone is illegal. And it would be difficult to prove criminal libel in most cases.

But there is one fundamental law which the dial-a-hate-message people have broken, and for which they can offer no excuse. In the name of freedom, they disregard the truth. And truth, above all else, is what makes possible our American way of life.

Democracy could not long survive on a diet of half-truth and vicious innuendo. Neither can the foolish, irresponsible impressions of the freedom ringers long exist in the glaring light of truth.

Editorial times:

TV channel 6: 7:15 p.m.; 11:15 p.m., 10:25 a.m. (except Saturdays).

AM radio, 1260: 6:10 p.m.; 6:10 a.m.; 12:10 p.m.; 3:10 p.m. On Saturdays: 8:15 a.m. and 12:15 p.m.

FM radio, 94.7: 5 p.m.; 10:18 p.m.; 11:15 a.m. On Saturdays: 11 a.m.

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH,
New York, N.Y., October 19, 1965.

Mr. BEN F. WAPLE,
Secretary, Federal Communications Commission,
Washington, D.C.

DEAR MR. WAPLE: This is in response to your letter dated September 28, 1965, with which you forwarded the report of the American Telephone & Telegraph Co. dated September 24 sent to you in response to our informal complaint of

August 31, 1965. In your letter you ask for our comments on the telephone company's reply.

We are pleased to learn that the American Telephone & Telegraph Co. has suggested to all Bell System companies that subscribers to their automatic announcement service be advised that their names would be given out by telephone companies on request. We are pleased to note that A.T. & T. agrees with our contention that the mask of anonymity must be stripped from the sponsors of announcements such as those broadcast by "Let Freedom Ring." We disagree, however, with the view of the telephone company that a requirement that all users of the automatic announcement service include in their messages the names and addresses of the true and actual sponsors of the message would impose an undue burden on users of the service. The fact is that the great majority of users of the service already so identify themselves since they wish the hearer of the service to know that they are responsible for the announcement. It is only those who have been misusing the automatic announcement service for the dissemination and broadcasting of abusive attacks who have been reluctant so to identify themselves. Such a requirement would deprive users of the service of at most a tiny fraction, practically infinitesimal, of the automatic announcement time for which they are paying.

We wish to point out, that regardless of the method used for insuring that the person using the automatic announcement service for announcements such as those disseminated by "Let Freedom Ring" does not operate under the mask of anonymity, care must be taken to insure that the sponsors of such messages not evade the requirement of making known the identity of the sponsor by subscribing in the guise of a meaningless corporate name or through the use of an irresponsible person as a dummy to cover his own identity. Would the proposed change in the telephone company's tariff regulations bar the use of such evasive devices by the true and actual sponsors? There are instances in which the "Let Freedom Ring" broadcasts give the name of the purported sponsor but then gives the address only as a post office box number. Would such disclosure be satisfactory? Would the revised regulations be so drafted as to seek to avoid this difficulty? In this connection we wish to reiterate a suggestion contained in our original letter of complaint that the telephone company include in its revised tariff a provision that the recorded message service would not be furnished to a subscriber unless the names and addresses of all the true and actual sponsors of the message were listed with the telephone company. The same kind of requirement should be included if the company's tariff regulations are revised to accept the suggestion which we think would better achieve the elimination of the mask of anonymity, a requirement that the names and addresses of all true and actual sponsors of the message be included in the message itself.

In our original letter of complaint, we expressed the belief that the Commission should inquire into the civil liability of a telephone company for knowingly and repeatedly carrying a plainly libelous recorded message. We recommended for the Commission's consideration possible amendment of the company's tariffs to include a provision similar to the one in the Western Union Telegraph Co. tariff stating that messages containing profane or obscene language or defamatory statements will not be accepted if the receiving clerk of the telegraph company knows that the message is spurious or that the sender is acting in bad faith and for the purpose of traducing another. The response of the telephone company reads this recommendation as a suggestion that the company censor the content of communications over its network. It stresses its statutory duty to offer services to all without discrimination and argues also that utilities are not authorized to make the judicial determination as to whether an announcement is or is not libelous. It claims also that communication common carriers have a privilege against liability for transmission of libelous messages. Finally, it argues that even if it, the telephone company, had the power to censor such a power would be exercisable only at the carrier's peril.

We submit that the telephone company is in a position no different from that of a telegraph company when it has been made aware of the libelous contents of a message it transmits. If it thereafter permits the repeated transmission over its facilities of the libelous message with knowledge that the sender is acting in bad faith for the sole purpose of traducing and vilifying the person or institution which is the victim of the libel, there is no reason why it should not be held liable. To impose such a responsibility on the telephone company after

it has been put on notice of the nature of the message is to do no more than the court said ought to be done in *O'Brien* v. *Western Union* when it indicated that Western Union could be held liable for transmitting a defamatory message of this character. The fact is that A.T. & T. had included in its tariff a recognition of this responsibility. FCC Tariff 132, B, 5C provides as follows:

"The customer indemnifies and saves the telephone company harmless against claims for libel, slander, infringement of copyright from the material transmitted over its facilities * * * and against all other claims arising out of any act or omission of the customer in connection with the facilities provided by the telephone company." Similar recognition of this responsibility is reflected in the fact that some of the associated companies of A.T. & T. such as the Bell Telephone Co. of Pennsylvania, have included in their tariff a recognition of this responsibility. Section 2A, part 2C of the Pennsylvania company's tariff governing the automatic announcement service reads as follows: "The customer indemnifies and saves the telephone company harmless against all claims arising from the material transmitted over facilities furnished hereunder, including claims for libel, slander, fraudulent or misleading advertisements, infringement of copyright, or any other claims, and against all claims arising out of any act or omission of the customer or of the calling party in connection with facilities provided by the telephone company."

Thus it would appear that the telephone company has taken action in an effort to protect itself against liability for libels disseminated over the automatic announcement service it rents. But the telephone company is also aware that sometimes the "hold harmless" provision may not be adequate, that the sender of the libelous message may not be sufficiently financially responsible to insure against the telephone company suffering loss by the transmission of such messages. It must then take up with its own counsel whether it is required to subject itself to such possible liability. In determining what advice to give the telephone company, its counsel or any other employee charged with the responsibility to determine the question must examine the nature of the possibly libelous message. Its determination must be prospective. It must act on the advice of the person in charge of the matter in determining whether the benefit derived from renting out the service is commensurate with the danger incidental from possible liability. This determination must be made both in terms of the possible extent of resulting liability if the libelous message is sent out by the telephone company with knowledge of its potential nature as a libel.

In making a determination as to whether the risk entailed outweighs the benefits to be gained from renting the equipment for the dissemination of that message, the telephone company is no different from any other business. It is not engaging in censorship. Rather, it is carrying out its basic responsibility of protecting itself against liability for participating in the dissemination of a libel, a knowing participation once the telephone company is put on notice that the message might contain a libel. It is submitted that a necessary concomitant of the tariff provision requiring the user of the automatic announcement service equipment to hold the telephone company harmless is a duty on the part of the telephone company to make a working determination—not a judicial determination—when faced with the question as to whether it is willing to take on the risk of liability for libel by continuing dissemination of any particular message. We submit that the tariff regulation should make it clear that whenever the telephone company, on advice of its counsel or other employee, decides that the risk is not commensurate with the danger, it must be left free to refuse to transmit the message which is claimed to be libelous.

In this connection it should be pointed out that the cases sustaining the power of the telephone companies to discontinue service used in violation of law are very much precedent. Such discontinuances, it is true, sometimes follow upon a request by governmental authorities. But the request by government authorities is not made on the basis of a judicial determination. Such a request is based on the same kind of administrative tentative determination as would be involved when the telephone company, acting on advice of its own counsel, after having been put on notice that it may be disseminating a libel, engages in when it determines that the risk of liability outweighs the risk arising from a refusal to transmit the allegedly libelous message. The differences in judgment between a prima facie violation of a criminal statute and a prima facie libel are not, as the telephone company claims, "vast." Each is based on a determination by lawyers or law enforcement officers or other

responsible company employees as to whether or not, in their view, there is sufficient ground to support a tentative finding of criminal activity in the one case or libel in the other case. In neither case is there any question of the telephone company being authorized to engage in censorship of the content of messages.

We recognize, of course, that there is a statutory provision which exempts telephone companies from liability if they discontinue telephone service to a subscriber pursuant to a request by government authorities. But we submit that the determinations made by the government authorities are no more judicial determinations than would be the determinations by the telephone company itself and need not be judicial in nature. We want to point out furthermore that libel is not just a civil wrong but under the statutes of many States is also a crime. When the telephone company is put on notice that a message going out over its facilities repeatedly via the automatic announcement service is libelous, we submit that it has a responsibility to determine whether that libel does involve a violation of the law. Even when no request is made by government authorities, the telephone company cannot idly stand by and permit its facilities to be used for the preparation of a crime.

Finally, in this respect we wish to point out that, in our opinion, the telephone company is in no different position from a telegraph company or a newspaper when it is faced with the knowledge that it may be permitting its facilities to be used for the dissemination of a libel. Telegraph company tariffs, as we pointed out in our original complaint, give the authority for making determination as to whether a message it is asked to send out involves the dissemination of a libel to the person, a mere clerk often, who takes the message for transmission. Newspapers which are often faced with the same problem with respect to copy submitted for publication usually assign the determination as to whether a particular statement is libelous to persons who have some experience in making such determinations but who are not lawyers. The telephone company, when put on notice that a message being sent out over its automatic announcement service is considered by some persons to be a libel on him, can and should follow exactly the same procedure and can and should be subjected to exactly the same possibility of libel if its responsible officials assigned to deal with that problem decide that the message is to go out.

Mention has been made of the concern of the telephone company that imposing the responsibility on it of determining whether a message is libelous would put it in the position of being a censor. But the fact is that FCC Tariff 132, B10 already imposes such a responsibility on the telephone company, a responsibility which it has never hitherto claimed subjected it to the requirement that it engage in censorship. That tariff reads in part as follows: "The service is furnished subject to the condition that there will be no abuse or fraudulent use of the service. Abuse or fraudulent use of the service includes: (*c*) the use of service or facilities of the telephone company for a call or calls, anonymous or otherwise, if in a manner reasonably to be expected to frighten abuse, torment, or harass another; (*d*) the use of profane or obscene language." This tariff imposes on the telephone company the duty of determining when messages involve the use of profane or obscene language or are reasonably to be expected to frighten, abuse, torment, or harass another. We submit this involves no censorship at all but rather involves the imposition on the telephone company of a duty to see to it that its lines are not used for abusive practices.

In opposing the suggestion as to possible liability on the part of the telephone company for knowingly transmitting libelous messages over its automatic announcement service, the company points to the danger that if it should be held liable in damages for improperly discontinuing a message ultimately determined not to be libelous, it would then have to pass on the resulting costs in the form of a rate increase to the public. But this argument ignores the fact that the telephone company already has included in its tariffs a provision that the sender agrees to hold the telephone company harmless for sending any such damages. So long as the telephone company acts in good faith in reliance on the opinion of its counsel or other responsible employee in cutting off the message, it is unlikely that a court will hold it liable. But in any case the telephone company can easily avoid such possible liability by including in its tariff and in its contract with the subscriber of the automatic announcement service a provision that if the company acts in good faith in reliance on advice of counsel or other responsible employee in cutting off such a message, the company could

not thereafter be held liable in damages if the court should ultimately find that the company was in error.

As a concomitant of stripping the mask of anonymity from the users of the automatic announcement service for purposes of dissemination of abusive attacks and libels on individuals and institutions. we suggested in our original complaint that means be found to enable persons and groups defamed by statements in such automatic announcement service messages to obtain the full text of the message so that they can be in a position to seek legal redress if they are so disposed. In this connection, we recommended that a copy of the text of each such message be retained and made available by the telephone companies. The response of A.T. & T. is that such retention would not, in its view, serve any useful purpose since any listener could himself transcribe and retain the message at will. The telephone companies also say that to retain the text of the many thousands of announcement services in operation throughout the country, some with text changed frequently, would place a heavy burden on the telephone companies. Finally, in this respect the telephone company's reply states that if it engaged only in selective retention of particular types of announcements, this would be another form of censorship involving constant monitoring and selection.

Our original suggestion was that in the case of messages which involve defamatory attacks on individuals, groups, and institutions, the sender be required to deposit the tape of the message with the telephone company so that its content will be available to inquirers upon reasonable request.

We submit that the number of messages which might possibly, even under the broadest interpretation, involve defamatory attacks on individuals, groups or institutions is by no means excessive. We see no reason why a tariff change which would require the deposit of all such messages with the telephone company would impose undue burdens on the telephone company. But if the company is unwilling to draft such a tariff, we suggest that an equally feasible alternative to achieve the desired goal might be to require that all users of the automatic announcement service for announcements which contain anything other than simple statements of fact such as stock quotations or weather reports be required to retain the text of such announcements for a period of at least 30 days with the understanding that they must make available such records to the telephone company or any other inquirers upon request.

Still another standard which might be used is to require that all users of the automatic announcement service who use the same recorded message for at least 12 hours could be required to retain a copy of the text of such message. The effect of so limiting this requirement would be to avoid placing a burden on users who change their text frequently such as those who use the service to issue stock reports, weather reports, etc.

In any case, if the requirement to retain the text of such announcements is imposed on the users, then the telephone company would not be burdened to select or retain records. Since each user would retain only his own texts and such users normally want to retain the texts of their announcements in any case, the additional burden imposed on the user would be slight if any such burden would result at all. The important thing is that a person libeled by an automatic announcement service text should not be required to pursue the will-o'-the-wisp of having to record for himself what the announcement says or seeking out those who heard it so that they can attempt to repeat it from memory. Rather, he should be given access to records kept by the disseminator or by the telephone company which is also a disseminator.

In closing may be repeat that we are pleased with the action taken by the American Telephone & Telegraph Co. because it concedes that the cloak of anonymity must be stripped from the persons using its automatic announcement service to disseminate abusive, extremist attacks and libels on individuals, groups, and institutions. But, we wish to emphasize that this is only a first step in curbing the misuse of the recorded telephone message service, an evil the company concedes to exist. It is a step which we submit is by no means the most effective available device for achieving the goal of denying anonymity to the misusers of the service. It is a step taken by the company only after it had repeatedly asserted to complainants that it was powerless to do anything about this abuse of its service. We submit that the suggested additional counteractive steps against this abuse of the automatic announcement service spelled out above are completely reasonable, impose no undue burden on the telephone companies or on innocent users of the automatic announcement service, and are necessary

to meet the evil created by these messages and their sponsors, an evil which endangers our democratic society and subjects individuals, institutions, and groups to unfair, malicious, defamatory attacks without insuring to those attacked the right of defense.

Respectfully yours,

ARNOLD FORSTER, *General Counsel.*

Anti-Defamation League supplementary list of "Let Freedom Ring" stations as of November 19, 1965

State	Cities	Number of stations
1. Alabama	Birmingham	1
2. Arizona	Phoenix	1
3. California	Anaheim, Berkeley, Carlsbad, Encinitis, Long Beach, Sacramento, San Fernando Valley, San Gabriel Valley, Walnut Creek.	9
4. Colorado	Boulder	1
5. Florida	Clearwater, Gainesville, Jacksonville, Kissimmee, Miami, Pensacola, Sarasota, Tallahassee.	8
6. Georgia	Macon, Atlanta (being reestablished)	2
7. Illinois	Chicago, Danville, Decatur	3
8. Indiana	Hammond, Indianapolis, Muncie	3
9. Iowa	Des Moines	1
10. Kansas	Wichita	1
11. Maryland	Baltimore, Frederick, Hagerstown	3
12. Massachusetts	Dedham, Gloucester	2
13. Michigan	Ann Arbor, Detroit, Flint (rumored), Grand Rapids (rumored), Lansing (rumored).	5
14. New Hampshire	Nashua	1
15. New Jersey	Summit	1
16. New York	Staten Island, Ossining	2
17. North Carolina	Southern Pines	1
18. Ohio	Canton, Cincinnati, Columbus	3
19. Pennsylvania	Pittsburgh	1
20. Rhode Island	Westerly	1
21. Texas	Dallas (rumored), Nederland	2
22. Washington	Seattle	1
Total		53

Other organizations disseminating telephone propaganda

State	Cities	Name	Number of stations
1. Illinois	Chicago	American Opinion Editorial	1
2. Kansas	Kansas City	Victory	1
3. New York	Staten Island	John Birch Society	2
4. North Carolina	Winston-Salem		1
5. Washington	Bremerton	American Heritage Forum	1
Total			6

States without "Let Freedom Ring" outlets

1. Arkansas
2. Connecticut
3. Delaware
4. Idaho
5. Kentucky
6. Louisiana
7. Maine
8. Minnesota
9. Mississippi
10. Missouri
11. Montana
12. Nebraska
13. Nevada
14. New Mexico
15. North Dakota
16. Oklahoma
17. Oregon
18. South Carolina
19. South Dakota
20. Tennessee
21. Utah
22. Vermont
23. Virginia
24. West Virginia
25. Wisconsin
26. Wyoming

No information available

1. Alaska
2. Hawaii

Senator MCGEE. The next witness is Mr. Bruce Felknor.

STATEMENT OF BRUCE FELKNOR, FAIR CAMPAIGN PRACTICES COMMITTEE, INC.

Mr. FELKNOR. Senator McGee, Mr. Zapple. If I may, I will read my prepared statement and trim and patch a bit as I go, in light of some of yesterday's and today's testimony.

Senator MCGEE. Proceed as you best determine.

Mr. FELKNOR. Thank you.

As I understand the underlying problem addressed by these bills, as has become obvious in the course of yesterday's and today's hearing, it is an expression of concern over particular abuses of the recorded telephone message system or service for political attacks without revealing the identity of the persons delivering or sponsoring the messages. Thus, protected by anonymity, haters and radical rightists—I don't mean to imply that the terms aren't mutually exclusive—have been able to malign political figures and indeed the American political system without revealing their own identity or exposing themselves to rebuttal questioning or legal action.

In holding these hearings, the subcommittee is performing a valuable public service. By doing so you are serving notice of your awareness and interest upon the organizations and individuals concerned.

Furthermore, you are alerting and informing the general public in an area of critical importance to our political system.

I heard Mr. Berger with interest on the prospect of holding hearings in other communities. I suggest that would be a useful additional step in this role of alerting and informing the public.

I have watched the increasing use of recorded telephone messages for political argument for several years, both on a year-round basis like that of the so-called "Let Freedom Ring" messages and in individual election campaigns. In either case it is entirely too often that these messages fall into the category that I a year or so ago began to call "Dial a Smear."

On many occasions I have discussed this problem with the telephone companies, and I am aware of their longstanding concern over the mischief wrought by irresponsible spokesmen hiding behind the cloak of effective anonymity. I am also aware of the companies' reluctance to engage in censorship and to impose unreasonable hardships upon legitimate users of the service.

Now I note with pleasure that in recent weeks the Bell System companies have, in two steps, eliminated the problem of anonymity without moving into the realm of censorship.

And it is anonymity, in my opinion, which is the real problem in these messages. I have confidence in the American citizen, and I believe that the shrill voices among us will discredit themselves in the future as they have done in the past, if their sources are exposed to view.

This exposure now has been facilitated by the Bell System companies in their new tariff provisions relating to the automatic announcement service. I am confident, and I urgently hope, that the independent companies, particularly including those which operate entirely on an intrastate basis, will quickly demonstrate the same kind of responsible concern for the best interests of their subscribers and the society. Every operating company which denies a hiding place to

fanatics by requiring identification in the text of these messages, and which reveals the identity of their sponsors to any citizen upon request, merits the thanks of the people.

In the light of the voluntary requirement of identification by the Bell System companies, and assuming that the independent companies will act similarly, I believe it would be best to postpone action on either of the bills at hand. The central purpose of the proposed legislation is in fact accomplished—and in the best American tradition—by the voluntary action of the companies.

To me it is obvious that the telephone companies may require users of the automatic message service to identify themselves, but it seems less certain that legislation can force such action without incurring a fair chance of reversal in the courts.

If the regulation of anonymous literature is analogous to the regulation of anonymous recorded telephone messages, the *Talley* case of 1960 would seem to support this apprehension. In that case (*Talley* v. *California*, 80 S. Ct. 536, 1960) the petitioner, Talley, had distributed unsigned handbills attacking a supermarket, I believe. A Los Angeles County ordinance prohibited the distribution of anonymous literature. Talley was convicted.

The Supreme Court reversed his conviction, essentially on the ground that although the State had a right to prohibit anonymous literature in particular situations, for example election campaigns, where the danger to be protected against was specified, the State could not prohibit any unsigned literature at any time in any circumstance, as the Los Angeles County ordinance did.

As I read S. 2693 and S. 2713, I think I see some of the broadness of the Los Angeles County ordinance. I would urge careful consideration of this possibility by the subcommittee should you act favorably on either of these bills.

In my judgment the best course for the present would be to continue to keep a watchful eye on the use and abuse of the automatic message service, continuing to be prepared to act through the legislative route should it appear at any time that the telephone companies' voluntary exercise of responsibility and the FCC's regulatory role fall short of what is required by the broad public interest.

I thank you for the opportunity to testify, and I repeat my admiration for your present investigation and concern.

I am aware that the telephone companies did not act until pressure had been generated by the action of the Anti-Defamation League and the National Council of Churches in urging legislation. However, I think it is a great mistake to underplay the genuineness and depth of concern that the telephone companies have felt in seeing this creation of theirs abused. I have a long history of personal animosity for the telephone companies serving in communities in which I have lived, argued by bills, service, and everything else. I am no apologist for "Mother Bell" or any of the chickens. But it is naive, I think, to suppose that the telephone companies are irresponsible and unconcerned at these abuses.

Fundamentally, of course, the anonymity——

Senator McGee. Could I ask you there, Mr. Felknor: I think you would agree that they strive to be very responsible. Do you think it

to be their proper function to exercise the sum total of this kind of public responsibility? Is this properly lodged with a private group rather than a public body?

Mr. FELKNOR. I am generally disposed to believe that the responsibility may be properly lodged there. I feel that there is validity in the complaint that the telephone companies did not act sooner. There is a perfectly valid argument that if the telephone companies in this instance don't act, that legislation becomes quite important. I believe it is appropriate to give the phone companies a chance to demonstrate whether in fact they will——

Senator MCGEE. What will distinguish between this circumstance, namely the telephone message type thing, and the situation in other communication media that required legislation, even though it might be argued, say, that the broadcasters would voluntarily have made equal-time provisions. You are very familiar with those categories because that happens to be the fundamental concern of your organization. What is the difference between the legislation that seemed wise in those instances that would rule out the wisdom of legislation in this case?

Mr. FELKNOR. The legislation in the other cases deals in 38 States and in the Federal law at section 612, title 18, with anonymous literature in election campaigns. In some cases, to be sure, there is a requirement that the sponsor of a newspaper advertisement identify himself, but in every case the fundamental target here is with pamphlets, tracts, handbills, ephemoral literature.

Senator MCGEE. I am thinking of legislation now through the Communications Act and its various amendments as affect the broadcasting industry particularly—TV and radio. This wouldn't involve pamphlets and tracts of that sort. There must be some difference here, I would think, to sustain your position.

Mr. FELKNOR. My position essentially is that I think the legislation certainly in terms of the two bills that I have read, your own and that of Senator Javits, would require identification details that would be perhaps superfluous and burdensome on the so-called actual messages.

Senator MCGEE. That is not the issue of my question. My question is on the principle of where responsibility for this lies. I am only asking that you say for the record or explain to us for the record why we found it wise—and it seems to work—that we have regulatory legislation that applies to the broadcasting media in some of this area, but that it won't necessarily be necessary in this telephoning media.

Mr. FELKNOR. I think one argument is the fact that this message is only conveyed to a person who learns the number and dials it.

Senator MCGEE. Which is different from a person that has to look up on a TV log and decided to turn on the radio or TV?

Mr. FELKNOR. Or may be tuned in for one purpose.

Senator MCGEE. What is the difference there?

Mr. FELKNOR. I am not arguing, Senator, that the legislation is improper, or that this legislation——

Senator MCGEE. Maybe I misunderstood you, Bruce. I thought you were suggesting that in this case you didn't believe that legislation was proper in this instance.

Mr. FELKNOR. No.

Senator MCGEE. That private initiative on this was sufficient to cover it. My point, as you heard earlier, was that this may be a sector

where the private sector should not be burdened with the responsibility because of the very nature of its monopoly characteristic, of its public interest characteristic, of the fact that it is subject to the rules and regulations of the Federal Communications Act of 1934 as amended already.

I simply think the record ought to show why what was necessary there and proper there should not be necessary and proper in the case of the telephone messages. I think that would be very helpful.

Mr. FELKNOR. I don't suggest it would be improper. I was suggesting, in my prepared testimony, that I thought it was not necessary at this time, that——

Senator MCGEE. That is why I am asking why, why can't we learn from the past? In other words, what it comes down to, haven't we learned that this is probably what the complex circumstances required? Why do we duck it now? Why do we defer it or hope it will go away? What are the different circumstances?

Mr. FELKNOR. I don't think we hope it will go away. My principal apprehension about the proposed legislation is not on the matter of its propriety or its appropriateness as an expression of public policy at all. I believe that anonymity must be stripped away from the people who are essentially the publishers.

Senator MCGEE. That's not the question we are talking about. I am trying to get help from you. I am flexible on this position. I want to get educated on it. That is why I asked why. What is the difference here, or don't we learn? Is there something here that doesn't entitle us to learn from these other experiences? What is the ingredient that changes?

Mr. FELKNOR. I am unclear at this point as to what other experiences you are referring to.

Senator MCGEE. In broadcasting. We have regulations in the Communications Act that have certain minimal requirements in terms of what must be done in these controversial areas on the air.

What is there in this business, telephone communications, that should exempt it from those general requirements?

Mr. FELKNOR. Approached that way, nothing.

Senator MCGEE. This, it seemed to me, is really the crux of whether we have Federal legislation on this, or whether we simply sit back and see if it works the present way.

Mr. FELKNOR. When I suggest sitting back and see if it works, I don't mean to do it at all carelessly.

Senator MCGEE. No. Suppose it works beautifully. The question raises the point, isn't that irrelevant?

Mr. FELKNOR. Perhaps so.

Senator MCGEE. That there is another fundamental at stake. I am willing to be knocked out of that position if there is something different in this circumstance that we ought to make it a separate and exceptional case rather than fit the general pattern that is applied to other communications media.

Mr. FELKNOR. I confess I was looking at this experience, this problem, as a separate case, and I was not looking at it in the context of regulating broadcasting.

Senator MCGEE. You have the same question of initiative here. The individual still has to make the first move. He is not ordinarily trapped. The TV set doesn't go on automatically for him; the radio

doesn't go on automatically unless he sets it on the "wake up bright and cheery in the morning" signal. Ordinarily you have to take that first move.

But here it has reached the point where you can be dialed automatically, and you have no choice but to answer your tone.

Mr. FELKNOR. I agree entirely in the light of what I learned, for the first time, in reading Chairman Henry's testimony yesterday. I think this puts the telephone subscriber into the position of being a broadcaster, or worse than that.

Senator MCGEE. A prisoner, theoretically.

Mr. FELKNOR. In truth, really.

Senator MCGEE. If anything, it seems to me that the need to define this in legislative terms might even be a little sharper than in the case of the broadcasting media.

Mr. FELKNOR. So far as the possibility of recorded messages reaching you willy-nilly. I agree entirely on that score. I find that a thoroughly frightening prospect.

Senator MCGEE. Likewise the fact that this is still a relatively small operation in toto, compared to TV and radio, its mechanical ramifications and potentialities are looming suddenly very large here, and almost unlimited in the future.

Mr. FELKNOR. That is perfectly true.

Senator MCGEE. For that reason, we have a chance to get at it now. That is why I desperately and sincerely would like to know what makes this different from the others.

Mr. FELKNOR. Dealing with the new development in the field, I see no reason. Mind you, the statement I prepared was prepared without the knowledge of the existence of this new approach.

Senator MCGEE. If there were a Federal statute wisely drawn on this—and I don't think anybody has particular pride in authorship in any of these bills that have been put out here; they have been put out as points of departure in order to enable educated and expert exchange among those that are best qualified to speak on them—assuming that point on some kind of legislation, do you see any way in which this would meaningfully intrude upon the operations of the private regulated monopoly sector, or the State commissions, if you wish?

Mr. FELKNOR. I don't see any way that properly drawn legislation would intrude beyond exerting the regulation that is necessary as a matter of public interest; no.

Senator MCGEE. There seems to be, among the private sector groups, the telephone companies, and among the State commissions, and among the members of this committee, there seems to be at least unanimous judgment on the need for action of this type being taken at whatever level, so there doesn't seem to be any disagreement as to the general target except from Sarasota.

I simply want the record to flush out here a little bit your views. You have had to do battle on this kind of question more than most of us.

Mr. FELKNOR. True; for a long time.

Senator MCGEE. That is the reason I wanted to pick your experience and your judgment in these things.

Let me stop at that point. Are there any other sections here that you would like to pick out for special emphasis?

Mr. FELKNOR. I would like to express at least my apprehensions that the *Talley* decision, which Mr. Berger cited, might raise a problem.

Senator MCGEE. A constitutional question?

Mr. FELKNOR. Yes, sir. I think this problem can be solved if indeed it exists. I am not a constitutional expert; I am not a lawyer. As I read the *Talley* decision, it rather clearly upset the Los Angeles County ordinance in question because of its broadness and because it did not point out the dangers that it sought to protect society against.

Senator MCGEE. And it applied to an entirely different——

Mr. FELKNOR. It outlawed any kind of anonymity under any circumstance.

Senator MCGEE. Specifically aroused by parent's fraternities?

Mr. FELKNOR. Yes. It sought to prohibit any anonymous literature.

Senator MCGEE. In your judgment, as you look at the constitutional ramifications of this, what would be the constitutional difference between the fact of the telephone companies and the State regulatory boards carrying out such a policy as this and a legislative enactment by the Congress that went exactly along the same lines?

What would be the constitutional lack of pressure in one that wouldn't be in the other?

Mr. FELKNOR. I think that the telephone company would clearly have a right to require, to set up the regulations by which its equipment and service is used.

Senator MCGEE. Even if it infringes upon the freedom of speech of the individual?

Mr. FELKNOR. We are not talking about freedom of speech, I don't think. We are talking about freedom from responsibility here.

Senator MCGEE. Which at least has been bandied about here rather loosely as an inhibiting factor to freedom of speech, and thus it comes back to the simplest of cliches—freedom of speech—with what we understand that to mean.

Mr. FELKNOR. Dr. Douglass would, I think, applaud any efforts to strip away the anonymity of any Communist front or transmission belt, but he and his colleagues make much of their right to expose what they see as Communists and pro-Communists. Yet, he resists the efforts of the society to strip away the anonymity of the fronts and transmission belts for his brand of subversion.

Senator MCGEE. I think he has at interest the fact that his patriots won't want to risk their job or their blood for their patriotism.

Mr. FELKNOR. Was it Samuel Johnson who said, "Patriotism is the last refuge of scoundrels"? It seems to me that in dealing with superpatriots——

Senator MCGEE. Say that again, because I want to use that again sometime.

[Laughter.]

Mr. FELKNOR. If I correctly have it.

Let's start with the assumption that patriotism is indeed the last refuge of scoundrels. Let's modify it to deal with the present situation and suggest that anonymity, when we are dealing with superpatriotism—anonymity, I think, is the first refuge of scoundrels. I see no reason why these people should be given protections that they so ardently deny to others.

Senator McGee. They have a propensity for stealing all the best—the richest phrases and words of the language. This is an old trick. The Communists, I think, invented it, with all due respect. These fellows have stolen it from the Communists. It is all the same, no matter who uses it.

Mr. Felknor. They share it with the Communists.

Senator McGee. Patriotism they have preempted; freedom they have preempted; the Constitution they have preempted; anticommunism they have preempted.

Hitler was probably one of the pioneer anti-Communists in this world. That didn't happen to make him any better a guy. These men can be the kind of patriots they want to be.

Mr. Felknor. Indeed.

Senator McGee. As long as the rest of us have the freedom to be as patriotic as we see.

Mr. Felknor. If they are afraid of harassment, if they are identified as the patriots that they pretend to be, why are they not afraid of the harassment that their messages inspire in people who call and get the message that Senator Javits is a Communist, or that the National Council of Churches is promoting armed insurrection in the South, and so forth.

However, I urge upon the committee that it look very carefully at the implications of the *Talley* decision. I think it may be a simple matter to specify the particular evils that you seek to protect society against.

Senator McGee. That is the reason we need to refine all the thinking on that phase. Whatever else our fundamental determination is, it is worth taking risks and even suffering damages in order to preserve some freedom—all freedom. It is a question of weighing these out on a scale of what seems reasonable and right. And that is the reason for our concern in this category of what we are doing here.

If this does open up the question of impinging upon freedom in a reckless way, then I for one want no part of it. I would think that our record also shows, our history shows, that freedom has never carried with it an unlimited irresponsibility.

No one quarrels with penalizing a man for crying "fire" in a crowded theater, where it may produce panic and death. There are some limitations that we impose upon freedom because one man's freedom may be another man's destruction. Our concept of freedom has never included a license to destroy another.

And so we hope to draw the intelligent lines there with whatever wisdom mortals can command.

Mr. Felknor. Precisely. I think particularly in the light of the present possibility that these messages may invade your own home without your knowledge or consent, that legislation is clearly indicated.

I think that the dangers that the legislation seeks to protect society against are pretty clear. Perhaps they ought to be——

Senator McGee. Would you attach any significance to the suggestion made to this committee this morning, that the fear of retaliation of individuals to local persons that might sponsor the telephone messages would be sufficient cause for preserving anonymity for them?

Mr. Felknor. By no means. If I go out and set fire to my neighbor's barn, I would expect retaliation from the law or from my neighbor. If you engage in any antisocial or irresponsible——

Senator McGEE. What about crackpots that are around? They don't need to burn his barn down. He can imagine all sorts of things about you if he knows where you are or who you are.

Mr. FELKNOR. Yes.

Senator McGEE. Shouldn't we try to protect the individual from that kind of chance accident?

Mr. FELKNOR. If we are protecting the individual from that kind of chance accident, we are preventing the crackpot from the opportunity to malign the responsible people in our society.

Senator McGEE. In other words, there is no ultimate protection of that sort that you can have except for doing away with everybody but me.

Mr. FELKNOR. That is right.

Senator McGEE. It is probably the only ultimate protection there is to be, and we have to assume risks. We pay a real price for freedom. We pay great risks for freedom, including the risk of bodily harm, including the risk of character assassination.

Mr. FELKNOR. By not agreeing with Dr. Douglass, you, Senator Javits, other distinguished Americans, find themselves described in terms that could easily persuade some deranged superpatriot that the only way to solve the problems would be to shoot you.

Senator McGEE. Or to call me on the phone and propose that my blood be spilled a little bit.

Mr. FELKNOR. Yes.

Senator McGEE. Even though that person may have no connection whatsoever with a movement. They still are triggered by this kind of thing.

Mr. FELKNOR. They may well be.

Senator McGEE. Mr. Zapple has a question.

Mr. ZAPPLE. Mr. Felknor, I know you are not a lawyer, but you expressed some apprehension as a result of the so-called *Talley* case. In order to round out the record I thought I should bring to your attention the so-called *United States* v. *Scott* case. Are you familiar with that one?

Mr. FELKNOR. Not by name.

Mr. ZAPPLE. That is the case in which the U.S. district court in North Dakota sustained the constitutionality of a Federal statute which prohibits the publication or distribution of any statement concerning a candidate for specified Federal offices without giving the name of the person responsible for it.

Mr. FELKNOR. I recall the case now, Mr. Zapple. I am aware of it; yes.

Mr. ZAPPLE. Isn't the principle there more comparable to the legislation that is presently being considered than the one set forth in the so-called *Talley* case?

Mr. FELKNOR. I think it is. The only thing that concerned me in the *Talley* case and the present bills is the fact that they do not specify the actual problem that they really address. It is simply my opinion that they might be better able to withstand the test of time in the courts if they did stipulate, as the Federal statute in the North Dakota case you cite, makes perfectly explicit what it is talking about. It is talking about literature designed to influence a campaign for election to public office.

Here we are talking really about political arguments or public affairs arguments. Of course, these phrases are dangerous.

Senator McGEE. Controversial public questions.

Mr. FELKNOR. Some formulation exists. If indeed the Talley precedent does pose a problem, some formulation could be found to render the bill proof against attack on that ground. That is my concern.

Mr. ZAPPLE. As I construe what you are saying, you are suggesting to the committee, in developing a legislative history that they be precise in setting forth what they are endeavoring to accomplish in order to avoid the pitfalls of the so-called *Talley* case?

Mr. FELKNOR. That is exactly right. Indeed one of the useful attributes of the phone company proposals is to exempt the so-called factual information services and thus sort of by indirection arrive at about the point that I would like to see the bill arrive at.

Senator McGEE. I want to thank you, Mr. Felknor, for your contribution in this matter. I have no more questions. Do you have any more questions?

Mr. ZAPPLE. No, sir.

Senator McGEE. Thank you very much.

This is the last of the witnesses that asked to testify until now. I think it ought to be made clear, as was made clear yesterday, that this is the opening of a series of hearings on the various phases of the developments in the communications media in regard to controversial matter, and that at a later time, presumably after Congress gets back in town, that we want to explore with the appropriate agencies the impact of all of these developments on the fairness doctrine of the Federal Communications Commission on balanced programing, but that in all instances the focus of the study has to do with the implications in communications and in no sense has anything to do with the substantive content of what is being said as such.

There is no interest in sensoring, no attempt to intimidating somebody into retreat. In fact, the insistence is that we encourage more and still more of this. And the more it can be brought to the surface with identity, the stronger the fiber of our formulation of new ideas, new policies, it really becomes.

I stress that again as we wind up these preliminary sessions of this committee.

The committee will now stand in recess, subject to the call of the chairman, Senator Pastore, which call has already been advertised as soon after the opening of the next session of Congress, at which time we will have additional thoughts and testimony from the appropriate agencies that are reexamining this question, and at which time we will open up the questions laid out on the agenda during the beginning session of this committee hearing yesterday morning.

With that announcement, the committee will stand in recess.

(Whereupon, at 12:05 p.m., the committee was recessed, subject to call of the Chair.)

(The following material was submitted for the record:)

FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF MIAMI,
Miami, Fla., November 17, 1965.

Hon. JOHN O. PASTORE,
U.S. Senate, Washington, D.C.

DEAR SENATOR PASTORE: Please permit me to express my enthusiasm and respect for the hearings your Commerce Subcommittee will undertake tomorrow on S. 2713, which is the Javits bill, to amend the Communications Act of 1934.

The subject before you will be the spreading nationwide network of recorded telephone messages which are declared to be in the joyous name of "Let Freedom Ring."

I am simply one of many persons who are deeply disturbed by the failure of the messages to identify the authors and sources of the promiscuous broadside diatribes. As a citizen, I am not alarmed by any attack on any subject, providing I am aware of and at liberty to take action against the attacker.

The enclosures relate when and why I became involved in the matter. The illuminating cartoon by Don Wright, of the Miami News, paints the story in an unforgettable manner. It is thought that some 50,000 of the LFR fliers are currently being distributed in the Greater Miami area. I do believe that your hearings are truly in the national interest.

It has been too long since I enjoyed a baseball game in your company and that of Al Brick. Perhaps good fortune will bring us together again some day. I hope this happens.

Cordially,

HARRY P. CAIN.

(Enclosures referred to in Senator Cain's letter are in the committee files.)

FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF MIAMI,
Miami, Fla., November 17, 1965.

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

DEAR MAGGIE: From a thousand miles away, I am genuinely pleased because John Pastore's subcommittee is to hold hearings on S. 2713, the Javits bill, which would amend the Communications Act of 1934 with respect to conveying recorded messages by telephone.

A cause for the bill and hearings is a growing nationwide network of recorded telephone messages which spews hate while attacking everything and everyone with whom it disagrees. All of this is done by anonymous persons who hide behind the exciting title "Let Freedom Ring."

The enclosures bear on the subject. The cartoon by Don Wright, of the Miami News, tells the whole story. My statement relates when and why I became seriously involved in the matter. In consequence, I feel deeply that nothing but good can result from the hearings.

With my warmest best and in hope that we encounter each other someday real soon, I am

Cordially,

HARRY P. CAIN.

STATEMENT OF HARRY P. CAIN, MAY 19, 1965

At about 8 last night a friend called to ask if I knew what was being said about the University of Miami and certain persons, including myself, in response to dialing 221-6767. I had no knowledge of the telephone number or subject matter.

A recorded woman's voice had this to say:

"This is 'Let Freedom Ring.'

"Last Tuesday night, at Miami's own Little Red Schoolhouse, there was a strange assortment of pinks, punks, beatniks, and leftwing educators assembled for the unashamed purpose of pleading for a softline against the Communists.

"Openly associating themselves with what many people consider to be near treason was, of course, John Papandrew, of the Florida Civil Liberties Union, an identified associate of the Fair Play for Cuba Committee.

"You will remember that Lee Harvey Oswald, Marxist assassin of President Kennedy, was a field secretary for this same outfit.

"Also present Tuesday, and acknowledging responsibiltiy for this display of appeasement and retreat, was the University of Miami's own Professor Tedeschi, himself frequently linked with leftist and pacifist causes.

"Later in the program, an elderly Senator from Alaska openly endorsed efforts toward withdrawal from our commitments against Communist aggression, and, to the cheers of many University of Miami students, actually bragged of his refusal to vote for the money our President wanted to fight the war against communism.

"Instead of being evicted from the premises, he was applauded and left the building, shoulder to shoulder, with Miami's admitted Marxist, an advocate of what he calls selective assassination, Peter Christiansen. Christiansen, leader of the law-breaking organization CORE, was fired recently from his welfare job for violating his probation.

"Also participating, and supporting this affair, was the controversial ex-Senator Harry P. Cain.

"While the local leftwingers were assembled here to plead for what the Communists want in Vietnam and the Dominican, a similar group of students in Mexico City was burning the American flag.

"These students, admittedly Communists, were pleading the same line as the University of Miami students.

"For more information on these same leftwing campus activities, hear the "Manion Forum" or the Norb Gariety program, Sunday night at 11:30 on WMIE, 1140 on your dial.

"Thank you for calling.

"Call us Monday for a new weekly message.

"Let Freedom Ring."

REACTION

The attack on the University of Miami and its encouragement for debate and free inquiry among its students and faculty was cowardly, scurrilous, distorted, misleading, and inaccurate.

The teach-in at the university amounted to a discussion which covered all facets, including criticisms and counterproposals to our Government's posture, position, and policy in Vietnam. The several thousand students, faculty, and off-campus persons who attended or participated in the teach-in were divided in their opinions as to who was right and what course of action was correct and should be followed. Many among them were not reluctant about stating and advancing their positions.

Any person in attendance whose mind was uncommitted was provided with a wide range of arguments to consider and from which to make a choice.

As a citizen of our Republic, I thought the university was acting in its finest tradition through stimulating thought, concern, and action within its student body, faculty, and off-campus guests.

During the course of the evening I met a William Christiansen whose identical twin brother, Peter Christiansen, is made reference to in the telephone message. William Christiansen acted as a host and guide for Senator Ernest Gruening who was a prominent speaker during the program. I do not know that Peter Christiansen was even on the campus during the evening.

About a week prior to the teach-in I had been invited to make the last speech on the evening's program. I appreciated but declined the invitation on the grounds that I was not sufficiently knowledgeable about a complicated matter which had its origin many years ago. The person who extended the invitation made clear that I was free and urged to support or oppose our Government's Vietnam policy and practices.

As a person off the street, so to speak, I attended the teach-in in order to better understand how different kinds of minds were thinking as related to the Vietnam situation, and to greet a longtime and respected friend, Senator Gruening. For me, the evening, in its entirety, was rewarding stimulating, and refreshing.

Senator Gruening stated publicly and bluntly that he opposes what the United States is presently attempting in Vietnam, and approved without reservation what our Government has undertaken to accomplish in the Dominican Republic.

The "Let Freedom Ring" telephonic message was not only vastly inaccurate in its allegations but indicted the loyalty of the university's student body and would have the listener believe that the University of Miami is dominated and controlled by fellow travelers and left-wing elements.

This indictment is ridiculous, unfortunate, and sad. The University of Miami's Board of Trustees and Citizens Advisory Board includes south Florida's power structure. When thought of as a whole, these community leaders are as intelligently conservative as any group could be. These instruments determine policy for the university's management and conduct.

Nineteen sixty-five marks the beginning of the university's golden anniversary development program. Successful endeavors are underway to raise approximately $100 million for the university's development needs through the next dec-

ade. This towering amount of money will be raised because of our community's respect for and faith in the university's future. The university is our community's greatest creative asset. It is both reprehensible and inexcusable for the university to be anonymously but publicly assaulted without a shred of justification.

Dr. Henry King Stanford, president of the University of Miami, has declared what needs to be appreciated everywhere:

"A university is the place where ideas should flourish. Here is where keen minds are honed to keener edges by their confrontation with similar minds. Here is where professors and students should be encouraged to seek, to probe, to scrutinize, to test, to question, and finally to conclude. Thus the university can serve society as a critic, as a conscience, and even as a prophet. This intellectual process should be protected at all costs."

QUESTION

What and where are the rules, regulations, directives, statutes, or laws which bear on this question: Is there, or should there be, an opportunity for slander and libel by telephone that is not tolerated by radio or television?

STATUTES RELATING TO THE USE OF OBSCENE OR INDECENT LANGUAGE OVER TELEPHONE OR MAKING OF THREATENING OR ANNOYING CALLS

State	Indecent, obscene language	Anonymous calls	Calls to females	Annoying or harassing calls	Threatening calls	Prosecute where call placed or received	Printed notice of statute required in directory
Alabama	X			X	X	X	
Alaska	X	X		X			
Arkansas	X	X		X			
California	X	X		X	X	X	
Colorado [1]	X	X		X	X		
Connecticut	X			X	X	X	
Delaware	X			X			
District of Columbia [2]							
Florida	X						X
Georgia	X		X				X
Hawaii	X						
Idaho	X			X	X	X	
Illinois	X			X			
Indiana	X			X	X	X	
Louisiana [3]	X	X			X		
Maine				X			
Maryland	X	X		X	X	X	
Massachusetts	X		X	X			
Michigan	X				X		
Minnesota	X	X		X	X	X	
Mississippi	X				X	X	
New Jersey	X			X		X	
New Mexico				X			
New York	X		X		X		
North Carolina	X	X	X		X		
North Dakota	X						
Ohio	X			X	X	X	X
Oklahoma	X		X				
Rhode Island	X			X	X	X	
Pennsylvania	X			X		X	
South Carolina	X					X	
South Dakota	X						
Tennessee	X			X			
Texas	X			X	X		
Virginia [4]	X				X	X	X
West Virginia	X						
Wisconsin				X			

[1] Colorado is the only State to also prohibit extortion of money or other thing of value from any person or family by means of the telephone.

[2] Prosecution has been under the disorderly conduct provisions of the District of Columbia Code; however, H.R. 10497 which passed House, now pending in U.S. Senate will cover.

[3] Public service commission may adopt rules authorizing telephone employees to cooperate with police.

[4] Telephone company may be subpenaed to supply information on above calls. Virginia also has a provision prohibiting malicious calls giving false information about third persons.

Statutes Relating to the Use of Profane or Obscene Language Over the Telephone and the Making of Threatening or Annoying Telephone Calls

I.

State laws relating to profanity or threats over the telephone date back to 1909 when Texas enacted a law providing a penalty of not less than $5 nor more than $100 for using "vulgar, profane, obscene, or indecent language over or through any telephone." Since that time, 35 other States have passed laws prohibiting telephone calls embraced in one or more of the following categories: (1) use of profane or obscene language over the telephone, (2) annoying calls, (3) threatening calls, (4) calls giving false information about third persons.

The majority of these laws were enacted in the latter part of the 1950's. Three laws were passed in 1959, one in 1960, four in 1961, one of which (Indiana) repealed a former act and enacted a more comprehensive statute. In 1962, Virginia passed two laws adding further provisions to its existing statute, one of which was the first to prohibit malicious calls giving false information about third persons. Several laws were amended in 1963. In 1965, laws were passed in Alaska, Idaho, Rhode Island, and South Dakota.

In the following summary, the various State laws have been analyzed under the five general categories as set forth above. Within these divisions certain differences and distinctions are indicated. It should be noted that many of these State laws are quite comprehensive and a State may be listed under several or all of these different categories.

1. Laws prohibiting obscene language

The most prevalent provision, contained in the laws of 33 States, prohibits the use of obscene or lascivious language over the telephone. Most of these penalize the mere use of profane language but several of these acts qualify the prohibition by the requirement that the language be intended to annoy or that the call be of an anonymous nature.

Laws with provisions prohibiting mere use of obscene language are in effect in the following states:

Alabama.
Arkansas.
Colorado.
Connecticut.
Florida.
Georgia (restricted to language used to a female, but also makes it unlawful to use opprobrious or abusive language to anyone).
Hawaii.
Indiana.
Maryland.
Massachusetts.
Michigan.
Minnesota.
Mississippi.
New Jersey.
New York (restricted to language used to a female or a male child under 16 years).
North Carolina (one section restricted to language used to a telephone operator; other section extends to "any female").
North Dakota.
Oklahoma (to any female person).
Pennsylvania.
Rhode Island.
South Carolina.
South Dakota.
Texas.
Virginia.
West Virginia.

Provisions which add the qualification that the profane or obscene language be reasonably expected to annoy or intended to offend or annoy another are found in:

California.
Delaware.
Idaho (use of obscene language is prima facie evidence of intent to offend).

Illinois (use of obscene language is prima facie evidence of intent to offend).
Ohio.
Tennessee.

Provisions requiring that the obscene call be anonymous or that the person not reveal his true identity are in effect in:

Alaska.
California (whether or not conversation ensues).
Louisiana.
North Carolina (language used must be such that if published would bring public contempt and disgrace).

2. Laws prohibiting annoying calls

A number of State laws contain provisions which prohibit harassing or annoying telephone calls. This type provision prohibits and penalizes persons who make telephone calls with the intent of annoying or harassing another. It is not necessary that obscene language be used. Provisions of this type may require that the annoying call be anonymous or that the call be repeated. Laws in this category are in effect in the following States:

Alabama (telephone repeatedly).
Alaska (anonymously telephones repeatedly).
Arkansas (anonymous call or calls or repeated calls).
California (with intent to annoy).
Colorado (by repeated annoymous or identified messages).
Connecticut (telephone repeatedly).
Delaware (expected to annoy).
Idaho (with intent to annoy or offend).
Illinois (whether or not conversation ensues).
Indiana (telephone repeatedly).
Maine (willfully harasses, without reasonable cause, by conversation over any telephone).
Maryland (makes repeated calls or anonymous calls).
Massachusetts (telephones repeatedly, whether or not conversation ensues).
Minnesota (anonymous calls).
New Jersey (telephones repeatedly).
New Mexico (with intent to annoy whether or not conversation ensues).
Ohio (telephones repeatedly).
Pennsylvania (telephones repeatedly).
Rhode Island (telephones repeatedly or causes to be telephoned).
Texas (with intent to annoy).
Tennessee (intended to annoy).
Virginia (without intent to converse, causes telephone to ring).
Wisconsin (whether or not conversation ensues).

It should be noted that the statute in Maine is unique in that it requires willful and wanton or malicious action without provocation or reasonable cause.

3. Laws prohibiting threatening calls

Provisions in this category prohibit threatening calls. Types of threats include body harm, crimes against member of the family, destruction of property, and threats to create explosion in a private or public building. Some provisions add the requirement that the call be anonymous. States having this type of provision are:

Alabama (threat to creat explosion; also conveying false information as to placing explosive in building).
California (threat to inflict injury on person or property of person or any member of the family).
Colorado (threaten physical violence on person or member of the family).
Connecticut (threatening language).
Idaho (to inflict injury to person or property).
Indiana (threat to create explosion; conveying false information as to placing explosive in building).
Louisiana (anonymous threat of any kind).
Maryland (transmit false information as to placing or location of explosive in building).
Michigan (threatening language).
Minnesota (threatening words or language).

Mississippi (threatening language).
New York (threatening to commit a crime against person or member of family).
North Carolina (threaten anonymously violent personal injury or property destruction).
Ohio (threaten bodily harm).
Rhode Island (false reports concerning explosives).
Texas (threatening language).
Virginia (threatening language).

4. Laws prohibiting calls giving false information

A law enacted in Virginia in 1962 prohibits malicious telephone calls informing another of the death, accident, injury, illness, or disappearance of another where the informant knows the information is false. The Idaho law, passed in 1965, prohibits false statements concerning the person telephoned or any member of his family.

5. Laws prohibiting extortion calls

The Colorado law, enacted in 1963, is the only State to date to also prohibit to extort money or other thing of value from any person or family by means of the telephone.

II

The laws of Florida, Georgia, Ohio, and Virginia require that notice of the act be printed in the telephone directory. In Ohio, omission of such notice is deemed a violation of the section.

In Louisiana and Virginia, the telephone company is under a duty to furnish such information as it may.

The Louisiana and Virginia statutes contain provisions which are apparently directed at obtaining telephone company cooperation in the interruption or detection of obscene calls. The Virginia law imposes a duty on the telephone company to furnish, in response to a subpena, such information as it may possess which, in the opinion of the court, may aid in the apprehension of the person making the indecent call. Companies, company officers, or employees who fail to comply with the subpena are penalized. The Louisiana statute, in contrast, merely authorizes the public service commission to promulgate such rules as are necessary to authorize telephone company employees to cooperate with the police in the interception of the call and apprehension of the caller.

All the laws provide for fines and/or imprisonment. Maximum fines range from $100 to $1,000 and maximum prison terms from 90 days to 10 years. In most States the crime is classified as a misdemeanor. In Alabama and Indiana, a threat to create an explosion is a felony. In Maine, the crime is a misdemeanor or felony, depending on the degree of the offense. In Connecticut, the court may order any person convicted to be examined by one or more competent psychiatrists.

III

Several cities have passed ordinances prohibiting profane telephone calls. Where brought to our attention, they have been included at the end of this compilation.

Revised November 1965.

ALABAMA

CODE OF ALABAMA, 1958

Title 48. Public Utilities

OFFENSES CONCERNING TELEGRAPH AND TELEPHONES

§ 417(3) MOLESTING, HARASSING OR THREATENING ANOTHER BY USE OF TELEPHONE; CONVEYING CERTAIN FALSE INFORMATION

(1) Whoever telephones another person and addresses to or about such other person any lewd, lascivious or indecent words or language; or whoever telephones another person repeatedly for the purpose of annoying, molesting or

harassing such other person, or his or her family, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than $500 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

(2) Whoever telephones another person and threatens to create an explosion, or falsely informs that some other person threatens or intends to create an explosion in any private or public building, transportation facility or place of accommodation shall be guilty of a felony, and on conviction shall be sentenced to imprisonment for a period of not less than one year and may also be fined not more than $1,000.

(3) Whoever willfully imparts or conveys or causes to be imparted or conveyed any false information by use of a telephone, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to place or cause to be placed any explosive or other destructive substance in or upon any private or public building, transportation facility or place of accommodation, shall be guilty of a felony, and upon conviction shall be imprisoned for a period of not less than one year nor more than five years, and may also be fined not more than $1,000.

(4) Any of the above offenses may be deemed to have been committed at either the place at which the telephone call or calls were made, or at the place where the telephone call or calls were received. (1963, No. 587)

November 1965.

ALASKA

Alaska Statutes

Title 11. Criminal Law

CHAPTER 45. OFFENSES AGAINST PUBLIC PEACE

Sec. 11.45.035. Illegal use of telephones.—A person who anonymously telephones another person repeatedly for the purpose of annoying, molesting, abusing, through vile and obscene language, or harassing that person or his family, is guilty of a misdemeanor, and, upon conviction is punishable by imprisonment in jail for not less than three months, nor more than one year, or by a fine of not less than $1,000, or both. (§ 1, ch. 87, SLA 1965)

November 1965.

ARKANSAS

Arkansas Statutes, 1947, Annotated

Criminal Offenses

DISORDERLY CONDUCT

§ 41-1437. Abusive or obscene telephone calls.—It shall be unlawful for any person to make use of telephone facilities or equipment (1) for an anonymous call or calls if in a manner reasonably to be expected to annoy, abuse, torment, harass or embarrass one or more persons, or (2) for repeated calls, if such calls are not for a lawful business purpose but are made with intent to abuse, torment, harass or embarrass one or more persons, or (3) for any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent. (Acts 1963, No. 107, § 1, p. 305)

§ 41-1438. Penalty.—Any person violating any of the provisions of Section 1 (41-1437) of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than one thousand dollars ($1,000.00), or to imprisonment for not more than one year, or both. (Acts 1963, No. 107, § 2, p. 305)

November 1965.

CALIFORNIA

WEST'S ANNOTATED CALIFORNIA CODES

Title 15. Penal Code

CHAPTER 2. OF OTHER AND MISCELLANEOUS OFFENSES

653 m. TELEPHONE CALLS WITH INTENT TO ANNOY.—(a) Every person who with intent to annoy telephones another and addresses to or about such other person any obscene language or addresses to such other person any threat to inflict injury to the person or property of the person addressed or any member of his family, is guilty of a misdemeanor.

(b) Every person who makes a telephone call with intent to annoy another and without disclosing his true identity to the person answering the telephone is, whether or not conversation ensues from making the telephone call, guilty of a misdemeanor.

(c) Any offense committed by use of a telephone as herein set out may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received. (added 1963, c. 801, p. 1832, § 1)

November 1965.

COLORADO

COLORADO REVISED STATUTES 1963

Chapter 40. Crimes and Punishments

ARTICLE 4. OFFENSES AGAINST UTILITIES

40–4–23. DISTURBANCE OF PEACE BY TELEPHONE.—It shall be unlawful for any person by means or use of the telephone to disturb, or tend to disturb the peace, quiet, or right of privacy of any other person or family by repeated and continued anonymous or identified telephone messages intended to harass or disturb the person or family to whom the call is directed; or by a single call or repeated calls to use obscene, profane, indecent, or offensive language or to suggest any lewd or lascivious act over or through a telephone; or to attempt to extort money or other thing of value from any person or family by means or use of the telephone; or to threaten any physical violence or harm to any person or family; or to repeatedly or continuously cause the telephone of any person or family to ring with intent to disturb or harass such person or family; provided, that the normal use of the telephone for the purpose of requesting payment of debts or obligations or for legitimate business purposes shall not constitute a violation hereof. Any violation of this section shall be a misdemeanor and punishable upon conviction by a fine of not more than three hundred dollars or by imprisonment for not more than ninety days in the county jail, or by both such fine and imprisonment. (Laws 1963, p. 300, § 1)

November 1965.

CONNECTICUT

GENERAL STATUTES OF CONNECTICUT, 1958

Chapter 943

OFFENSES AGAINST PUBLIC PEACE AND SAFETY

SEC. 53–174a. INDECENT OR HARASSING TELEPHONE CALLS.—Any person who, by telephone under jurisdiction of the public utilities commission, addresses another in or uses indecent, or obscene language, or who telephones another repeatedly for the purpose of annoying, threatening or harassing him, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

Such offense may be deemed to have been committed either at the place where the telephone call was made or at the place where it was received. The court may order any person convicted under this act to be examined by one or more competent psychiatrists. (1963, P.A. 182)

November 1965.

DELAWARE

DELAWARE CODE ANNOTATED (CUM. SUPP.)

Title 11

§ 758. DISTURBING PRIVACY BY USE OF TELEPHONE FACILITIES OR EQUIPMENT.—Whoever makes use of telephone facilities or equipment and therein communicates language, suggestions or proposals which are obscene, profane, vulgar, lewd, lascivious, or indecent in a manner reasonably to be expected to annoy, abuse, torment, or embarrass another shall be fined not more than $200 or imprisoned for not more than one year, or both. Added 50 Del. Laws, Ch. 246, § 1, eff. June 8, 1955.

March 11, 1960.

FLORIDA

FLORIDA STATUTES ANNOTATED

CHAPTER 365, RAILROADS AND OTHER UTILITIES

§ 365.16 USE OF OBSCENE OR INDECENT LANGUAGE OVER TELEPHONE

(1) It shall be unlawful for any person to use any words or language of a lewd, lascivious or indecent character, nature or connotation over any telephone. Any person violating these provisions shall be fined not more than five hundred dollars or imprisoned in the county jail for a period not exceeding six months, or both.

(2) After the ninetieth day following the effective date of this Act, every telephone directory thereafter published for distribution to the members of the general public shall contain a notice which explains this law, such notice to be printed in type which is no smaller than the smallest type on the same page and to be preceded by the word "WARNING". The provisions of this section shall not apply to directories solely for business advertising purposes, commonly known as classified directories. (Laws 1963, C. 63–51, §§ 1, 2)

November 1965.

GEORGIA

CODE OF GEORGIA ANNOTATED

Title 26. Crimes and Punishments

§ 26–6303 (387 P.C.). USING ABUSIVE OF OBSCENE LANGUAGE.—Any person who shall, without provocation, use to or of another, and in his presence, or by telephone, opprobrious words or abusive language, tending to cause a breach of the peace, or who shall, in like manner, use obscene and vulgar or profane language in the presence of, or by telephone to, a female, or any person who shall communicate to any virtuous female within this State by writing or printing any obscene or vulgar language or improper proposals, or by indecent or disorderly conduct in the presence of females on passenger cars, streetcars, or other places of like character, shall be guilty of a misdemeanor.

(1) In every telephone directory distributed to the general public in this State after January 1, 1964, in which are listed the call numbers of any telephone located within this State, except such as are distributed solely for business advertising purposes, commonly known as classified telephone directories, there shall be printed in type not smaller than the smallest type appearing on the same page, a notice, preceded by the word "warning" printed in type at least as large as the largest type on the same page, setting forth the substance of said Code Section. (Amended Laws 1963, pp. 455, 456)

November 1965.

HAWAII

REVISED LAWS OF HAWAII 1955

CHAPTER 302

§ 302–2. OBSCENE OR LASCIVIOUS LANGUAGE OVER TELEPHONE; PENALTY.—Any person who uses, utters or speaks any obscene or lascivious language over any telephone line shall be fined not more than $100, or imprisoned not more than three months, or both. [L. 1921, c. 80, s. 1; R. L. 1925, s. 4482; R. L. 1935, s. 6141; R. L. 1945, s. 11541.]

March 11, 1960.

IDAHO

IDAHO CODE

Title 18. Crimes and Punishments

CHAPTER 67. TELEGRAPH AND TELEPHONE COMPANIES

§ 18–6710. USE OF TELEPHONE TO ANNOY OR OFFEND BY LEWD OR PROFANE LANGUAGE OR THREATS—PENALTIES.—Every person who with intent to annoy or offend telephones another and addresses to or about such person any obscene, lewd or profane language, or addresses to such other person any threat to inflict injury to the person or property of the person addressed or any member of his family, is guilty of a misdemeanor and upon conviction thereof, shall be sentenced to a term of not to exceed one year in the county jail. Upon a second or subsequent conviction, the defendant shall be deemed guilty of a felony and shall be sentenced to a term of not to exceed three years in the state penitentiary.

The use of obscene, lewd or profane language or the making of a threat shall be prima facie evidence of intent to annoy or offend. (1965, Ch. 298, § 1, p. 787)

§ 18–6711. USE OF TELEPHONE TO TERRIFY, INTIMIDATE, HARASS OR ANNOY BY FALSE STATEMENTS—PENALTIES.—Every person who telephones another and knowingly makes any false statements concerning injury, death, disfigurement, indecent conduct or criminal conduct of the person telephoned or any member of his family, with intent to terrify, intimidate, harass or annoy the called person, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to a term of not to exceed one year in the county jail. Upon a second or subsequent conviction of the violations of the provisions of this section, the defendant shall be deemed guilty of a felony and upon conviction thereof, shall be sentenced to a term of not to exceed three years in the state penitentiary.

The making of a false statement as herein set out shall be prima facie evidence of intent to terrify, intimidate, harass or annoy. (1965, Ch. 298, § 2, p. 787)

§ 18–6712. PLACE OF OFFENSE.—Any offense committed by use of a telephone as herein set out may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received. (Laws 1965, Ch. 298, § 3, p. 787)

November 1965.

ILLINOIS

SMITH-HURD ILLINOIS STATUTES ANNOTATED

Criminal Code of 1961

ARTICLE 26. DISORDERLY CONDUCT

§ 26–1. ELEMENTS OF THE OFFENSE

(a) A person commits disorderly conduct when he knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace; or

(2) With intent to annoy another, makes a telephone call, whether or not conversation thereby ensues; or

(3) Transmits in any manner to the fire department of any city, town or village a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or

(4) Transmits in any manner to another a false alarm to the effect that a bomb or other explosive of any nature is concealed in such place that its explosion would endanger human life, knowing at the time of such transmission that there is no reasonable ground for believing that such a bomb or explosive is concealed in such place; or

(5) Transmits in any manner to any peace officer, public officer or public employee a report to the effect that an offense has been committed, knowing at the time of such transmission that there is no reasonable ground for believing that such an offense has been committed.

(b) Penalty: A person convicted of a violation of Subsection 26–1(a) (1) or (a) (2) shall be fined not to exceed $500. A person convicted of a violation of Subsection 26–1 (a) (3), (a) (4) or (5) shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both. (1961, July 28, Laws 1961, p. 1983, 1963, Aug. 2, Laws 1963, p. 2166, § 1, p. 2170, § 1.)

November 1965.

ILLINOIS

SMITH-HURD ILLINOIS STATUTES ANNOTATED
(1964 Cum. Supp.)

CHAPTER 134. TELEGRAPH AND TELEPHONE COMPANIES

§ 16.4 TRANSMISSION OF OBSCENE MESSAGES PROHIBITED.—Any person in this State who sends messages or uses language or terms which are obscene, lewd or immoral with the intent to offend by means of or while using a telephone or telegraph facilities, equipment or wires of any person, firm or corporation engaged in the transmission of news or messages between states or within the State of Illinois is guilty of a misdemeanor. The use of language or terms which are obscene, lewd or immoral is prima facie evidence of the intent to offend. 1957, May 29, Laws 1957, p. 304, § 1.

§ 16.5 PENALTIES.—Any person who violates any of the provisions of this Act shall, upon conviction, be punished by a fine of not more than $300 or confinement in the county jail for a period not to exceed 6 months or both. 1957, May 29, Laws 1957, p. 304, § 2.

NOTE.—Also see Criminal Code of 1961 § 26–1

November 1965.

INDIANA

BURNS INDIANA STATUTES ANNOTATED
(1961 Cum. Supp.)

CHAPTER 49 MISCELLANEOUS OFFENSES

10–4944. ANNOYING, MOLESTING OR HARASSING ANOTHER OR INDECENT LANGUAGE BY TELEPHONE CALLS.—Whoever telephones another person and addresses to or about such other person any lewd, lascivious or indecent words or language; or whoever telephones another person repeatedly for the purpose of annoying, molesting or harassing such other person, or his or her family, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars [$500.00], to which may be added imprisonment in the county jail not exceeding six [6] months: Provided, That any offenses committed by the use of a telephone as herein set out may be deemed to have been committed at either the place at which the telephone call or calls were made, or at the place where the telephone call or calls were received.

10–4945. MAKING OF THREAT OF EXPLOSION IN PRIVATE OR PUBLIC BUILDING OR PLACE OF ACCOMMODATION BY TELEPHONE CALLS—PENALTY.—Whoever telephones another person and threatens to create an explosion, or falsely informs that some other person threatens or intends to create an explosion, in any private or public building, transportation facility or place of accommodation shall be guilty of a felony, and on conviction shall be sentenced to imprisonment in the state prison for a period of not less than one [1] year nor more than five [5] years to which may be added a fine not exceeding one thousand dollars [$1,000,000]: Provided, That any offenses committed by the use of a telephone as herein set out

may be deemed to have been committed at either the place at which the telephone call or calls were made, or at the place where the telephone call or calls were received.

10–4946. IMPARTING FALSE INFORMATION CONCERNING PLACING OF EXPLOSIVES IN PRIVATE OR PUBLIC BUILDING OR PLACE OF ACCOMMODATION BY TELEPHONE CALLS—PENALTY.—Whoever willfully imparts or conveys or causes to be imparted or conveyed any false information by use of a telephone, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to place or cause to be placed any explosive or other destructive substance in or upon any private or public building, transportation facility or place of accommodation, shall be guilty of a felony, and, upon conviction, shall be imprisoned for a period of not less than one [1] year nor more than five [5] years, to which may be added a fine of not to exceed one thousand dollars [$1,000]; Provided, That any such offense may be deemed to have been committed at either the place where the telephone call or calls were made, or at the place where the telephone call or calls were received. [L. 1961, c. 249, eff. 7–6–61. Leg. hist. repeals Acts 1957, c. 61, § 1.]

June 21, 1962

LOUISIANA

WEST'S LOUISIANA STATUTES ANNOTATED
(1964 Cum. Supp.)

Title 14. Criminal Law

PART II. OFFENSES AFFECTING PUBLIC MORALS

§ 14.285. USE OF OBSCENE OR INDECENT LANGUAGE IN TELEPHONE CONVERSATION; PENALTY

A. No person shall engage in or institute a telephone call, conversation or conference of an anonymous nature and therein use obscene, profane, vulgar, lewd, lascivious or indecent language, or make any suggestion or proposal of an obscene nature or make any threat of any kind whatsoever.

B. Whoever violates the provisions of this act shall be fined not more than five thousand dollars, or imprisoned for not more than two years, or both. (Acts 1954, No. 435, §§ 1, 2, as amended Acts 1958, No. 121, §§ 1, 2, Acts 1963, No. 54, § 1)

NOTE.—Also see Title 45: Public Utilities & Carriers.

November 1965.

Title 45. Public Utilities & Carriers

PART V. PUBLIC SERVICE COMMISSION

SEC. 1166. Telegraphs and telephones; service; powers of commission; * * *

B. The commission may promulgate such rules as are necessary to authorize all persons engaged in doing a telephone business to cooperate with police in the interception of indecent telephone calls and the apprehension of those persons making them. The commission shall not make any rules or regulations under the provisions of this subsection which conflict with the federal wire tapping laws or with federal regulations made under such laws. [Added Acts 1962, No. 314, § 1.]

September 12, 1962.

MAINE

REVISED STATUTES ANNOTATED 1964

Title 17. Crimes

CHAPTER 121. THREATS AND EXTORTION

§ 3703. MALICIOUS VEXATION BY PERSONS OVER 16.—Whoever having attained his 16th birthday willfully and wantonly or maliciously vexes, irritates, harasses or torments any person in any way, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace, and who-

ever without reasonable cause or provocation willfully and wantonly or maliciously vexes, irritates, harasses or torments any person by communications to or conversation with such person over or by means of any telephone, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years; but when such offense is not of a high and aggravated nature, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months. (R. S. 1954 c. 130, § 29; 1963, c. 331 § 5.)

November 1965.

MARYLAND

Maryland Code Annotated (1957)

ARTICLE 27. CRIMES AND PUNISHMENTS

§ 151A. A person is guilty of a misdemeanor if, knowing the statement or rumor to be false, he circulates or transmits to another or others, with intent that it be acted upon, a statement or rumor, written, printed, or by word of mouth, concerning the location or possible detonation of a bomb or other explosive. An offense under this section committed by the use of a telephone may be deemed to have been committed either at the place at which the telephone call or calls were made or at the place at which the telephone call or calls were received.

A person convicted of violating this section is subject to a fine not exceeding one thousand dollars ($1,000.) or to imprisonment for not exceeding one year, or to both such fine and imprisonment in the discretion of the Court. This section does not apply to any statement or rumor made or circulated by an officer, employee, or agent of a bona fide civilian defense organization or agency, if made in the regular course of his duties with that organization or agency. L. 1963, c. 395.

November 4, 1963.

Annotated Code of Maryland
(Cum. Supp. 1961)

ARTICLE 27. CRIMES AND PUNISHMENTS TELEPHONE MISUSE

§ 555A. Unlawful use of telephone.—It is unlawful for any person to make use of telephone facilities or equipment (1) for an anonymous call or calls if in a manner reasonably to be expected to annoy, abuse, torment, harass, or embarrass one or more persons; (2) for repeated calls, if with intent to annoy, abuse, torment, harass, or embarrass one or more persons; or (3) for any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent. Any person violating any one of the provisions of this section is guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than $500.00 or to imprisonment for not more than twelve months, or both, in the discretion of the court. [L. 1961, c. 165, eff. 6–1–61.]

June 21, 1962.

MASSACHUSETTS

Massachusetts General Laws Annotated

CHAPTER 269. CRIMES AGAINST PUBLIC PEACE

§ 14A. Annoying telephone calls.—Whoever telephones another person, or causes any person to be telephoned to, repeatedly, for the sole purpose of harassing, annoying or molesting such person or his family, whether or not conversation ensues, or whoever telephones a person of the female sex, or repeatedly telephones a person of the male sex, and uses indecent or obscene language to such person, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than three months, or both. (Stat. 1964, c. 668; 1965 S.B. 1013)

November 1965.

MICHIGAN

MICHIGAN STATUTES ANNOTATED

Title 28. Crimes

CHAPTER 28. DISORDERLY PERSONS

§ 28.364. DEFINITION; SECOND OFFENDERS

SEC. 167. Any person of sufficient ability, who shall refuse or neglect to support his family; any common prostitute; any window peeper; any person who engages in an illegal occupation or business; any person who shall be drunk or intoxicated or engaged in any indecent or obscene conduct in any public place; any vagrant; any person found begging in a public place; any person found loitering in a house of ill-fame or prostitution or place where prostitution or lewdness is practiced, encouraged or allowed; any person who shall knowingly loiter in or about any place where an illegal occupation or business is being conducted; any person who shall loiter in or about any police station, police headquarters building, county jail, hospital, court building or any other public building or place for the purpose of soliciting employment of legal services or the services of sureties upon criminal recognizances; any person who shall be found jostling or roughly crowding people unnecessarily in a public place; *any person who telephones any other person or causes any other person to be telephoned and uses any vulgar, indecent, obscene, threatening or offensive language, or suggesting any lewd or lascivious act over any telephone, shall be deemed a disorderly person.* When any person, who has been convicted of refusing or neglecting to support his family under the provisions of this section, is then charged with subsequent violations within a period of 2 years, such person shall be prosecuted as a second offender or third and subsequent offender as provided in section 168 of this act, if the family of such person is then receiving any form of public relief or support. (Laws 1964, S.B. 1313, P.A. 144)

November 1965.

MINNESOTA

MINNESOTA STATUTES ANNOTATED

Chapter 609. Criminal Code of 1963

CRIMES RELATING TO COMMUNICATION

609.79 MAKING ANONYMOUS TELEPHONE CALL

Subdivision 1. Whoever, without disclosing his identity and with intent to alarm or annoy another, makes a telephone call, whether or not conversation ensues, may be sentenced to imprisonment for not more than 90 days or to payment of a fine or not more than $100.

Subdivision 2. The offense may be prosecuted either at the place where the call is made or where it is received. (Laws 1961, c. 240, Laws 1963, c. 753)

November 1965.

MISSISSIPPI

MISSISSIPPI CODE 1942 ANNOTATED

CRIMES AND MISDEMEANORS

§ 2291.5. PROFANE AND INDECENT LANGUAGE OVER TELEPHONE.—It shall be unlawful for any person or persons to use any profane, vulgar, indecent, threatening, obscene or insulting language over any telephone. Any person who shall be convicted of the violation of this law shall be fined not more than Five Hundred Dollars ($500.00) or imprisoned in the county jail not more than six (6) months, or both such fine and imprisonment, or imprisoned in the State Penitentiary for not more than two (2) years. Any person violating this law may be prosecuted in the county where such conversation or language originates in case such conversation originates in the State of Mississippi. In case it originates outside the State of Mississippi then such person shall be prosecuted in the county to which it is transmitted. (Amended Laws 1964, c. 351)

November 1965.

NEW JERSEY

NEW JERSEY STATUTES ANNOTATED

Title 2A. Administration of Civil and Criminal Justice

CHAPTER 170. DISORDERLY PERSONS GENERALLY

2A:170–29. OFFENSIVE LANGUAGE; MOLESTING OR INTERFERING WITH PERSONS

1. Any person who utters loud and offensive or profane or indecent language in any public street or other public place, public conveyance, or place to which the public is invited; or

2. Any person who in any place, public or private,

a. Addresses or makes audible and offensive remarks to or concerning any passing person; or

b. Obstructs, molests or interferes with any person lawfully therein; or

3. Any person who telephones another and addresses to such person any lewd, lascivious, indecent or disgusting remarks; or

4. Any person who repeatedly telephones another for the purpose of annoying or molesting such person—

Is a disorderly person.

Any offense committed under paragraphs 3 or 4 of this section may be deemed to have taken place at either the place at which the telephone call was made or the place at which the telephone call was received.

November 1965.

NEW MEXICO

NEW MEXICO STATUTES 1953

ARTICLE 20. CRIMES AGAINST PUBLIC PEACE

40A–20–1. DISORDERLY CONDUCT.—Disorderly conduct consists of * * *.

B. Maliciously making a telephone call with intent to annoy another, whether or not conversation ensues; or * * *.

* * * * * * *

Whoever commits disorderly conduct is guilty of a petty misdemeanor. (Laws 1963, Ch. 303)

November 1965.

NEW YORK

PENAL LAW (MCKINNEY'S)

ARTICLE 50. COMMUNICATION

§ 555. MALICIOUS TELEPHONE CALLS. A person who maliciously uses any telephone instrument to make a call for the purpose of threatening to commit a crime against the person called or any member of his family or any other person or for the purpose of using obscene language to a person of the female sex or to a male child under the age of sixteen years is guilty of a misdemeanor. (Laws 1960, c. 725, Laws 1963, c. 415.)

November 1965.

NORTH CAROLINA

GENERAL STATUTES OF NORTH CAROLINA

§ 14–196. USING PROFANE OR INDECENT LANGUAGE TO FEMALE TELEPHONE OPERATORS.—It shall be unlawful for any person to use any lewd or profane words, or any words of vulgarity, or to use indecent language to any female telephone operator operating any telephone, switchboard, circuit or line. Any person violating this section shall upon conviction be guilty of a misdemeanor. (1913, c. 35; 1915, c. 41; C.S., s. 4351.)

§ 14–196.1 USING PROFANE, VULGAR OR INDECENT LANGUAGE TO FEMALE OVER TELEPHONE.—It shall be unlawful for any person to use any lewd or profane language or words of any vulgarity or indecency over the telephone to any female

person, or to repeatedly telephone any female person for the purpose of annoying, molesting or harassing such female person. Any person violating this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court. (1951, c. 127, 1965, S.B. 392.)

§ 14–196.2. USING PROFANE OR THREATENING LANGUAGE TO ANY PERSON OVER TELEPHONE.—It shall be unlawful for any person, without revealing his or her true identity, to telephone any other person repeatedly for the purpose of annoying, molesting or harassing such other person; or to threaten any other person over the telephone with violent personal injury or destruction of property. It shall also be unlawful for any person, without revealing his or her true identity, to use such vulgar, obscene or lewd language over the telephone, which if published would bring such person into public contempt and disgrace. The violation of the provisions of this section shall be a misdemeanor, punishable in the discretion of the court. (1959, c. 769, 1965, S.B. 391.)

November 1965.

NORTH DAKOTA

NORTH DAKOTA CENTURY CODE ANNOTATED

Title 12. Crimes and Punishments

PART II. OFFENSES AGAINST THE PUBLIC COMMUNITY

12–21–06. USE OF OBSCENE LANGUAGE IN PUBLIC PLACE OR OVER TELEPHONE—MISDEMEANOR.—Any person who shall utter or speak any obscene or lascivious language or words in any public place or in the presence of females, or of children under ten years of age, or over any public telephone line in this state, is guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. (R.C. 1943, § 12–2106)

November 1965.

OHIO

PAGE'S OHIO REVISED CODE (1959 SUPP.)

TITLE 49

§ 4931.31. THREAT OR HARASSMENT IN TELEPHONE COMMUNICATION PROHIBITED; DIRECTORY NOTICE.

No person shall, while communicating with any other person over a telephone, threaten to do bodily harm or use or address to such other person any words or language of a lewd, lascivious, or indecent character, nature, or connotation for the sole purpose of annoying such other person; nor shall any person telephone any other person repeatedly or cause any person to be telephoned repeatedly for the sole purpose of harassing or molesting such other person or his family.

Any use, communication, or act prohibited by this section may be deemed to have occurred or to have been committed at either the place at which the telephone call was made or was received.

Every telephone directory distributed to the general public in this state which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offenses provided for in this section, such notice to be printed in type which is not smaller than the general body of the other type on the same page and to be preceded by the word "warning" printed in type with at least equal prominence as the headings of other regulations or information on the same page; provided, that the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories, nor to any telephone directory distributed or for which copy has been sent to the printer or is in the process of printing or distribution to the general public prior to the effective date of this section.

Any person, firm, or corporation providing telephone service which distributes or causes to be distributed in this state one or more copies of a telephone directory which is subject to the provisions of this section and which willfully omits the notice herein provided for shall be deemed guilty of a violation of this section.

§ 4931.99. PENALTIES.

* * * * * * *

(H) Whoever violates section 4931.31 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

March 11, 1960.

OKLAHOMA

OKLAHOMA STATUTES 1961

TITLE 21. CRIMES AND PUNISHMENTS

§ 1021. INDECENT EXPOSURE—INDECENT EXHIBITION—OBSCENE OR INDECENT WRITINGS, PICTURES, ETC.—Every person who willfully and lewdly either:

* * * * * * *

(4) makes, prepares, cuts, sells, gives loans, distributes, or keeps for sale, or exhibits any disc record, metal, plastic or wax, wire or tape recording or any other kind of sound recording of any obscene or indecent language, poetry, songs or speaks any words by means of a telephone to any female person which would be offensive to decency or is calculated to excite to vicious or lewd thoughts or acts, or any communicable words, such as is offensive to decency, or is adapted, to excite to vicious or lewd thoughts or acts, is guilty of a felony and upon conviction therefor shall be punished by the imposition of a fine or not less than Ten Dollars ($10.00) nor not more than One Thousand Dollars (1,000.00) or by imprisonment for not less than thirty (30) days nor more than ten (10) years, or both such fine and imprisnment. (Laws 1961, p. 230 § 1.)

November 1965.

PENNSYLVANIA

PURDON'S PENNA. STATUTES ANNOTATED

TITLE 18. CRIMES AND OFFENSES

§ 4414.1. MALICIOUS USE OF TELEPHONES.—Whoever telephones another person and addresses to or about such other person any lewd, lascivious or indecent words, language, suggestion or proposal, or solicitation to engage in fornication or any other immoral act, or whoever telephones another person repeatedly for the purpose of annoying, molesting or harassing such other person or his or her family, is guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars ($500), or undergo imprisonment for not more than one (1) year, or both: Provided, That any offense committed by the use of a telephone, as herein set out, may be deemed to have committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received. (1939, P.L. 872; 1959 § 414.1, 1965 H.B. 1018.)

November 1965.

RHODE ISLAND

GENERAL LAWS OF RHODE ISLAND—1956

Title II. Criminal Offenses

CHAPTER 35. PUBLIC UTILITIES

§ 11-35-17. CRANK, OBSCENE TELEPHONE CALLS; PUNISHMENT.—Whoever shall telephone any person repeatedly or cause any person to be telephoned repeatedly for the sole purpose of harassing, annoying, or molesting such other person or his family, whether or not conversation ensues; or whoever shall telephone any person for the purpose of using any threatening, vulgar, indecent, obscene or immoral language over the telephone, shall be guilty of a misdemeanor and shall

be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than one (1) year or both.

§ 11–35–18. EXPLOSIVES OR OTHER DANGEROUS SUBSTANCE OR CONTRIVANCE; FALSE REPORTS AS TO LOCATION; PUNISHMENT.—Whoever, knowing the same to be false, transmits or causes to be transmitted to any person by telephone or other means a communication falsely reporting the location of any explosive or other dangerous substance or contrivance thereby causing anxiety, unrest, fear, or personal discomfort to any person or group of persons, shall be guilty of a felony and shall be punished by imprisonment at the adult correctional institution for not more than ten (10) years or by a fine of not more than one thousand dollars ($1,000) or by both such fine and imprisonment.

§ 11–35–19. PROSECUTION.—The crimes described in sections 11–35–17 and 11–35–18 may be prosecuted and punished in the territorial jurisdiction in which the communication originates or is received. (Added Laws 1965, S.B. 92.)

November 1965.

SOUTH CAROLINA

CODE OF LAWS OF SOUTH CAROLINA 1962

Title 16. Crimes and Offenses

CHAPTER 8. OFFENSES AGAINST PUBLIC POLICY

§ 16–552.1. USE OF INDECENT LANGUAGE OVER TELEPHONE.—It shall be unlawful for any person to use in telephonic communications any lewd, lascivious or indecent words or language. Anyone violating the provisions of this act shall be guilty of a misdemeanor and, upon conviction, be subject to a fine of not more than five hundred dollars and imprisonment for not more than six months. (1961 (52) 451.)

§ 16–552.2. VENUE FOR PROSECUTION UNDER § 16–552.1.—Venue for prosecution pursuant to the provisions of this act shall be either in the county wherein the telephonic communication originated or the county where it was received. (1961 (52) 451.)

November 1965.

SOUTH DAKOTA

SOUTH DAKOTA CODE OF 1939

Title 13. Crime

CHAPTER 13.17. CRIMES AGAINST PUBLIC MORALS

§ 13.1708. OBSCENE LANGUAGE: REGULATION; PENALTY.—If any person shall utter or speak any obscene or lascivious language in any public place or in the presence of females or in the presence of children under ten years of age or over any public telephone line in this state, he shall be guilty of a misdemeanor and upon conviction thereof he shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than ninety days or both. (Added Laws 1965, H.B. 776)

November 1965.

TENNESSEE

TENNESSEE CODE ANNOTATED

(1959 Cum. Supp.)

39–3002. TELEPHONE CONVERSATION—LEWD, OBSCENE OR LASCIVIOUS REMARKS—PENALTY.—It shall be unlawful for any person or persons to communicate to another within this state by means of telephonic conversation, any lewd, obscene or lascivious remarks, suggestions or proposals manifestly intended to embarrass, disturb or annoy the person to whom the said remarks, suggestion or proposals are made.

Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof be fined not more than one thousand dollars ($1,000) and in the discretion of the court shall be confined in the county jail or workhouse for some period of time less than one (1) year. [Acts 1957, ch. 360, §§ 1, 2.]

March 11, 1960.

TEXAS

VERNON'S PENAL CODE OF THE STATE OF TEXAS ANNOTATED

Article 476. PROFANE LANGUAGE OVER TELEPHONE.—Whoever uses any vulgar, profane, obscene, or indecent language over or through any telephone or whoever uses any telephone in any manner with intent to harass, annoy, torment, abuse, threaten or intimidate another, except if such call be for a lawful business purpose, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not less than one (1) month nor more than twelve (12) months, or by both such fine and imprisonment. (Acts 1909, p. 87, Laws 1965, H.B. 391)

November 1965.

VIRGINIA

CODE OF VIRGINIA, 1950

Title 18. Crimes and Offenses Generally

ARTICLE 4 MISCELLANEOUS OFFENSES

§ 18.1–238. USE OF PROFANE, THREATENING OR INDECENT LANGUAGE OVER TELEPHONE; DUTY OF TELEPHONE COMPANIES.—If any person shall curse or abuse anyone, or use vulgar, profane, threatening or indecent language over any telephone in this State, he shall be guilty of a misdemeanor and may be prosecuted either in the county or city from which he called or in the county or city in which the call is received. It shall be the duty of each telephone company in this State to furnish immediately in response to a subpoena issued by a court of record such information as it, its officers and employees, may possess which, in the opinion of the court, may aid in the apprehension of persons suspected of violating the provisions of this section. Any telephone company or any officer or employee thereof who shall fail or refuse to furnish such information when so requested, may be fined not more than one hundred dollars. (Code 1950, § 18–115; 1960, c. 358; 1964, c. 577.)

§ 18.1–238.1. GIVING CERTAIN FALSE INFORMATION TO ANOTHER BY TELEPHONE.—If any person maliciously advised or informs another over any telephone in this State of the death of, accident to, injury to, illness of, or disappearance of some third party, knowing the same to be false, he shall be guilty of a misdemeanor. (1962, c. 225.)

§ 18.1–238.2 CAUSING TELEPHONE TO RING WITH INTENT TO ANNOY; PUBLICATION OF SECTION IN TELEPHONE DIRECTORIES REQUIRED.—Any person who, without intent to converse but with intent to annoy any other person, causes any telephone not of his own to ring shall be guilty of a misdemeanor. Any person who permits or condones the use of any telephone under his control for such purpose also shall be guilty of a misdemeanor. Every such company shall print this section in its telephone directories hereafter issued. (1962, c. 495.)

October 1964.

WEST VIRGINIA

WEST VIRGINIA CODE OF 1961 ANNOTATED

CHAPTER 61. CRIMES

§ 6071. PROFANITY, OBSCENE, INDECENT OR VULGAR LANGUAGE, OR THREATS OVER TELEPHONE; PENALTY.—If any person shall profanely curse, swear at or abuse another, or use profane, obscene, indecent or vulgar language over any telephone

wire or system in this state, or, being in this state, shall use such language while talking to another person or persons out of the state, or over a telephone shall threaten to commit a crime against any person, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment. (Amended Laws 1965, S.B. 204.)

November 1965.

WISCONSIN

Wisconsin Statutes

CHAPTER 947

947.01. Disorderly conduct.—Whoever does any of the following may be fined not more than $100 or imprisoned not more than 30 days: * * *

(2) With intent to annoy another, makes a telephone call, whether or not conversation ensues.

March 11, 1960.

CANADA

Criminal Code of Canada

Section 315.

(1) Every one who, with intent to injure or alarm any person, conveys or causes or procures to be conveyed by letter, telegram, telephone, cable, radio, or otherwise, information that he knows is false is guilty of an indictable offence and is liable to imprisonment for two years.

(2) Every one who, with intent to alarm or annoy any person, makes any indecent telephone call to such person is guilty of an offence punishable on summary conviction.

[See Statutes of Canada 1960–61, 9–10 Eliz. II, Vol. I, pp. 266–67 (chap. 43).]

Section 316.

(1) Every one commits an offence who by letter, telegram, telephone, cable, radio, or otherwise, knowingly utters, conveys or causes any person to receive a threat

(*a*) to cause death or injury to any person, or

(*b*) to burn, destroy or damage real or personal property, or

(*c*) to kill, maim, wound, poison or injure an animal or bird that is the property of any person.

(2) Every one who commits an offence under paragraph (*a*) of subsection (1) is guilty of an indictable offence and is liable to imprisonment for ten years.

(3) Every one who commits an offence under paragraph (*b*) or (*c*) of subsection (1) is guilty of

(*a*) an indictable offence and is liable for imprisonment for two years, or

(*b*) an offence punishable on summary conviction.

[See Statutes of Canada 1953–54, 2–3 Eliz. II, Vol. I, p. 467 (chap. 51) and Statutes of Canada 1960–61, 9–10 Eliz. II, Vol. I, p. 267 (chap. 43).]

ORDINANCES

Baltimore, Md.

ORDINANCE NO. ——

An ordinance to add a new Section 158A to Article 24 of the Baltimore City Code (1950 Edition) title "Police", to follow immediately after Section 158 thereof, and to be under the new subtitle "Telephone Misuse", making unlawful the use of telephone facilities or equipment for certain types of telephone calls or requests, providing a penalty for a violation of any one of the provisions of this section, and relating generally to the misuse of telephone facilities or equipment in this City

Section 1. *Be it ordained by the Mayor and City Council of Baltimore*, That a new Section 158A be and it is hereby added to Article 24 of the Baltimore City

Code (1950 Edition), title "Police", to follow immediately after Section 158 thereof, and to be under the new subtitle "Telephone Misuse", and to read as follows:

"TELEPHONE MISUSE

"158A. It is unlawful for any person to make use of telephone facilities or equipment (1) for an anonymous call, if in a manner which may annoy, abuse, torment, harass or embarrass one or more persons; or (2) for any request, suggestion or proposal which, to the person receiving the call, is objectionably profane, obscene, vulgar, lewd, lascivious or indecent. A violation of any one of the provisions of this section is a misdemeanor, subject upon conviction to a fine not greater than five hundred dollars ($500), or to imprisonment for a period not longer than twelve months or to both such fine and imprisonment in the discretion of the Court.

Spring 1960.

DETROIT, MICH.

An ordinance making it unlawful for a person or persons to telephone another person repeatedly for the purpose of harassment, unless a legitimate business call, or to use a telephone in a threatening, vulgar, indecent, obscene, immoral or insulting manner and to provide penalty for violation thereof

It is hereby ordained by the people of the city of Detroit:

SECTION 1. It shall be unlawful for any person or persons to telephone any other person repeatedly or cause any person to be telephoned repeatedly for the sole purpose of harassing or molesting such other person or his family, whether or not conversation ensues, except for telephone calls made for legitimate business purposes.

SEC. 2. It shall be unlawful for any person or persons to use any threatening, vulgar, indecent, obscene, immoral or insulting language over any telephone.

SEC. 3. Any person or persons violating any of the provisions of this ordinance shall, upon conviction thereof, be subject to a fine of not more than Five Hundred ($500.00) Dollars or to imprisonment in the Detroit House of Correction for a period of not more than ninety (90) days, or to both such fine and imprisonment in the discretion of the court.

SEC. 4. This ordinance is declared necessary for the preservation of the peace, health, safety and welfare of the people of the City of Detroit and is hereby given immediate effect.

Approved:

NATHANIEL H. GOLDSTICK,
Corporation Counsel.

Read twice by title, ordered printed and laid on the table.

Summer, 1960.

TEMPLE, TEX.

An ordinance making it a public nuisance for any person to call another person on the telephone and engage such other person in conversation with profane or obscene language, or useless immaterial and irrelevant conversation, for the purpose of annoying, molesting or disturbing such other person; and making it unlawful for any person to call another person on the telephone and, when such other person answers such call, fail to answer or engage the person being called with conversation, meanwhile leaving the telephone of the person being called engaged so that others may not call said telephone; and making it unlawful for a person to repeatedly call another person on the telephone for the purpose of harassing, annoying or disturbing such other person; providing for penalties and declaring an emergency

Be it ordained by the Board of Commissioners of the city of Temple:

SECTION 1. It shall hereafter be a public nuisance for any person to call another person on the telephone and engage such other person in conversation with profane or obscene language, or useless, immaterial and irrelevant conversation, for the purpose of annoying, molesting, or disturbing such other person.

SEC. 2. It shall hereafter be a public nuisance for any person to call another person on the telephone and, when such other person answers such call, fail to answer or engage the person being called with conversation meanwhile leaving the telephone of the person being called engaged so that others may not call said telephone.

SEC. 3. It shall hereafter be a public nuisance for a person to repeatedly call another person on the telephone for the purpose of harassing, annoying, and disturbing such other person.

SEC. 4. It shall hereafter be unlawful for any person to knowingly allow any other person to use the telephone of said first person for the purpose of committing any of the acts of the constituting a public nuisance, described in Section 1, or Section 2, or in Section 3, of this ordinance.

SEC. 5. Any person violating any provision of this ordinance shall upon conviction, be guilty of a misdemeanor and fined not less than $10,000 nor more than $100.00 and each violation hereof shall constitute a separate offense.

SEC. 6. The fact that various persons in the City of Temple have been calling various other persons on the telephone and using vulgar, profane and obscene language and other language, which is useless, irrelevant, and immaterial and the fact that various persons have been calling other persons on the telephone and when the persons called answer their telephones, the persons doing the calling remain silent and refuse to talk, leaving the telephones of the persons being called engaged for long periods of time, some of which telephones are business telephones and are needed for business telephones and are needed for business purposes, and the further fact that various persons have been calling other persons on the telephone at all hours of the day and night, repeatedly and frequently for the purpose of annoying, molesting, or disturbing the persons being called create an emergency for the immediate preservation of the public business, property and health, making it mandatory that the rule requiring ordinances to be read at three separate readings be suspended and such rule is hereby suspended and this ordinance is hereby finally passed and adopted on the date of its introduction.

Passed and adopted on this the 9th day of January, 1951.

(Sgd) C. L. WALKER,
Mayor.

Attest:

(Sgd) D. H. VANNOY,
City Secretary.

(Additional material submitted for the record:)

DIAL-A-SAINT,
Liguori, Mo., December 30, 1965.

Hon. J. O. PASTORE,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR MR. SENATOR: The Redemptorist Fathers, of Liquori, Mo., in their apostolate for the salvation of souls, have two programs throughout the United States on telephone. The one is entitled "Dial-a-Saint," which is a 1-minute recorded-message on the lives of the saints and the moral virtues. Dial-a-Movie is a recording of the moral evaluation of movies, according to a consensus of ratings from Protestant, Catholic, Jewish and nonsectarian rating agencies. Dial-a-Movie ordinarily runs 2 minutes.

Each of these programs is sponsored by a commercial institution, which pays for the cost of telephone service, the advertising, and the overhead. The name of the sponsor is mentioned on the message. For instance, Dial-a-Movie in Minneapolis, Minn., is sponsored by a member of President Johnson's Economic Advisory Board, Mr. Harold Greenwood, Jr., of the Minneapolis Federal Savings & Loan Association. On the recorded message, we actually say, "This is Dial-a-Movie, brought to you today by the Minneapolis Federal Savings & Loan Association."

These programs are put into a city at the request of the hierarchy; usually it is at the request of the Catholic bishop and the cooperation of the Council of Churches and the Jewish Community is solicited. These programs are advertised from the pulpit and in church bulletins and religious newspapers and secular newspapers.

The bishops of the United States and the Redemptorist Fathers, who have immediate charge of this program are solicitous that nothing be done to interfere with the tremendous amount of good that these programs are doing. I am sure it is not the intention of anyone in the Federal Communicatins Commission or in the Commerce Subcommittee on Communications investigating taped phone

propaganda to interfere with programs like this, which are doing a tremendous amount of good.

There is just one point that we would like to make as a practical application in our program. The recorders that we use for Dial-a-Saint usually run but 1 minute, actually 56 seconds.

The recorder we use for Dial-a-Movie runs approximately 2 minutes. Now, in both these recorded messages, we use the full time for the message. We always include the name of the sponsor, which is a local business firm, usually one of the best known in town. We are most solicitous in picking the sponsor for this program, that he be of the highest repute and social stature. If we would have to put on these messages more information for the public, as to those actually originating the messages and the group originating the messages, we feel that this would be a great hardship to us, due to the shortness of the message and due to the nature of the message itself. The message would, especially in the case of Dial-a-Saint, sound more like a television commercial than a message about the saints and an application to the spiritual life.

If we can be of any help in the formulation of any proposed bills with regard to regulation of taped phone propaganda, we would be most happy to cooperate with you.

Very truly yours,

Rev. R. T. McKee, C.SS.R.

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