

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

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

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

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

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

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

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

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

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

On July 27, 1966, the Commission adopted comments on S. 2825, 89th Congress, which, as it passed the Senate on June 29, 1966, is identical to H.R. 611. It is requested that these comments, copies of which are enclosed, be accepted as the Commission's comments on H.R. 611. The Bureau of the Budget has advised that while there is no objection to the presentation of this report from the standpoint of the Administration's program, it believes that the comments and recommendations made by the Department of Justice on S. 2825, 89th Congress, merit careful consideration by your Committee.

Sincerely yours,

ROSEL H. HYDE, *Chairman.*