

This is a preliminary transcript of a Committee Hearing. It has not yet been subject to a review process to ensure that the statements within are appropriately attributed to the witness or member of Congress who made them, to determine whether there are any inconsistencies between the statements within and what was actually said at the proceeding, or to make any other corrections to ensure the accuracy of the record.

1 {York Stenographic Services, Inc.}

2 HIF162.160

3 HEARING ON H.R. 1084, THE COMMERCIAL ADVERTISEMENT LOUDNESS

4 MITIGATION ACT (CALM);

5 H.R. 1147, THE LOCAL COMMUNITY RADIO ACT OF 2009; AND

6 H.R. 1133, THE FAMILY TELEPHONE CONNECTION PROTECTION ACT OF

7 2009

8 THURSDAY, JUNE 11, 2009

9 House of Representatives,

10 Subcommittee on Communications, Technology and the Internet

11 Committee on Energy and Commerce

12 Washington, D.C.

13 The subcommittee met, pursuant to call, at 10:03 a.m.,

14 in Room 2322 of the Rayburn House Office Building, Hon.

15 Rick Boucher (chairman) presiding.

16 Members present: Representatives Boucher, Rush, Eshoo,

17 Stupak, Doyle, Weiner, Butterfield, McNerney, Stearns,

18 Walden, and Terry.

19           Staff present: Roger Sherman, Chief Counsel; Shawn  
20 Chang, Counsel; Liz Eraker, Intern; Amy Levine, Counsel;  
21 Sarah Fisher, Special Assistant; Pat Delgado, Chief of Staff  
22 (Waxman); Amy Bender, Minority Detailee; Neil Fried, Senior  
23 Minority Counsel; Sam Costello, Minority Legislative Analyst;  
24 and Amanda McGreevy, Minority Legislative Intern.

|

25           Mr. {Boucher.} Good morning to everyone. Before  
26 addressing the matters that are pending before the  
27 subcommittee today, I want to note that after years of  
28 planning, the digital television transition will take place  
29 tomorrow. I want to take this moment to thank the members of  
30 the staff of the FCC, to thank the personnel at NTIA and the  
31 broad range of stakeholders ranging from the broadcasters and  
32 cable to satellite companies, retailers and the manufacturers  
33 of converter boxes for all of their effective work that will  
34 help to assure a smooth digital transition. While some  
35 viewers remain unprepared, the Nielsen Survey reported this  
36 week that fully 97.5 percent of Americans are now fully  
37 prepared and ready for tomorrow's transition. The FCC's call  
38 centers are staffed and ready to provide assistance to  
39 viewers who have difficulties connecting. I have every  
40 confidence that the transition will be uneventful for the  
41 vast majority of Americans.

42           Today the subcommittee considers three stand-alone  
43 measures, the first of which is H.R. 1084, the Commercial  
44 Advertisement Loudness Mitigation Act otherwise known as the  
45 CALM Act, introduced by our colleague from California, Ms.  
46 Eshoo, in order to address a leading consumer complaint, the  
47 volume of advertisements on television. All of us have had

48 the experience of enjoying a favorite program only to find  
49 ourselves scrambling for the remote control when at the  
50 commercial break the volume of the television seems to  
51 double. I have cosponsored the CALM Act and I suspect that  
52 if enacted this measure will become as popular as the  
53 legislation that created the do not call list, and I look  
54 forward to learning why the phenomenon of loud commercials  
55 exist and what we can do as policymakers in order to address  
56 that phenomenon.

57 H.R. 1133, the Family Telephone Connection Protection  
58 Act introduced by Chairman Rush would address the serious  
59 matter of the rates that are paid by prison inmates for  
60 collect calling services. Inmates are literally a captive  
61 audience and they typically have no option for using the  
62 telephone to contact family and legal counsel other than  
63 making their calls from a prison payphone and the rates that  
64 are charged for those services are enormous and include not  
65 only a high per-minute rate for the service but also per-call  
66 connection fees that can be as high as \$4 per call. The  
67 burden of these charges often falls on those who are least  
68 able to afford the charges, the inmates who have virtually no  
69 income and the members of their families who frequently face  
70 their own financial hardships. Phone service for inmates is  
71 a necessity. It is not a luxury. It is often their only

72 link to family and attorneys and therefore, we hope that this  
73 morning the witnesses will tell us what may be done to ensure  
74 that prison inmates have access to this very necessary  
75 service at rates that are reasonably affordable.

76       The third bill that we are hearing this morning is H.R.  
77 1147, the Local Community Radio Act introduced by our  
78 colleagues Representatives Doyle and Terry. It would provide  
79 additional opportunities for low-power FM radio stations by  
80 allowing their operation on third adjacent channels to full-  
81 power radio stations. LPFM stations are typically community-  
82 based, nonprofits and they operate usually at 100 watts or  
83 less of broadcast power and have a broadcast reach of only a  
84 few miles. They play a truly unique role in our media  
85 firmament. They are more likely than their full-power  
86 counterparts to be owned by women or by minorities. They are  
87 an important forum for local clergy, for politicians, for  
88 civil rights focused programs and community leaders who seek  
89 to weigh in on local matters of public interest. They are  
90 also commonly found at our institutions of higher education  
91 across the United States. While expanding opportunities for  
92 more low-power FM stations is desirable, we must be certain  
93 that expanded low-power FM service is implemented in a way  
94 that does not jeopardize existing broadcast services  
95 including noncommercial, full-power FM stations. This

96 morning we are interested in how low-power FM stations on  
97 third adjacencies can protect existing services including FM  
98 radio, emerging HD radio and radio reading services.

99 I want to welcome our witnesses and thank them for their  
100 attendance here this morning. We will turn to your testimony  
101 shortly.

102 [The prepared statement of Mr. Boucher follows:]

103 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
104           Mr. {Boucher.} But at this time, I am pleased to  
105 recognize other members of the subcommittee for their own  
106 statements and I will call on the gentleman from Florida, the  
107 ranking Republican on our subcommittee, Mr. Stearns.

108           Mr. {Stearns.} Good morning and thank you, Mr. Chairman  
109 and thank you for having this hearing. We have nine alert,  
110 ready-to-go witnesses and it is quite impressive.

111           As you mentioned, we have three distinct pieces of  
112 legislation we are looking at. I will go with one that you  
113 sort of mentioned in the last which is H.R. 1133, the Family  
114 Telephone Connection Protection Act. As mentioned, it would  
115 require the FCC to regulate telephone services to inmates in  
116 correctional facilities. Typically, a single carrier is  
117 selected through a competitive bidding process to provide the  
118 prisoner his phone service and although services and rates  
119 vary by State or facility, inmates are often limited to  
120 making a collect call and the rates charged are frequently a  
121 bit higher to help pay for these collect calls nationwide.

122           Supporters of this legislation argue that prison call  
123 fees are too high costing families too much to keep in touch  
124 with their relatives in jail and making it harder to  
125 rehabilitate criminals. Our nation's sheriffs have a unique  
126 perspective however since over 80 percent of the nation's

127 local jails are simply under the jurisdiction of the sheriffs  
128 so it is very good, Mr. Chairman, we have them here to  
129 testify to give their side.

130 This bill could lead to a prohibition on a payment of  
131 commissions to the correctional facilities by providers of  
132 the phone service. These commissions go to providing  
133 security measures to monitor non-privilege calls, to prevent  
134 elicit activities and to pay for the cost of the telephone  
135 system itself. Without the commissions, these correctional  
136 facilities will either have to ask taxpayers to front the  
137 cost of the phone system or completely dismantle the program.

138 In addition, these commissions are a main source of  
139 funding for many beneficial inmate programs such as adult  
140 education, any recidivism programs, jail ministries and  
141 substance abuse programs. For example, in New York some  
142 funding from telephone commissions were used to provide free  
143 bus rides to the facilities for inmate family members. I  
144 certainly understand the hardship that many inmates' families  
145 have to endure however, and frankly as local and State  
146 budgets get tighter and tighter not allowing these  
147 commissions might force correctional facilities to eliminate  
148 many important programs.

149 Mr. Chairman, the second bill under discussion is H.R.  
150 1147, the Local Community Radio Act. The FCC created low-

151 power FM station service in 2000 to promote local  
152 programming. At the end of 2000, Congress restricted how  
153 close low-power stations may operate to full-power stations  
154 due to chiefly the interference concerns. As a result, fewer  
155 low-power stations can be authorized. This bill would simply  
156 repeal the statutory limits. I support the idea of allowing  
157 more low-power stations to be licensed however, such a  
158 sweeping policy change needs to balance the potential impact  
159 on full-power FM stations, namely interference.

160 Third, adjacent protection exists for a reason, to guard  
161 against such interference. There is a policy already in  
162 place to allow low-power FM stations to operate in the FM  
163 band with third adjacent protection. The FCC has licensed  
164 more than 865 low-power operators with more having been  
165 granted construction permits or that have applications that  
166 are pending. As we consider H.R. 1147, we need to fully  
167 examine the impact on full-power FM stations and the issue of  
168 interference. A broad blanket policy change may be  
169 unnecessary at this time. I hope to work with the sponsors  
170 of this bill as we move forward.

171 And last, Mr. Chairman, we are examining H.R. 1084, the  
172 Commercial Advertisement Loudness Mitigation Act and I will  
173 compliment the author of the bill with the word CALM Act. I  
174 am sure they worked hard to get that to come together. This

175 bill would require the FCC to mandate rules within one year  
176 prohibiting commercials from being excessively noisy or  
177 strident. The issue is more complex than it appears. Many  
178 different entities are responsible for producing and  
179 distributing the content consumers see and hear today. Each  
180 element may be recorded and provided at different volume  
181 levels. Moreover, shows and movies have a dynamic sound  
182 range to cover everything from a quiet scene to an explosion.  
183 Commercials, meanwhile, tend to have a narrow sound range.  
184 Volume levels are typically set for the programming which can  
185 throw off the volume levels for commercials. Two years ago,  
186 the Advanced Television Systems Committee established a  
187 subgroup on digital television loudness. This subgroup  
188 consists of the leading experts on audio technology from all  
189 the major broadcast networks, cable, production and post-  
190 production, manufacturing and education in the United States  
191 of America. Since it was established, these audio technology  
192 experts have crafted a hard-fought consensus on the  
193 recommended practices that should be employed across the TV  
194 industry to deal with TV loudness concerns.

195       Mr. Chairman, I trust the collective wisdom of these  
196 technical experts to craft a solution to the TV loudness  
197 issue. The subgroups hard work should not be undone by  
198 legislation. One suggestion would be to revise the bill

199 simply so that the FCC rulemaking only commences if industry  
200 has not addressed the issue within a certain amount of time.  
201 So I think we have, perhaps, a solution to our problem which  
202 is Advanced Television Systems Committee and all the hard  
203 work they have done in this area.

204           So, Mr. Chairman, I look forward to the hearing, the  
205 witnesses and I welcome again the opportunity to ask them  
206 questions. Thank you.

207           [The prepared statement of Mr. Stearns follows:]

208 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
209           Mr. {Boucher.} Thank you very much, Mr. Stearns, for a  
210 very thoughtful statement. The gentleman from Pennsylvania,  
211 Mr. Doyle, is recognized for five minutes. I am sorry, for  
212 two minutes.

213           Mr. {Doyle of Pennsylvania.} Thank you, Mr. Chairman,  
214 for holding this legislative hearing that includes the bill I  
215 introduced with my good friend, Lee Terry, H.R. 1147, the  
216 Local Community Radio Act.

217           You know, it is appropriate to hold this hearing this  
218 morning. I heard on the radio today that today is the 74th  
219 anniversary of the first FM broadcast. Students of that  
220 story know that the dominant AM broadcaster, RCA,  
221 successfully lobbied the FCC to move the FM band, obsoleting  
222 the inventor's burgeoning radios, destroying his company,  
223 leading the inventor, Edward Armstrong, to suicide and  
224 delaying FM's role-out for decades. We are almost full  
225 circle here today but this story starts a decade ago. In  
226 2000, the Federal Communications Commission, started to  
227 create new community radio stations run by local schools,  
228 churches, community groups and governments. They did this  
229 because their missions from Congress is not to help entrench  
230 lobbies but to make sure as many Americans as possible have  
231 access to the public's airwaves to fulfill a basic human

232 need, the right to communicate. Thousands of peoples and  
233 groups wanted these new stations and applied.

234         Almost immediately, incumbent broadcasters warned this  
235 subcommittee that these new community radio stations would  
236 create and I quote ``oceans of interference harming listeners  
237 efforts to listen to the stations they already know and  
238 enjoy.'' So in response to the broadcasters' concern,  
239 Congress called timeout and asked for an independent study to  
240 examine this issue. The premise of Congress' decision to  
241 order the study was that if the study confirmed the FCC's  
242 findings, Congress would remove it's prohibition on the FCC  
243 and allow it to fully implement community radio.

244         Well, the study came back, agreed with the FCC that  
245 these stations can be created without harming listeners and  
246 through two unanimous bipartisan votes the FCC has twice now  
247 recommended to Congress to do so. I am asking Congress to  
248 keep its part of the bargain today.

249         After Congress limited community radio in 2001, several  
250 groups in my district, the City of Pittsburgh and some  
251 working-class suburbs lost their chance to go on the air. I  
252 will point out that late last month, Mr. Chairman,  
253 Pittsburgh's only minority-owned station and the city's only  
254 hip-hop and R and B station sold for \$9 million. The new  
255 owners plan a format change and now no one else can connect

256 with urban radio listeners in my district. It is almost like  
257 incumbent broadcasters wrote the line that William  
258 Shakespeare actually wrote in Hamlet. ``Give every man his  
259 ear but few his voice.''

260 Mr. Chairman, we need to make sure that more Americans  
261 get a chance to exercise their voice. We must pass this bill  
262 and we must bring low-power back to the people.

263 I yield back.

264 [The prepared statement of Mr. Doyle of Pennsylvania  
265 follows:]

266 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
267           Mr. {Boucher.} Thank you very much, Mr. Doyle. The  
268 gentleman from Nebraska, Mr. Terry, is recognized for two  
269 minutes.

270           Mr. {Terry.} Thank you, Mr. Chairman, for holding this  
271 hearing. I appreciate my friend, Mr. Doyle, and associate  
272 myself with your Shakespearean opening statement. And I  
273 would also like to take this opportunity to thank several  
274 that have worked hard for this bill like Candace Asman, Cory  
275 Hoffman and Pete Tridish of Prometheus Radio, Michael Bracy  
276 of the Future of Music Coalition, the band Okay Go and our  
277 very own witness today, Cheryl Leanza with the United Church  
278 of Christ.

279           There are numerous benefits by low-power radio stations  
280 to smaller communities and what I mean by smaller communities  
281 is both in an urban sense in a suburban and even a rural  
282 sense. It gives people a voice to their particular community  
283 that they may not have now. And as Mike pointed out, the  
284 studies have shown that we can technically do low-power FM  
285 without stepping on the signals of the higher power stations.

286           Now, with that, Mr. Chairman, I would like to enter into  
287 the record the 100 Black Men of Omaha who are interested as  
288 an organization of providing low-power FM within the African  
289 American community of Omaha to provide a platform for

290 discussion of community issues. I ask unanimous consent that

291 I can submit that for the record.

292 [The information follows:]

293 \*\*\*\*\* INSERT 13 \*\*\*\*\*

|  
294           Mr. {Boucher.} Without objection.

295           Mr. {Terry.} And with that, once again thank you but I  
296 can't resist on 1133 to say that is this the definition of a  
297 captive customer.

298           [The prepared statement of Mr. Terry follows:]

299           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
300           Mr. {Boucher.} Thank you very much. Thank you, Mr.  
301 Terry. The gentleman from California, Mr. McNerney, is  
302 recognized for two minutes.

303           Mr. {McNerney.} Thank you, Mr. Chairman, for holding  
304 this hearing and thank you to the witnesses for coming forth  
305 today.

306           I am a cosponsor of 1147, the Local Community Radio Act.  
307 I believe that it is important that the Federal Communication  
308 Commission provide equitable rules for low-power FM stations.  
309 Our smallest stations deserve to be heard to be able to  
310 provide community focus programming that serves all of our  
311 listeners' needs.

312           Concerning the CALM Act, we have all experience  
313 unpleasant sudden volume changes during TV programming. The  
314 problem was identified more than 50 years ago and many other  
315 nations are already adopting standards. Now, there is one  
316 experience I had as a young boy. I was a teenager. One of  
317 the very Sunday afternoons that my father allowed me to watch  
318 TV which wasn't every Sunday afternoon, I was watching a  
319 horror show in the den and he was out barbequing and the  
320 advertisement came on and he came running in and wanted to  
321 know what was happening because it was so loud he could hear  
322 all the screaming outside. It was somebody selling

323 furniture. So I have experienced this. It will be  
324 interesting to see what we can do about it.

325 So with that, I yield back the balance of my time.

326 [The prepared statement of Mr. McNerney follows:]

327 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
328           Mr. {Boucher.} Thank you, Mr. McNerney. The gentleman  
329 from Oregon, Mr. Walden, is recognized for two minutes.

330           Mr. {Walden.} I thank you very much, Mr. Chairman. I  
331 appreciate the opportunity to get the testimony today from  
332 the witnesses on these various bills.

333           I would like to submit for the record a letter I  
334 received from Jefferson Public Radio with regards to H.R.  
335 1147 and some issues that they are raising and I think they  
336 are very legitimate.

337           [The information follows:]

338 \*\*\*\*\* INSERT 14 \*\*\*\*\*

|  
339 Mr. {Boucher.} Without objection.

340 Mr. {Walden.} Thank you, Mr. Chairman.

341 The Jefferson Public Radio probably has more translators  
342 covering a more rigorous mountain environment providing  
343 public broadcasting in southern Oregon then probably anywhere  
344 else in the country and they are concerned about the effect  
345 that H.R. 1147 would have regarding displacement of their  
346 translators. They are further concerned about the language  
347 in H.R. 1147 which would give authority to the FCC to go even  
348 further than the third adjacent channel relaxation in the  
349 rulemakings. And so these are issues that I think the  
350 committee needs to look at very carefully. Having been in  
351 the broadcast business for more than 21 years, I am not now a  
352 licensee, I share the concern of many who want to make sure  
353 that as you move forward on adding additional signals in the  
354 marketplace that there isn't disruptive interference  
355 especially too, looking at old receivers versus new  
356 receivers. There are legacy radios that aren't as selective  
357 as some of the new ones in terms of listening quality and  
358 differentiating among the signals. And so I think these are  
359 issues we need to look at carefully before we move forward.

360 I finally add to the record too, just a note that I hope  
361 the FCC is doing proper and appropriate oversight over LPFMs.

362 They are not supposed to be commercial stations and it would  
363 be interesting to know just kind of the oversight you are  
364 doing to see are they operating in some cases as if they were  
365 a for-profit commercial because I don't think that was the  
366 intent of LPFM nor is it, I am sure, the sponsors' of this  
367 legislation that they would merge into a full commercial  
368 operation.

369           So thank you, Mr. Chairman. I look forward to the  
370 testimony.

371           [The prepared statement of Mr. Walden follows:]

372 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
373 Mr. {Boucher.} Thank you very much, Mr. Walden. The  
374 gentleman from Michigan, Mr. Stupak, is recognized for two  
375 minutes.

376 Mr. {Stupak.} Thank you, Mr. Chairman, and I am going  
377 to be in and out all day but I did want to have a few  
378 comments especially on H.R. 1147. In all honesty, I am not  
379 real excited about that legislation that is authored by my  
380 good friend from Pittsburgh, Mr. Doyle. I understand why  
381 this low-power legislation is so important to him. It is  
382 probably because it reminds him of his Pittsburgh Penguin  
383 front line of Malkin and Crosby. That is the low-power line  
384 they have in hockey and I am sure if for some reason, some  
385 bad calls, my Red Wings come up a little bit short, I am sure  
386 Mr. Doyle will be in full-power telling me about it on Friday  
387 and Saturday.

388 I have a minute left if you care to respond here, Mr.  
389 Doyle.

390 Mr. {Walden.} Will the gentleman yield? I think you  
391 are just going to get interference from him.

392 Mr. {Stupak.} It will be interference.

393 Mr. {Doyle of Pennsylvania.} I just want to say to my  
394 friend that on Monday I will buy the beer for you to cry in.

395 Mr. {Stupak.} It will take more than beer, Doyle.

396 I yield back, Mr. Chairman.

397 [The prepared statement of Mr. Stupak follows:]

398 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
399           Mr. {Boucher.} Thank you, Mr. Stupak. The gentleman  
400 from Illinois, Mr. Rush, chairman of the subcommittee on  
401 consumer protection is recognized for two minutes.

402           Mr. {Rush.} Thank you, Mr. Chairman. I really am  
403 delighted to be here and I am also delighted not to have some  
404 consensus in the previous discussion. The Blackhawks have  
405 been low-power for a long time now.

406           Mr. Chairman, I want to thank you for holding today's  
407 hearing on these important bills.

408           I would like to limit my limited time on remarks on H.R.  
409 1133. I introduced this bill with the sincerest concerns for  
410 those innocent families and close friends of those  
411 individuals who find themselves incarcerated in our jails and  
412 prisons. Like you and me, they are telephone services  
413 consumers having the same needs when it comes to hearing  
414 their loved ones' voices and maintaining regular contact with  
415 their families just as you and I are and many in this room  
416 are. Their personal lives, their households and their budget  
417 affairs are complicated by having to choose accepting a  
418 collect phone call from a loved one in prison which can cost  
419 up to five times as much as the same call that you and I  
420 would have to make. They have to live with the real life  
421 consequences of their choice which could mean missing a car

422 or rent or a mortgage payment or not having enough money to  
423 buy groceries.

424       There are typically three ways that an inmate can make  
425 and complete a telephone call in most State and county  
426 correctional institutions. Either collect, prepaid collect  
427 or prepaid by the inmate which in most cases is paid  
428 indirectly by the inmate's family through a deposit into  
429 their prison debit account. For collect calls, the billed  
430 party is usually in charge of billing calls recovery fee of  
431 so many dollars for each month that collect call charges are  
432 paid. Or prepaid collect accounts the inmate telephone  
433 services provide a collector fee usually between \$5 and \$10  
434 in order to process credit card and check payments over the  
435 phone, and for a prepaid inmate call, the inmate telephone  
436 services providers charging in the neighborhood of \$1 for  
437 each completed interstate telephone call.

438       Mr. Chairman, it is patently unfair that family and  
439 friends of incarcerated individuals should have to pay these  
440 inflated amounts. Revenue sharing agreements entered in by  
441 inmate telephone service providers and the correctional  
442 authorities they service are the primary cause of this  
443 egregious disparity. Some States are collecting commissions  
444 from providers of inmate telephone services at rates that are  
445 as high as 40 to 65 percent of gross bills inmate telephone

446 revenues. These commissions continue to have the effect of  
447 substantially inflating rates for collect, prepaid collect  
448 and debit interstate and intrastate telephone calls. Simply  
449 put, they represent a pass through of calls from the  
450 correctional facility and the jails to the inmates and his or  
451 her families.

452       Accordingly and most notably, my bill H.R. 1133 focuses  
453 on these commission arrangements. It would prohibit the  
454 payment of commissions to administrators of correctional  
455 institutions and departments of correction. It would also  
456 require the FCC to promulgate rules that ensure interstate  
457 rates for calls that incarcerated individuals make while in  
458 confinement are just, reasonable and nondiscriminatory.  
459 Finally, it would require providers of inmate telephone  
460 services to offer both collect calling and debit account  
461 services which is a cheaper option according to paid  
462 telephone service providers because it mitigates the risk of  
463 bad debt associated with collect calling.

464       Mr. Chairman, I would like to thank you for holding this  
465 hearing and I am glad to have the witnesses here to testify  
466 on behalf of my bill. Thank you and I yield back the balance  
467 of my time.

468       [The prepared statement of Mr. Rush follows:]

469 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
470           Mr. {Boucher.} Thank you very much, Mr. Rush. The  
471 gentleman from North Carolina, Mr. Butterfield, is recognized  
472 for two minutes.

473           Mr. {Butterfield.} Thank you very much, Mr. Chairman,  
474 for convening this hearing and I particularly want to thank  
475 Chairman Rush for introducing the legislation. This is not  
476 the first Congress in which he has introduced this bill. He  
477 has done it in Congresses past and I thank him for his  
478 sensitivity to this issue.

479           As most of you know, I served as a trial judge in my  
480 State for many years before coming to Congress. I sat on the  
481 highest trial bench in my State and presided over felony  
482 cases and very serious crimes. As a consequence of my work,  
483 there were many people that I had the unfortunate and  
484 unpleasant task of incarcerating. But I want to tell you  
485 from personal experience that the telephone system between  
486 the jails and the prisons and communities is really in need  
487 of revamping. It would break my heart when mothers and  
488 grandmothers and family members would call me from time-to-  
489 time and tell me that they had--these are poor people, who  
490 would have \$3 and \$400 telephone bills because their loved  
491 ones would call collect from the jail. And what does a  
492 grandmother say when her grandchild is calling her collect

493 from the jail? The only thing she knows to do is to accept  
494 the charges.

495         And so this legislation that we have before us today is  
496 certainly a step in the right direction. It is not the ideal  
497 legislation. I wish we could do more. I have always said  
498 that one remedy for the problem would be to create a debit  
499 card just like we have here in the cafeteria. Whenever I  
500 want to go get a meal, I go downstairs and I put this debit  
501 card in and I get my meal. Now, we could do this in the  
502 jails and make it very effective.

503         The other thing that we could do would be have cell  
504 phones in the prisons and in the jails that would be  
505 controlled. Not unlimited cell phones but the prisoners  
506 could get cell phones for 30 minutes a day and use those cell  
507 phones and at the conclusion of the call, they could turn in  
508 the cell phones and they could be locked up and kept away  
509 from the prisoners.

510         So thank you, Mr. Rush. Thank you, Mr. Chairman, for  
511 having this hearing today. This is a step in the right  
512 direction.

513         I yield back.

514         [The prepared statement of Mr. Butterfield follows:]

515 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
516 Mr. {Boucher.} Thank you very much, Mr. Butterfield.

517 We turn now to our panel of witnesses and again thank  
518 each of them for their attendance here this morning. Without  
519 objection, your prepared written statement will be made a  
520 part of the record and we would welcome your oral  
521 presentation. And in the interest of time given the large  
522 number of witnesses who have joined us this morning, we would  
523 ask that your oral statements be kept to approximately five  
524 minutes.

525 I will just say a brief word of introduction about each  
526 of our witnesses. Mr. Frank Krogh is an attorney with the  
527 firm of Morrison and Foerster representing Citizens United  
528 for the Rehabilitation of Errants. Mr. Curtis Hopfinger is  
529 Director of Government and Regulatory Affairs at Securus  
530 Technologies. Mr. David Goad is the Sheriff of Allegany  
531 County, Maryland and President of the National Sheriffs'  
532 Association. And each of those witnesses will be testifying  
533 with respect to H.R. 1133, the Family Telephone Connection  
534 Protection Act.

535 Testifying on the Commercial Advertisement Loudness  
536 Mitigation Act is Mr. Joel Kelsey, Policy Analyst at  
537 Consumers Union, Mr. David Donovan, President of The  
538 Association for Maximum Service Television and Mr. Jim

539 Starzynski, Principal Engineer and Audio Architect for NBC  
540 Universal.

541           Testifying on the Local Community Radio Act is Mr. Peter  
542 Doyle, Chief of the Audio Division of the Media Bureau of the  
543 Federal Communications Commission, Ms. Caroline Beasley,  
544 Executive Director and CFO of Beasley Broadcast Group and Ms.  
545 Cheryl Leanza, Policy Director of the United Church of  
546 Christ, Office of Communication.

547           We welcome each of you and, Mr. Krogh, we will pleased  
548 to begin with you and you will need to turn your microphone  
549 on and move it as close as possible to you and we can hear  
550 you much better.

|  
551 ^STATEMENTS OF FRANK W. KROGH, ESQUIRE, MORRISON AND FOERSTER  
552 LLP; CURTIS HOPFINGER, DIRECTOR OF GOVERNMENT & REGULATORY  
553 AFFAIRS, SECURUS TECHNOLOGIES; DAVID GOAD, NATIONAL SHERIFFS'  
554 ASSOCIATION; JOEL KELSEY, POLICY ANALYST, CONSUMERS UNION;  
555 DAVID DONOVAN, PRESIDENT, THE ASSOCIATION FOR MAXIMUM SERVICE  
556 TELEVISION, INC., JIM STARZYNSKI, PRINCIPAL ENGINEER AND  
557 AUDIO ARCHITECT, NBC UNIVERSAL, ADVANCED ENGINEERING; PETER  
558 DOYLE, CHIEF, AUDIO DIVISION, MEDIA BUREAU, FEDERAL  
559 COMMUNICATIONS COMMISSION; CAROLINE BEASLEY, EXECUTIVE VICE  
560 PRESIDENT AND CFO, BEASLEY BROADCAST GROUP; AND CHERYL A.  
561 LEANZA, POLICY DIRECTOR, UNITED CHURCH OF CHRIST, OFFICE OF  
562 COMMUNICATIONS, INC.

|  
563 ^STATEMENT OF FRANK W. KROGH

564 } Mr. {Krogh.} Thank you for this opportunity to testify.  
565 I am Frank Krogh, an attorney with the firm of Morrison and  
566 Foerster which represents the Washington Lawyers Committee  
567 for Civil Rights and Urban Affairs in a proceeding before the  
568 Federal Communications Commission addressing prison inmates'  
569 long distance telephone service rates. We also have been  
570 coordinating closely in that proceeding with Citizens United  
571 for the Rehabilitation of Errants or CURE.

572 Charlie and Pauline Sullivan, the co-directors of CURE,  
573 are here with us today and they have asked me to testify in  
574 support of H.R. 1133, the Family Telephone Connection  
575 Protection Act of 2009. On behalf of CURE, I want to thank  
576 Subcommittee Chairman Boucher and Congressman Rush, the  
577 sponsor of H.R. 1133, for their leadership in trying to solve  
578 this problem of unaffordable inmate telephone rates.

579 The long distance telephone rates charged prison inmates  
580 and their families are exorbitant and make it harder for  
581 inmates to maintain the critical family and community  
582 connections that are needed for their rehabilitation. H.R.  
583 1133 would ensure that the FCC addresses this issue  
584 forcefully.

585 As Chairman Boucher and Congressman Rush explained,  
586 prison inmates and their families pay some of the highest  
587 long distance rates in the country. The problem arises from  
588 the bidding process to win these exclusive service contracts.  
589 The competing service providers generally are expected to  
590 offer generous commissions to the prison administrator or  
591 state correctional agency or the treasury for the right to  
592 provide the exclusive service to the facilities for the  
593 prison system. The winning bidder is typically the service  
594 provider that offers the highest commission payment not the  
595 lowest service rate. So then the winning bidder then has to

596 charge excessive rates for the inmate calls in order to cover  
597 these huge commission payments of 40 to 65 percent.

598         As a result, you have got these tremendous collect call  
599 charges often as high as \$3.95 for a service charge plus a  
600 per-minute charge of 89 cents. And I have even seen inmate  
601 collect rates of \$4.28 plus 98 cents a minute as opposed to  
602 the typical rate available to residential subscribers or  
603 calling card customers of a few pennies per minute. At  
604 current rates, one hour of conversation a week can run up a  
605 monthly phone bill of \$300 which is a huge financial burden  
606 for the innocent families, low-income families and loved ones  
607 receiving and paying for inmate collect calls. These rates  
608 deprive inmates and their family members of their most  
609 reasonable means, sometimes the only possible means of  
610 communication and strain the family and community  
611 rehabilitative ties that reduce recidivism, preserve families  
612 and ease prison tensions.

613         The need to act on this issue has become widely  
614 recognized. The American Bar Association, the American  
615 Correctional Association and a report released in 2006 by a  
616 diverse national prison reform commission which included  
617 correctional officials, all recommend that inmate telephone  
618 rates be drastically reduced in order to reinforce family and  
619 community ties.

620           Now, as Congressman Stearns pointed out, in some cases  
621 this commission revenue is used for prisoner welfare programs  
622 but that cannot justify the charging of unreasonable rates.  
623 You can't violate Federal Law on the grounds that the profit  
624 is going to charitable purposes. This is a regressive tax on  
625 some of the poorest people in America and this also means  
626 that these programs, these prisoner welfare programs are not  
627 free at all. They are being fully funded right now by the  
628 prisoners and their families. Those families and prisoners  
629 should have a choice of having fewer programs and more  
630 communication. I think if you gave them that choice, they  
631 would choose more reasonable telephone rates so they could  
632 communicate more. They should not be deprived of that choice  
633 through a regressive tax on their telephone calls.

634           Now, H.R. 1133 confirms the need to reduce inmate  
635 telephone rates and would require that the FCC consider  
636 imposing maximum interstate inmate calling rates, a  
637 requirement that inmate telephone service providers offer a  
638 debit calling option which is cheaper than and lower cost  
639 than collect calling and a prohibition of commission  
640 payments. The ABA has endorsed the proposed legislation as  
641 have leading newspapers. Some of the remedies specified in  
642 H.R. 1133 are also proposed in the pending FCC petition filed  
643 by Martha Wright, the grandmother of a former prisoner, and

644 other petitioners. The Wright petitioners have demonstrated  
645 that it is entirely feasible for interstate long distance  
646 telephone services to be provided profitably to prisoners at  
647 rates far below those prevailing at most prison facilities.

648 For example, interstate inmate long distance rates in  
649 Florida, Missouri, Nebraska, New Hampshire and New York  
650 correctional facilities are way below typical interstate  
651 inmate rates. Before New York eliminated its 57.5 percent  
652 commission rate in 2007, the interstate collect rate for  
653 prisoners in New York correctional facilities was 16 cents a  
654 minute plus a \$3 connection charge, which is equivalent to 41  
655 cents a minute for a 12-minute call. Now, with no commission  
656 payment, the rate is 6.8 cents per minute plus \$1.28  
657 connection charge which is equivalent to 17.5 cents a minute  
658 for a 12-minute call.

659 Michigan previously had an interstate rate equivalent to  
660 \$1.16 per minute for a 15-minute collect or debit call. Now,  
661 the debit and collect rates are 12 cents and 15 cents per  
662 minute respectively, with no per-call charge. So it is quite  
663 possible to have much lower rates and have the service  
664 provided at a profit which the service providers are quite  
665 eager to do.

666 Mr. {Boucher.} Mr. Krogh, let me ask if you could wrap  
667 up. Your time has expired.

668           Mr. {Krogh.} Oh yes, I think that H.R. 1133 would  
669 ensure that the FCC consider the remedies proposed by the  
670 Wright petitioners at the FCC and reaffirms the FCC's  
671 authority to impose those remedies. The bill would therefore  
672 help bring about prison inmate telephone service reform and  
673 CURE urges its swift passage.

674           Thank you for your time. I would be happy to answer any  
675 questions.

676           [The prepared statement of Mr. Krogh follows:]

677 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|

678 Mr. {Boucher.} Thank you very much. Thank you.

679 Mr. Hopfinger.

|  
680 ^STATEMENT OF CURTIS HOPFINGER

681 } Mr. {Hopfinger.} Good morning, Chairman Boucher and  
682 members of the committee. Thank you for inviting me to speak  
683 here today regarding inmate telecommunications and H.R. 1133.

684 My name is Curt Hopfinger and I am the Director of  
685 Regulatory and Government Affairs for Securus Technologies.  
686 Securus is a Dallas, Texas based company that provides inmate  
687 telecommunications through our wholly owned subsidiaries to  
688 correctional institutions in 44 States. We serve  
689 approximately 2,600 locations that include county, city and  
690 state-operated facilities. In addition, Securus is one of  
691 the leading providers and patent holders of technologies  
692 necessary to provide robust, reliable and above all secure  
693 inmate telecommunications.

694 My remarks will be brief. My aim is to provide the  
695 committee with further contacts and information regarding  
696 this highly specialized industry and the role that inmate  
697 telephone communications providers play in assisting law  
698 enforcement in meeting the demands in the correctional  
699 setting.

700 Today Securus is in a highly competitive industry.  
701 Today we compete with numerous providers of inmate

702 telecommunication services for contracts with correctional  
703 authorities that are put out for public bid. It is not  
704 uncommon for as many as eight different correctional service  
705 providers to bid for the same contract. This bidding process  
706 which is governed by the procurement codes and regulations  
707 applicable to the area in which the correctional facility is  
708 located, forces all participants to present their very best  
709 menu of technologies, security feature and above all  
710 telephone call prices in order to secure a contract.

711         As many law enforcement officials have explained to the  
712 FCC and elsewhere, the inmate telephone system is a critical  
713 tool for maintaining security both inside and outside the  
714 correctional environment. Today our industry provides law  
715 enforcement with a greater choice and quality of  
716 investigative tools than ever before.

717         I will provide just one example of how inmate telephone  
718 systems have assisted law enforcement officials in preventing  
719 crime and protecting the public. My written testimony has  
720 another. This example comes from one of our counties that is  
721 served by Securus Technologies. Grant County has informed us  
722 that the Federal Bureau of Investigation routinely listens to  
723 the recordings of Grant County inmate calls to assist in  
724 finding Al-Qaeda terrorist cells. Thus, even at the county  
725 level, secure inmate calling platforms are providing the

726 necessary tools for assisting in preserving homeland  
727 security.

728         All of the features and services I have described above,  
729 of course come at a cost. In this specialized corner of the  
730 telecommunication's industry, those costs are large in  
731 absolute figures and also in terms of the proportion of  
732 revenue that these costs represent. The requirement to  
733 provide customized products to law enforcement and  
734 correctional institutions causes inmate telephone service  
735 providers to incur substantial costs. In addition, it  
736 prevents our industry from enjoying the real economies of  
737 scale like local exchange companies and long distance  
738 companies that serve the general public.

739         I am pleased to tell you that in 2007, Securus began  
740 deploying a system called the Secure Call Platform or SCP  
741 which is a centralized system that requires less reliance on  
742 hardware and software at the correctional facility itself.  
743 Now that SCP has been deployed, our network efficiencies have  
744 improved and our calling rates have decreased significantly  
745 at several locations.

746         I must however make it clear that SCP is neither  
747 appropriate or feasible at all correctional facilities. The  
748 multi-million dollar investment by Securus that made this new  
749 technology possible is however indicative of the fact that

750 the industry is competitive and that law enforcement, inmates  
751 and families of inmates are in fact reaping the benefits.

752         Having given you this brief background on inmate  
753 telephones and how they work and are deployed, I would like  
754 to say a few words about H.R. 1133. Securus is concerned  
755 that H.R. 1133 will have the unintended consequences of  
756 hindering competition, compromising security and actually  
757 decreasing the availability of telephone service for inmates.  
758 In brief, this legislation would make it more difficult for  
759 Securus and all inmate telephone service providers to  
760 compete, to innovate and to even maintain their existence in  
761 the inmate telephone service market.

762         First, the legislation would require the FCC to set a  
763 federal rate cap. Securus is concerned that a federal rate  
764 cap would inevitably impose below cost rates for some  
765 facility locations and certainly for facility locations in  
766 high cost areas. In addition, a mandatory rate cap could  
767 leave such a slender margin of return that for many contracts  
768 few service providers could risk putting in a bid.

769         Second, the legislation would impose facilities-based  
770 competition at the individual facility sites. This mandatory  
771 unbundling could require installation and maintenance of two  
772 or more redundant inmate calling platforms at every facility.  
773 This multi-provider scheme would lead to a host of

774 administrative and security problems. In addition, it would  
775 increase the cost to the service providers and the facilities  
776 themselves. These increased costs would have to be recovered  
777 by those paying for inmate telephone calls.

778 Third, the legislation would require an inmate telephone  
779 service provider to complete calls to persons regardless of  
780 whether the provider has any billing agreement with the  
781 called party or the called party's local carrier. I assure  
782 the committee that Securus and the industry as a whole are  
783 making great efforts to establish billing relationships with  
784 called parties whether through their local residence exchange  
785 carrier or via billing arrangements directly with the called  
786 parties. A federal mandate requiring the completion of all  
787 inmate calls however, will discourage both inmates and called  
788 parties from allowing Securus to setup billing relationships  
789 with them. The result would be an unprecedented situation in  
790 which a telephone company is forced to give away service for  
791 free.

792 [The prepared statement of Mr. Hopfinger follows:]

793 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
794           Mr. {Boucher.} Thank you, Mr. Hopfinger. Your time has  
795 expired. Sheriff Goad.

|  
796 ^STATEMENT OF DAVID GOAD

797 } Sheriff {Goad.} Good morning, Mr. Chairman Boucher,  
798 Ranking Member Stearns and members of the committee.

799 My name is David A. Goad and I am currently the Sheriff  
800 of Allegany County, Maryland and President of the National  
801 Sheriffs' Association. The National Sheriffs' Association  
802 represents 3,000 elected sheriffs across the country and more  
803 than 20,000 law enforcement professionals, making us one of  
804 the largest law enforcement associations in the nation. I am  
805 pleased to have the opportunity to appear before you today to  
806 discuss our strong opposition to H.R. 1133, the Family  
807 Telephone Connection Protection Act of 2009 and the negative  
808 and potentially dangerous effect this legislation will have  
809 on jails and prisons throughout the United States.

810 As you may be aware, sheriffs play a unique role in the  
811 criminal justice system. Over 99 percent of the sheriffs are  
812 elected and oftentimes serve as the chief law enforcement  
813 officer of their respective counties. In addition to  
814 providing traditional policing within their respective  
815 counties, sheriffs also manage local jails and provide court  
816 security. Consequently, we have a keen understanding of the  
817 needs of the criminal justice system as well as our local

818 communities we serve.

819           Currently, over 80 percent of the nation's local jails  
820 are under the jurisdiction of sheriffs. While operating our  
821 nation's jails, sheriffs must process thousands of arrests  
822 and are responsible for detaining tens of thousands of  
823 inmates nationwide on any given day. The amount of time,  
824 effort, resources and funding necessary to manage these jails  
825 is quite substantial. Furthermore, sheriffs need to work  
826 with the knowledge that the safety of the public, as well as  
827 their deputies, is always guarded and held in the highest  
828 priority. Therefore, it is necessary for sheriffs to have  
829 control over and to have the ability to monitor the  
830 activities that transpire within our jails including the  
831 communication that inmates have with their connections  
832 outside of the facility.

833           The Family Telephone Connection Protection Act of 2009  
834 would alter a jail's inmate telephone service procedures and  
835 amend the Communications Act of 1934 to require the FCC to  
836 prescribe rules regulating inmate telephone service. While  
837 the bill requires that these regulations do not jeopardize  
838 ``legitimate security and penalogical interests,' ' it  
839 indicates that a reduction or elimination of revenue derived  
840 by corrections institutions from the receipt of commissions  
841 does not constitute jeopardizing or affecting legitimate

842 security standards or penological interests. H.R. 1133 also  
843 indicates that no provider or inmate telephone services may  
844 block or refuse to carry a call placed by an inmate on the  
845 grounds that the provider has no contractual or other  
846 arrangement with the local carrier servicing the call  
847 recipient.

848         The National Sheriffs' Association believes that this  
849 legislation would severely hamper the ability of all the  
850 sheriffs and law enforcement officials to effectively manage  
851 our nation's jails. Under H.R. 1133, correctional  
852 institutions would be required to provide inmates with a  
853 choice of carriers while placing telephone calls. This  
854 proposal would amount to nothing less than the complete  
855 dismantling of the existing system of inmate phone service.

856         Under the current system one inmate phone service  
857 provider is contractually committed to monitoring and of  
858 course control inmate calling for security and law  
859 enforcement purposes. Carrier choice would cause the  
860 facility to lose control over the monitoring and tracking of  
861 inmate calling which frequently results in criminal activity  
862 and massive fraud. Moreover, carrier choice would severely  
863 hamper the provider's ability to assist law enforcement  
864 officials with ongoing criminal investigations and of course  
865 to monitor the phone calls of suspected terrorists.

866           These are dangerous individuals who will continue to  
867   conduct criminal activities and operations on the outside via  
868   phone while they are incarcerated in local jails.  Such  
869   activities could also include threats against any testifying  
870   witness or against any law enforcement personnel and their  
871   families.  Consequently, the inability to monitor such calls  
872   could have a detrimental and potentially deadly impact.  It  
873   could place unsuspecting individuals in danger and could  
874   prevent witnesses from coming forward to testify.  Therefore,  
875   sheriffs' ability to easily and effectively monitor inmate  
876   telephone calls not only assists law enforcement in criminal  
877   investigations but significantly reduces the harm to law-  
878   abiding citizens throughout the community.

879           During the 110th Congress and in the current 111th  
880   Congress, there has been strong emphasis on rehabilitating  
881   incarcerated offenders and ensuring their successful  
882   reentries into society.  Local jails are attempting these  
883   efforts however as sheriffs' offices budgets have been  
884   significantly reduced or tightened in recent years, sheriffs  
885   have been unable to utilize funding for anything other than  
886   personnel and necessary equipment and technology.  Therefore,  
887   sheriffs rely on various services such as inmate telephone  
888   commissions to bring in revenue to fund and operate jailhouse  
889   treatment, rehabilitation and reentry programs.

890 I would like to interject a few examples such as in the  
891 State of Maryland that has to do with this revenue advantage.  
892 As correctional administrators we realize a significant  
893 funding loss. My facility which is a 225-bed facility in  
894 Western Maryland has realized approximately \$64,000 a year,  
895 other facilities such as Harford County, \$170,000 and  
896 Washington County in the State of Maryland approximately  
897 \$134,000 in lost revenue. Funds generated from commissions  
898 on inmate telephones are not a source of income for  
899 correctional administrators as we are only allowed to spend  
900 such funds on matters related to inmate welfare providing  
901 undergarments, socks and so on for inmates and so on. I  
902 would add that these commissions on phone calls are not  
903 unlike a sales tax. In this instance, the proceeds are  
904 entirely devoted to the betterment of the citizen population  
905 and in this instance, it is our inmates. I further wish to  
906 state that cutting such funds will have a negative effect on  
907 inmates in every correctional facility across the United  
908 States.

909 Sheriffs recognize that maintenance of communications  
910 with family is a positive influence for the inmate's  
911 integration back into the larger society after release. As  
912 such, the National Sheriff's Association endorses fair and  
913 reasonable rates for inmate calls and would expect all

914 sheriffs to require service providers to adhere to FCC rate  
915 guidelines. Furthermore, the National Sheriffs' Association  
916 continues to be an advocate for reentry initiatives proposed  
917 by Congress. However, we strongly oppose the proposals  
918 within H.R. 1133 as they would compromise public safety, put  
919 additional burdens on taxpayers and force correctional  
920 institutions to eliminate reentry programs and access to  
921 telephones for inmates.

922 Mr. {Boucher.} Sheriff Goad, thank you.

923 Sheriff {Goad.} I would like to thank you for the  
924 opportunity to be here today.

925 [The prepared statement of Mr. Goad follows:]

926 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
927           Mr. {Boucher.} Thank you, Sheriff Goad.   Mr. Kelsey.

|  
928 ^STATEMENT OF JOEL KELSEY

929 } Mr. {Kelsey.} Chairman Boucher, Ranking Member Stearns  
930 and esteemed members of the committee, thank you for the  
931 opportunity to testify before you for the first time today on  
932 behalf of Consumers Union, the nonprofit publisher of  
933 Consumer Reports.

934 While I am here to offer consumer viewpoints on H.R.  
935 1084, the CALM Act, I would be remiss if I did not also take  
936 this opportunity to highlight Consumers Union's support of  
937 the Local Community Radio Act. The current cost of starting  
938 up an FM radio station is close to \$2.5 million dollars.  
939 This financial hurdle often places the station licenses  
940 outside of the reach of local hands at a time when consumers  
941 are craving more local information than ever before. Efforts  
942 to support the LPFM bill are efforts to support the families,  
943 workers and places of worship that are the anchors in our  
944 communities.

945 The CALM Act, introduced by Representative Eshoo,  
946 addresses a widespread consumer complaint, the abrupt  
947 loudness of television advertisements. Representative  
948 Eshoo's legislation will go a long way towards preventing  
949 advertisements from screaming at consumers in their own

950 living rooms. Specifically, the Act would enable the Federal  
951 Communications Commission to monitor the volume of  
952 advertisements in television programming and determine  
953 acceptable levels. This would ensure that the volume levels  
954 of commercial breaks are consistent with the volume level of  
955 the programming which it brackets.

956         For years consumers have noticed that when a television  
957 program cuts to commercial breaks, the volume of the  
958 television suddenly rises to a shout, far beyond the average  
959 level of the television program it follows. We have often  
960 wondered are advertisers trying to scare us into remembering  
961 the names of their products.

962         This abrupt, sometimes shocking change in volume  
963 during advertisements is not a new phenomenon. In fact,  
964 consumer complaints about loud commercials began streaming  
965 into the FCC in the 1960s. At that point, the agency  
966 contended that there was no way to measure the volume level  
967 of commercials but did conclude loud commercials were  
968 contrary to the public interest and should be avoided.  
969 Throughout the next two decades, the Commission launched  
970 several fact-finding proceedings, ultimately concluding that  
971 although technology to measure the volume of commercials now  
972 exists, the perceived loudness of commercials is subjective  
973 and would vary from listener to listener. In 1984, the FCC

974 commented, ``As more is learned about loudness, it is likely  
975 that more sophisticated control devices will be developed and  
976 used by broadcasters. Such actions should begin to eliminate  
977 complaints of objectionable loudness.''

978         25 years later, complaints continue to flood the  
979 Commission. In fact, in the 25 quarterly reports that the  
980 FCC releases on consumer complaints, 21 of them have listed  
981 complaints about loud commercials as among the top consumer  
982 grievances in radio and television broadcasting. We believe  
983 this widespread consumer issue, which has spanned 45 years in  
984 a result of more than just the arbitrary or subjective  
985 perception of consumers. Rather, it is a real consumer  
986 grievance that deserves a new approach in the new era of  
987 digital broadcasting.

988         The current FCC guidance regarding loud commercials  
989 mostly points consumers towards equipment that they can  
990 purchase to stabilize the volume during transition to  
991 commercials. However, not every consumer can afford to  
992 purchase TV sets with smart sound nor should they have to.  
993 Advertisers simply do not have the right to scream at  
994 consumers in their own living rooms and consumers should not  
995 have to pay to experience peace and quiet in the sanctity of  
996 their own home.

997         There are several complexities that accompany this

998 action by the agency. In particular, there are differences  
999 in the compressed audio levels of television shows and  
1000 commercials. While the audio of a television show usually  
1001 matches natural sound more closely, the audio of a commercial  
1002 has less distinction between loud and soft sounds resulting  
1003 in everything seeming much louder. We recommend the FCC  
1004 focus in on this question in particular and develop an  
1005 approach that is consistent with the 1979 Notice of Inquiry.  
1006 In that Notice, the agency concedes that a dynamic range of  
1007 volume is desirable with regard to broadcasting but at some  
1008 point the amount of deviation from that average audio level  
1009 begins to conflict with the public's sensibilities.

1010 Placing a national standard on the loudness of  
1011 commercials is not without an international precedent. In  
1012 fact, the Library of Congress has noted that legislation  
1013 addressing this matter has already been adopted in Australia,  
1014 Brazil, France, Israel, Russia and the United Kingdom. In  
1015 addition, the International Telecommunications Union has  
1016 adopted standards that offer guidance to measure the audio  
1017 levels of different programs.

1018 In conclusion, the CALM Act provides an elegant and  
1019 commonsense solution to finally ending a 45-year consumer  
1020 complaint in the United States. Consumers Union endorses the  
1021 CALM Act as a solid step towards protecting consumers from

1022 unduly loud commercial advertisement, commends Representative  
1023 Eshoo for championing this legislation and urges lawmakers to  
1024 bring this measure forward.

1025           Thank you very much. I look forward to your questions.

1026           [The prepared statement of Mr. Kelsey follows:]

1027 \*\*\*\*\* INSERT 4 \*\*\*\*\*

1028

|

Mr. {Boucher.} Thank you, Mr. Kelsey. Mr. Donovan.

|  
1029 ^STATEMENT OF DAVID L. DONOVAN

1030 } Mr. {Donovan.} Thank you, Chairman Boucher, Ranking  
1031 Member Stearns and members of the subcommittee for the  
1032 opportunity today regarding broadcasters efforts to resolve  
1033 variations in volume between regular programming and  
1034 commercials in digital television. And I also want to thank  
1035 Representative Eshoo for the introduction of the CALM Act.

1036 MSTV is a nonprofit trade association representing  
1037 television broadcast stations across the country. In effect,  
1038 we are the engineering arm of the television broadcast  
1039 industry and our mission is to ensure that American consumers  
1040 have the highest quality, interference-free local television.  
1041 We have been actively involved in the digital television  
1042 transition since the 1980s. Working with the FCC, we helped  
1043 develop the digital TV table of allotments. We helped design  
1044 the digital converter box that is the backbone of the  
1045 transition and we have also been actively involved in dealing  
1046 with the question of loud commercials.

1047 At the outset, MSTV and the broadcast industry want the  
1048 committee to understand that we fully recognize the problem.  
1049 We get it. The future of our business, of digital television  
1050 in particular depends in part, depends in large measure on

1051 consumer satisfaction. Unexpected changes in volume can  
1052 ignore consumers and disrupt the viewing experience. The  
1053 television broadcast industry has every interest in ensuring  
1054 in the digital age that consumers are not subject to such  
1055 frustrations. As a matter of pure economics, we do not want  
1056 to lose viewers. Our revenue depends on viewers watching  
1057 programs and commercials. If viewers skip advertisements or  
1058 shut off their television altogether, we lost revenue.

1059         To this end, I think there is one important element why  
1060 digital is different from analog and it is extremely  
1061 important. The Advanced Television Systems Committee  
1062 standard employs a Dolby 5.1 digital sound system. The  
1063 dynamic range of the system, i.e., the highs and the lows of  
1064 volume allows for theater-quality sound. In fact, digital  
1065 television has more than two times the dynamic range of an  
1066 average analog television set. Consumers who have purchased  
1067 large screen television sets in digital now expect the in-  
1068 home theater experience. Thus, when developing a solution  
1069 for loud commercials, it is important not to impair the audio  
1070 range of those sets that have been purchased.

1071         In many respects you now have motion picture production  
1072 sound quality in the living room. Unfortunately, the noise  
1073 in most of our living rooms have not changed over the years  
1074 so you want to make sure you can enjoy the programs without

1075 having problems with the loud commercials.

1076           And the industry has made significant progress together  
1077 and let me just talk about two things in the context of  
1078 digital. First, the technical parameters are established by  
1079 our primary programming providers. In this regard, the major  
1080 television broadcast networks in effect help create a norm  
1081 for the entire industry and ABC, NBC, CBS and FOX have each  
1082 individually implemented policies in the context of digital,  
1083 policies to attempt to control loud commercials in the  
1084 context of digital television.

1085           Moreover, the entire industry including ABC, NBC, CBS,  
1086 FOX, all local stations began addressing this issue back in  
1087 2007 when the ATSC established the digital loudness subgroup.  
1088 Now, Jim Starzynski, who has worked on that extensively, will  
1089 go into detail. Let me just say here that the progress of  
1090 that subgroup has been remarkable. In many respects, it has  
1091 resolved more issues in the last two years than the  
1092 government was able to solve in decades and we are now on the  
1093 cusp of resolving this issue. Importantly, when ATSC adopts  
1094 its recommended practice it will have the salutary effect of  
1095 providing guidance for all local televisions for local  
1096 advertising, local programming, syndicated programming,  
1097 national spot but also influence both cable and satellite  
1098 systems which have similar technologies.

1099 I would ask the committee to consider just one word of  
1100 caution. This system has been worked on now for nearly two  
1101 years. Engineers by and large are problem solvers. That is  
1102 what they do and we are on the cusp of resolving this issue.  
1103 Our concern with the bill if enacted will send to the FCC for  
1104 one year and require a resolution within one year, in effect  
1105 it creates or may create a jump ball in which once the  
1106 lawyers get involved, you end up starting the process over in  
1107 the context of a regulatory environment. And this may have  
1108 the unintended consequence of actually delaying a solution  
1109 rather than fostering it. Nonetheless, we think the bill is  
1110 important. Certainly the bill has focused our attentions and  
1111 helped accelerate the process but we are concerned that there  
1112 may be some unintended consequences here.

1113 Mr. Chairman, I want to thank you for the opportunity to  
1114 testify before you today and I want to thank Representative  
1115 Eshoo for sponsoring the bill and I am prepared to answer any  
1116 questions you may have.

1117 [The prepared statement of Mr. Donovan follows:]

1118 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1119           Mr. {Boucher.} Thank you very much, Mr. Donovan. Mr.  
1120 Starzynski.

|  
1121 ^STATEMENT OF JIM STARZYNSKI

1122 } Mr. {Starzynski.} Mr. Chairman and Ranking Member  
1123 Stearns, thank you for inviting me to testify in H.R. 1084  
1124 and for the opportunity to discuss how NBC Universal and the  
1125 TV industry generally are addressing the TV loudness issue.

1126 I am here today representing NBC Universal, which I  
1127 serve as principal engineer and audio architect. I have been  
1128 working in the TV industry for 25 years and have focused on  
1129 digital TV for the past 12. I also serve as chairman of the  
1130 subgroup on digital television loudness within the advanced  
1131 television systems committee, the technical standard  
1132 organization for over the air digital TV.

1133 Though digital TV greatly enhances audio quality, if not  
1134 properly managed it also creates the opportunity for  
1135 excessive variations in loudness. This can be especially  
1136 apparent when transitioning from programs to commercials.  
1137 The TV understands and shares the concerns about variations  
1138 in volume levels. We want to give our audience the best  
1139 possible listening experience and we know that experience is  
1140 not currently optimal. Congress has also heightened our  
1141 awareness of the problem and helped galvanize industry action  
1142 on this issue. As a result, we have invested significant

1143 effort and resources in voluntary action to address the  
1144 situation. This hearing is especially timely because we are  
1145 on the cusp of offering a solution.

1146 Our experience at NBC Universal provides an example of a  
1147 possible solution. Early on we recognized that the digital  
1148 transition would require a culture change in our management  
1149 of audio programs and commercials. Whether produced  
1150 internally or obtained from outside suppliers, TV programs  
1151 and commercials come from hundreds of different sources. The  
1152 sheer number and diversity of program sources contribute to  
1153 uneven volume levels unless properly managed. Thus, our goal  
1154 of providing a cinema-quality sound experience also created a  
1155 risk of excessive variation. Fortunately, the ATSC's current  
1156 digital standard as adopted by the FCC incorporates the  
1157 necessary technology to eliminate variation in loudness  
1158 during program to commercial transitions. And although the  
1159 ATSC standard generally applies only to over-the-air  
1160 broadcasting, the standards and technologies used by cable,  
1161 satellite and telecom operators are all closely related.  
1162 Therefore, NBC Universal required our in-house productions,  
1163 external show suppliers and advertising customers to provide  
1164 soundtracks compatible with our in-place ATSC audio  
1165 practices. We require all of our content to be produced and  
1166 delivered at a consistent loudness and we set our broadcast

1167 equipment to properly operate at this loudness level. These  
1168 practices are generally sufficient to ensure consistent audio  
1169 level across NBC programs and networks.

1170 To address content delivered with loudness outside the  
1171 range of our spec, WNBC-DT in New York is about to test new  
1172 technology that will automatically normalize the loudness  
1173 levels. This technology simply adjusts the volume of  
1174 disparate content before transmission much like adjusting the  
1175 sound with a remote control at home. If successful, if the  
1176 test is successful at WNBC, we plan to apply the technology  
1177 to all NBCU television services.

1178 Now, let me discuss the broader issue and the industry  
1179 status. In April of 2007, the ATSC recognized that the  
1180 emerging digital TV loudness problem deserved more attention  
1181 across the industry so it created the ATSC subgroup that I  
1182 chair which is DTV loudness experts from all over the major  
1183 broadcast networks as well as cable, production and  
1184 postproduction, manufacturing and education.

1185 Our goal was to identify the impediments to providing  
1186 good DTV audio at consistent volume levels, then discuss and  
1187 document solutions for those problems. This process  
1188 ultimately led to the development of a recommended practice  
1189 which addresses five areas concerned and those areas are the  
1190 first, contemporary sound measurement. The second,

1191 establishing the correct sound monitoring environment. The  
1192 third is an explanation of how to properly manage DTV's  
1193 metadata element. The fourth is management of dynamic range  
1194 and the fifth, methods to effectively control program-to-  
1195 interstitial loudness or programs to commercials.

1196 This recommended practice is a comprehensive, effective  
1197 and easy-to-read resource that covers all issues from content  
1198 creation through distribution and transmission to the  
1199 consumer experience. This ATSC recommended practice can  
1200 become the roadmap for all TV professionals, no matter their  
1201 industry segment or level of technical sophistication.

1202 In terms of timing, the ATSC recommended practice is in  
1203 final review by the audio experts group and scheduled for  
1204 submission to our parent group in July on the 22nd with  
1205 release of a final document anticipated for September. After  
1206 release of the finished recommended practice, the industry  
1207 will be well-positioned to resolve concerns over TV loudness.

1208 Because the industry is on the cusp of taking action to  
1209 address TV loudness concerns, legislation on this matter is,  
1210 for the moment, inadvisable. Legislation may slow or stall  
1211 widespread implementation of the recommended practice while  
1212 the industry waits for Congressional and subsequent agency  
1213 action. Further legislation might result in sub-optimal  
1214 technical solution or require adherence to a technical

1215 standard that has already become obsolete.

1216 I understand a self-regulatory approach may not provide  
1217 some with the same level of assurance as a legislative  
1218 solution however I can assure you that the industry is  
1219 motivated to act.

1220 Once again, thanks for inviting me to address this  
1221 issue. I would be happy to take your questions.

1222 [The prepared statement of Mr. Starzynski follows:]

1223 \*\*\*\*\* INSERT 6 \*\*\*\*\*

- |
- 1224 Mr. {Boucher.} Thank you, Mr. Starzynski.
- 1225 Mr. {Starzynski.} Thank you.
- 1226 Mr. {Boucher.} Mr. Doyle.

|  
1227 ^STATEMENT OF PETER H. DOYLE

1228 } Mr. {Doyle.} Good morning, Chairman Boucher, Ranking  
1229 Member Stearns and members of the subcommittee. Thank you  
1230 for the opportunity to appear before you today.

1231 I am Peter Doyle and I will be presenting testimony on  
1232 behalf of the Federal Communications Commission. I am chief  
1233 of the media bureau's audio division. My staff and I are  
1234 responsible for all terrestrial radio broadcast station  
1235 licensing.

1236 The Commission authorized the low-power FM radio service  
1237 in January 2000. In establishing the first new radio station  
1238 in more than 30 years, the Commission sought to respond to a  
1239 broad and deep interest in creating outlets for highly local  
1240 radio stations grounded in their communities. 859 LPFM  
1241 stations are currently licensed and operating.

1242 The Commission initially declined to adopt third-  
1243 adjacent channel minimum distance separation requirements.  
1244 They concluded that such requirements would unnecessarily  
1245 restrict the number of LPFM stations and would not cause  
1246 unacceptable levels of interference.

1247 In December 2000, Congress passed the 2001 DC  
1248 Appropriations Act, legislation which directed the Commission

1249 to impose third-adjacent channel protection requirements.  
1250 The media bureau thereafter dismissed 462 applications which  
1251 could not be amended to comply with the Act's spacing  
1252 requirements.

1253 In accordance with the Act, the Commission selected the  
1254 Mitre Corporation to conduct interference tests. Mitre  
1255 delivered its Phase I Report in June 2003. Mitre  
1256 substantially agreed with the Commission's conclusions  
1257 finding that third-adjacent channel LPFM transmissions would  
1258 have little impact on incumbent full-power stations. In  
1259 February 2004, the Commission submitted its report to  
1260 Congress and recommended that Congress eliminate LPFM third-  
1261 adjacent channel requirements.

1262 I would like to make two specific comments about the  
1263 Local Community Radio Act. First, the Commission's FM  
1264 translator licensing experience, since the delivery of the  
1265 2004 report further confirms the agency's initial  
1266 determination that LPFM stations would not cause unacceptable  
1267 levels of interference. The FM translator service has by far  
1268 the most flexible rules to engineer in a low-power FM station  
1269 in a mature radio market. These rules permit an FM  
1270 translator to co-locate with a third-adjacent channel full-  
1271 power station on the basis of a Commission approved, no  
1272 actual interference methodology.

1273           On the other hand, a translator station must cease  
1274 operations if a single listener complaint of actual  
1275 interference remains unresolved. Since 2004, the audio  
1276 division has granted approximately 4,400 new translator  
1277 station licenses with approximately 1,800 of these relying on  
1278 a no-actual interference processing standard with regard to a  
1279 nearby or co-located second or third-adjacent channel  
1280 station, a perfect, real world test of the Commission's FM  
1281 interference prediction methodology.

1282           There has been no discernable increase in interference  
1283 complaints during this licensing process, a substantial  
1284 vindication of the Commission's technical conclusions.  
1285 Accordingly, we remain confident that the impact from LPFM  
1286 stations which generally operate at lower power levels than  
1287 translator stations would be extremely modest.

1288           The second point I would like to make is that the  
1289 failure to repeal current third-adjacent channel requirements  
1290 could significantly restrict the future growth of the LPFM  
1291 service. In 2007, the Commission announced a processing  
1292 policy to consider second-adjacent channel spacing waivers  
1293 from LPFM stations at risk of displacement from encroaching  
1294 full-power stations. Last Friday, the U.S. Court of Appeals  
1295 denied the Broadcasters challenge to this processing policy  
1296 thereby saving approximately 40 stations at risk of

1297 displacement. Enactment of H.R. 1147 would permit the  
1298 Commission to expand this processing policy to permit third-  
1299 adjacent channel waivers.

1300         The audio division currently anticipates enormous  
1301 applicant interest in the next LPFM window. It is difficult  
1302 to develop definitive projections regarding the preclusive  
1303 impact of the 2001 DC Appropriations Act with both applicant  
1304 demand and supply unknown until an LPFM window opens.  
1305 Nevertheless, the audio division has done some research and  
1306 has reached a few general conclusions. Beginning with cities  
1307 of approximately 500,000 or less, our analysis shows that  
1308 current requirements materially limit channels for LPFM  
1309 stations sometimes for closing use of the only channel or  
1310 channels otherwise available for LPFM use. Channels would be  
1311 widely available for communities of less than 50,000 if  
1312 current spacing requirements were eliminated.

1313         The Commission's extensive experience in FM translator  
1314 licensing refutes the claim that elimination of third-  
1315 adjacent channel protection requirements would result in  
1316 pervasive interference. The Commission has twice unanimously  
1317 requested that Congress lift these restrictions. As chief of  
1318 the audio division and on behalf of the division's expert  
1319 engineers who prudently safeguard the technical integrity of  
1320 the radio spectrum and who are responsible for ensuring

1321 interference-free service by over 16,000 FM stations daily, I  
1322 wholeheartedly support that request.

1323           Thank you for the opportunity to testify today. I would  
1324 be happy to answer any questions you may have.

1325           [The prepared statement of Mr. Doyle follows:]

1326 \*\*\*\*\* INSERT 7 \*\*\*\*\*

1327 | Mr. {Boucher.} Thank you, Mr. Doyle. Ms. Beasley.

|  
1328 ^STATEMENT OF CAROLINE BEASLEY

1329 } Ms. {Beasley.} Good morning, Chairman Boucher, Ranking  
1330 Member Stearns and subcommittee members.

1331 My name is Caroline Beasley. I am the executive vice  
1332 president and chief financial officer of the Beasley  
1333 Broadcast Group, a family-owned company which owns and  
1334 operates 44 radio stations in 11 markets. I am testifying  
1335 today on behalf of the National Association of Broadcasters  
1336 where I serve as vice chair of the NAB radio board.

1337 My main message today is that full-power FM stations and  
1338 low-power FM stations can coexist. There is a role for each  
1339 to play within their communities and there is a process in  
1340 place to continue licensing LPFM at the FCC. That being  
1341 said, it is important to maintain interference guidelines  
1342 that protect listeners to both services.

1343 The hallmark of full-power radio broadcasting is service  
1344 to our communities. Broadcasters provide unequalled community  
1345 service and contribute millions of dollars locally through  
1346 direct fundraising, charitable giving and donated airtime.  
1347 We air a wide range of music and entertainment, provide local  
1348 news, act as a lifeline in times of crisis, heighten  
1349 awareness of important issues and inform voters. In times of

1350 emergencies, local radio broadcasters rise to the occasion.  
1351 Local broadcasters will break from regular programming and  
1352 stay on the air to reach the public and share essential  
1353 information.

1354         In 2008, as the wildfire ravaged southwest Florida,  
1355 Beasley responded as five of our stations helped raise funds  
1356 for families that lost homes. When an explosion occurred at  
1357 a sugar refinery in Georgia, a neighboring Beasley station  
1358 acted as a communications center between the public and  
1359 officials dealing with the disaster. The station was flooded  
1360 with offers of help and assistance for victims of the  
1361 explosion. Listeners have come to expect this involvement  
1362 from their local broadcasters and we will always be there for  
1363 them.

1364         In serving our local communities, broadcasters are  
1365 concerned about interference. Simply, a listener that  
1366 experiences interference is a lost listener, one who will  
1367 change the channel and stop tuning in. This is a person we  
1368 may not reach at a critical time during an emergency. The  
1369 engineering study commissioned by the FCC and the subsequent  
1370 recommendations to Congress address the subject of  
1371 interference. The common perception of the report is that  
1372 interference is simply not a problem and the policy should be  
1373 changed. The study however showed that interference did in

1374 fact result from an LPFM station operating on a third-  
1375 adjacent channel. At various test sites, significant  
1376 degradation was found during listening. Some full-power FM  
1377 programs had static. Some were not heard at all and at  
1378 others time a different program could be heard in the  
1379 background. These factors were not present when the LPFM  
1380 test station was turned off but subsequently occurred when  
1381 the LPFM station was turned on.

1382 In view of these findings, the study recommended  
1383 consideration of a formula or a way in which to mitigate the  
1384 interference. The NAB's analysis was that harmful  
1385 interference would be far more prevalent than the  
1386 government's report and our objections to that report were  
1387 documented at length. Moreover, it is significant to note  
1388 that even the government's commission report did not  
1389 recommend a wholesale elimination of third-adjacent channel  
1390 protection. There is a process in place at the FCC for  
1391 approving low-power FMs and to date, 865 stations have been  
1392 licenses. Under existing rules, there is also a great deal  
1393 of capacity remaining for the licensing of additional low-  
1394 power FM stations. Nationwide, there is room for tens of  
1395 thousands of additional LPFMs. This is possible under the  
1396 existing third adjacent channel protection policy.  
1397 Interference is a real concern for local broadcasters and

1398 buffer protections are necessary and make sense.

1399           Any policy discussion to remove third adjacent channel  
1400 protection, should carefully balance interference risks to  
1401 both full-power and low-power FM services. Even with third  
1402 adjacent protections in place, there are examples of harmful  
1403 interference caused by LPFM, stations that are not adhering  
1404 to existing technical regulations. Enforcement remains an  
1405 issue and increasing the chance of interference through a  
1406 policy change affects all listeners and may increase the  
1407 likelihood of a lost listener at a time of need or  
1408 emergencies.

1409           Thank you, Mr. Chairman, for the opportunity to testify  
1410 and thank you, Mr. Doyle, for the chance to discuss your  
1411 legislation. I appreciate your interest in providing greater  
1412 opportunity and diversity in radio and I hope we can work  
1413 together to further that goal.

1414           [The prepared statement of Ms. Beasley follows:]

1415 \*\*\*\*\* INSERTS 8, 9 \*\*\*\*\*

|

1416           Mr. {Boucher.} Thank you very much, Ms. Beasley.

1417 Ms. Leanza.

|  
1418 ^STATEMENT OF CHERYL A. LEANZA

1419 } Ms. {Leanza.} Thank you. Good morning, everyone.  
1420 Thank you for keeping your attention on this long, long  
1421 panel. I really appreciate your time. I know it is a lot of  
1422 information and I am going to try to be brief and hopefully  
1423 interesting for you. I want to thank Chairman Boucher and  
1424 Ranking Member Stearns and members of the subcommittee.

1425 And I am here today to support the Local Community Radio  
1426 Act of 2009, H.R. 1147. First, I want to extend my sincere  
1427 gratitude to Congressman Doyle and Congressman Terry for  
1428 their leadership on this issue, as well as the bipartisan  
1429 group of legislators on this subcommittee for bringing this  
1430 issue forward. In particular, as a quick side note want to  
1431 articulate UCC support for the other bills that are being  
1432 considered this morning and I have a letter with me today  
1433 from 20 media justice organizations in support of Congressman  
1434 Rush's bill.

1435 But I am here to talk about low-power radio. I am going  
1436 to describe the service. I am going to describe the problem.  
1437 I am going to give you a couple of examples. I am going to  
1438 hit the technology for a little bit and hopefully we will get  
1439 out of here with time to spare, at least in my five minutes,

1440 right.

1441           So what is low-power radio? They are small FM stations.  
1442 They are 100 watts. They reach five to seven miles in  
1443 diameter. They are really small. They fit in between the  
1444 cracks and they use spectrum that is not used right now.

1445           We do have 800 stations on the dial. We know something  
1446 about them and there are an incredible diversity of stations.  
1447 I couldn't begin to describe them all to you today but  
1448 encourage you to look at my written testimony and go back  
1449 into your home districts and find out about what is going on  
1450 there because it really is incredible.

1451           But as I said, we are not here today about the stations  
1452 that are on the air. We are about the people who are left  
1453 behind because although we have 800 stations on the air,  
1454 there is one station in the top 50 markets in this country.  
1455 That is 140 million people that have virtually no opportunity  
1456 to hear about low-power radio. Hundreds and thousands of  
1457 organizations are waiting, waiting for Congress to act,  
1458 waiting for this bill to pass. Organizations like Southwest  
1459 Virginia Community College that submitted an application to  
1460 the FCC. Everything was 100 percent right. The previous  
1461 legislation passed and their hopes were smashed away.

1462           In contrast, if we pass this legislation, just about  
1463 every community in this country would get three or four LPFM

1464 stations. They are all waiting for Congress to act to pass  
1465 this bill.

1466 So there are a lot of stories I could tell you about  
1467 low-power radio but since it is June and it is the beginning  
1468 of hurricane season, I am going to talk a little bit about  
1469 some good examples. I want to assure you that although I  
1470 don't know who is going to win the hockey finals this season,  
1471 that LPFM radio is going to win the Stanley Cup overall.

1472 Let me give you some examples, Coalition of Immokalee  
1473 Workers is in central Florida. During Hurricane Wilma they  
1474 saved almost 300 people through their broadcast. What is  
1475 different about this radio station? They don't just  
1476 broadcast in Spanish. They broadcast in indigenous languages  
1477 like Mixe and Zapotec. This is not stuff you hear on the  
1478 radio now. When you get information in your native language,  
1479 it is much easier to respond in an emergency.

1480 Similarly in Hancock County, Mississippi, during  
1481 Hurricane Katrina, QRZ was able to stay on the air. Why?  
1482 They were small enough they could pick up the transmitter,  
1483 move it to higher ground and operate the entire time using a  
1484 car battery. That doesn't happen with regular full-power  
1485 radio.

1486 Finally, I want to tell you about somewhere that they  
1487 wish they had low-power radio, Citrus County, Florida.

1488 During Hurricane Frances, they were desperate for  
1489 information, local information. Well certainly, there was a  
1490 lot of information on the radio about Hurricane Frances in  
1491 that region. It was all emanating out of Tampa and directed  
1492 towards Tampa. The Citrus County officials were so desperate  
1493 for attention that they actually announced in 2004 they were  
1494 going to try to get a low-power radio station but they are  
1495 still waiting. Congress needs to act.

1496         So I need to spend about 60 seconds to make three points  
1497 about the technical issues about low-power radio because you  
1498 keep hearing this is a great service. It is a great idea but  
1499 there are technical problems. I understand that. I  
1500 understand the desire to study but let me make a few points  
1501 to you.

1502         First, we know low-power radio is safe because there are  
1503 thousands of translator stations on the air now run by full-  
1504 power broadcasters that are the same size, the same distance  
1505 apart, exactly the same. In fact, some of them are closer  
1506 than low-power radio stations and they are working fine. Mr.  
1507 Doyle said it in technical terms. I am telling you in  
1508 layman's terms, these are the same. They are on the air.  
1509 They don't cause interference. The only difference between  
1510 those stations and LPFM is who owns them. Are they a member  
1511 of the NAB or are they not?

1512           My second point, we have a 2.2 million Congressionally-  
1513 ordered independent study. Not a government study, not a  
1514 private sector study, an independent study. It confirms all  
1515 of the analysis of many other studies that have come before  
1516 it. I need to say to you today, one of the organizations  
1517 that I am representing is the National Federation of  
1518 Community Broadcasters. They are 200 full-power,  
1519 noncommercial broadcasters on the air. The organization is  
1520 25 years old. They support this service. They support the  
1521 legislation. They care incredibly about signal integrity.  
1522 They would not be here today supporting this legislation if  
1523 there was a danger to the service.

1524           Finally, I need to point out to you that incumbents do  
1525 not have a sterling track record when it comes to technical  
1526 questions about new entrants, whether it was an AM radio  
1527 broadcaster trying to keep out that newfangled FM service in  
1528 the 1930s or it was Ma Bell telling you that it was  
1529 absolutely impossible for you to buy a telephone in the store  
1530 and hook it up to the network without causing the entire  
1531 network to fall down. Incumbents protect their territory and  
1532 this situation is no different. We can certainly study the  
1533 issue to death and we can study it more. We can create an  
1534 entire stimulus package for just studying this issue but  
1535 thousands of stations, thousands of applicants around the

1536 country have been waiting and waiting and we have put a lot  
1537 of resources into it and we know the answer. The record is  
1538 clear.

1539         So in closing, I want to share a quick experience with  
1540 you, one of my favorite parts of working on low-power radio.  
1541 I often get the chance to ask people, what would you do if  
1542 you had a radio station? What would it sound like if your  
1543 community were in control and all of a sudden their eyes  
1544 light up because the wheels in their head are turning. Oh my  
1545 gosh, we would broadcast the local high school football game.  
1546 We would find out what exactly is going on at city council or  
1547 the school board and what about that river on the other side  
1548 of the county? Is that safe? Can my kids walk in it and  
1549 wade in it? And the music, the band down the corner that  
1550 they just heard for the first time that they're sure is going  
1551 to make it, the cherished songs from the homeland that they  
1552 like to share with their children and their grandchildren.  
1553 There is nothing like this on radio today.

1554         So I am bringing with you a potent example of why this  
1555 service is so popular. These are 20,000 signatures. The  
1556 public interest community has collected 20,000 signatures  
1557 only since the end of February, since this legislation was  
1558 introduced this year. This is just the tip of the iceberg.  
1559 These 20,000 people are asking you all to move this

1560 legislation ahead and I hope that you will listen to them.

1561 Thank you for your time and I look forward to answering

1562 your questions.

1563 [The prepared statement of Ms. Leanza follows:]

1564 \*\*\*\*\* INSERTS 10, 12 \*\*\*\*\*

|  
1565           Mr. {Boucher.} Thank you, Ms. Leanza. Thanks to each  
1566 of the witnesses for your testimony here today.

1567           I have two letters that are addressed to me which I am  
1568 going to ask unanimous consent to be placed in the record.  
1569 They are commentary on various items of legislation pending  
1570 before us this morning. Without objection, those will be  
1571 placed in the record.

1572           [The information follows:]

1573 \*\*\*\*\* INSERTS 15, 16 \*\*\*\*\*

|  
1574           Mr. {Boucher.} And, Mr. Doyle, let me begin my  
1575 questions with you with respect to low-power FM.

1576           One of the letters that I just placed in the record is  
1577 from the public radio station that serves the western part of  
1578 the State of Virginia. It serves my congressional district  
1579 and well as two neighboring congressional districts and I  
1580 think Mr. Walden had raised similar kinds of concerns to  
1581 those raised in this letter during the course of his opening  
1582 statement.

1583           This is a public radio station that has a main signal  
1584 and that main signal then is picked up by a whole group of  
1585 translators that are located in our very mountainous region  
1586 and we have two mountain ranges in my congressional district  
1587 alone. And for communities that are down in the valleys that  
1588 are well away from the main signal, these translators are the  
1589 way that public radio service gets propagated out across a  
1590 very large area. And this is the principal public radio  
1591 station for the entire western half of the State of Virginia.  
1592 It probably covers something close to 30 counties. That  
1593 coverage is largely through the translator facilities.

1594           The concern that has been expressed to me comes from  
1595 that public radio station. So in this instance, it is a  
1596 public station that is a bit concerned about opening the

1597 panorama of a potential for more public radio broadcasting,  
1598 in this case truly local broadcasting. Not because they  
1599 oppose it but because they are worried about interference.  
1600 You made brief reference in your statement to which I  
1601 listened very carefully, about the studies that you have done  
1602 relative to translator facilities and I want to ask you to  
1603 amplify on that a bit.

1604         The concern expressed to me is that the translator  
1605 facility receiving a signal from the main broadcast tower is  
1606 getting what is in effect a fairly weak signal because it is  
1607 a long way away, and around that translator facility, having  
1608 to pick up a very weak signal, if there is any local  
1609 interference that interference can materially degrade that  
1610 main signal coming into the translator and effectively impair  
1611 the receipt of this public radio programming through most of  
1612 the serviced territory. And that strikes me as a legitimate  
1613 question if not a legitimate concern so what I am asking you  
1614 is how legitimate is the concern and what have your studies  
1615 shown about the ability of these translators to pick up very  
1616 weak signals if there is any kind of interference in the  
1617 area.

1618         Mr. {Doyle.} Thank you, Mr. Chairman.

1619         Yes, that is a legitimate concern. We do have a rule  
1620 that protects what we call the input signal of a FM

1621 translator station and it is protected in the same way that  
1622 stations signals are protected.

1623       Mr. {Boucher.} So this is a protection that would be  
1624 specific to the translator itself and the area around the  
1625 translator?

1626       Mr. {Doyle.} Right, right, correct.

1627       Mr. {Boucher.} No, I understand.

1628       Mr. {Doyle.} I could look up the rule section number  
1629 for but we do have that in place.

1630       Mr. {Boucher.} What do you conclude about the potential  
1631 for third adjacency low-power FM within the immediate area of  
1632 that translator?

1633       Mr. {Doyle.} Well, that is exactly the qualification,  
1634 within the immediate area of the translator there would be  
1635 the potential for interference.

1636       Mr. {Boucher.} Right and so how do we guard against  
1637 that?

1638       Mr. {Doyle.} Well, we the commission has developed a  
1639 rule to protect stations in that situation.

1640       Mr. {Boucher.} If Mr. Doyle's bill passes, can your  
1641 rule still stand?

1642       Mr. {Doyle.} It is complementary, yes, it would still  
1643 stand.

1644       Mr. {Boucher.} It is complementary.

1645 Mr. {Doyle.} Yes.

1646 Mr. {Boucher.} I would like for you to submit for our  
1647 record if you would, a more detailed explanation of how that  
1648 rule works and answer directly the question of how that rule  
1649 can coexist with Mr. Doyle's bill in the event that it is  
1650 enacted.

1651 Mr. {Doyle.} We would be happy to do that.

1652 Mr. {Boucher.} Okay, thank you.

1653 Mr. Donovan and Mr. Starzynski, you refer in your  
1654 testimony with respect to volume controls on commercials on  
1655 television programs to a forthcoming recommended practice. I  
1656 believe you said that will be forthcoming in September and  
1657 that your practice will address squarely the need to make  
1658 sure that the volume on commercials is not excessive as  
1659 compared to the regular broadcast programming for volumes?

1660 Mr. {Starzynski.} That is right, Mr. Chairman, yes.

1661 Mr. {Boucher.} To what extent do you anticipate that  
1662 this practice will be adopted by television broadcasters once  
1663 it is published and I would ask you to make that projection  
1664 based on whatever past experience you have with similar kinds  
1665 of standards that have been recommended to the broadcast  
1666 industry, Mr. Starzynski.

1667 Mr. {Starzynski.} Oh okay.

1668 Mr. {Boucher.} Or Mr. Donovan, do you want, whoever.

1669 Mr. {Donovan.} I think it is a general matter when you  
1670 have a recommended practice that has gone through the  
1671 industry standard-setting body which is what ATSC is and in  
1672 fact in many instances there is more technical detail in that  
1673 standard than in others that we will refer to such as England  
1674 and other countries.

1675 Mr. {Boucher.} I understand that it will be technically  
1676 detailed but the question is to what extent will it be put  
1677 into practice and adopted by the local broadcasters?

1678 Mr. {Donovan.} I think it will be. I think it clearly  
1679 becomes the norm for the industry and the industry.

1680 Mr. {Boucher.} Is that based on past experience?

1681 Mr. {Donovan.} It is based on past experience as  
1682 working through the ATSC and industry standards.

1683 Mr. {Boucher.} Is there any enforcement to make sure  
1684 that that happens?

1685 Mr. {Donovan.} The enforcement becomes self-enforcing,  
1686 in other words you have.

1687 Mr. {Boucher.} Is there any monitoring that takes place  
1688 to make sure that it is being complied with by those who at  
1689 least in principle adopt it?

1690 Mr. {Starzynski.} Absolutely there is monitoring that  
1691 happens.

1692 Mr. {Boucher.} Who does the monitoring?

1693           Mr. {Starzynski.} We do it internally. I can speak for  
1694 NBC and it happens at the point at which the content comes  
1695 into the building so it gets monitored extensively and the  
1696 thing that it also does is it applies a contemporary  
1697 monitoring device. One, you may remember the FCC said we  
1698 can't go farther with this a whole bunch of years ago because  
1699 we don't have the technology to do it. We have it now so  
1700 that technology is an international standard. It works very  
1701 well and it can't be gamed so there is no issue where you may  
1702 have someone trying to game the system. It really reads it  
1703 and it works the way our ears work this time. It is not  
1704 dealing with just the electronics. It is dealing with  
1705 perceptual levels and we have every reason to apply this and  
1706 to move forward with it because we agree with you, the  
1707 problem is out there. We need to fix it.

1708           Mr. {Boucher.} All right. Well, you have confidence  
1709 that your standard will be followed, that it will be  
1710 monitored, that it can be effective.

1711           Mr. {Starzynski.} Yes, I do. Yes, sir.

1712           Mr. {Boucher.} Thank you for those answers.

1713           Let me take just a moment to address the question of  
1714 payphone rates that are imposed in correctional institutions.  
1715 I am exceeding my time. The chair will be very generous with  
1716 other members in terms of their time to ask questions, also.

1717           Mr. Hopfinger, let me pose a question to you. You have  
1718 heard Mr. Krogh testify that sometimes the successful bidder  
1719 in contracts to provide these telecommunication services to  
1720 inmates will be the bidder who offers the highest commission  
1721 to the correctional authority, not the bidder who offers the  
1722 lowest priced service. Is that correct and if it is correct  
1723 how is that justified?

1724           Mr. {Hopfinger.} Well, Chairman Boucher, I would say  
1725 that today that is not necessarily the case. As the  
1726 sheriffs' associations and the other associations have put  
1727 forth mandates or recommendations that rates for inmates be  
1728 just and reasonable for the inmates and for the people that  
1729 are paying for these calls. I will tell you in the bidding  
1730 systems today the majority of our bids, one of the criteria  
1731 is for low rates but low rates in anticipation with all the  
1732 other safety and security requirements that the system is  
1733 needed. And, Mr. Krogh, mentioned a few States where the  
1734 rates are lower. I will say that in addition to the States  
1735 that Mr. Krogh mentioned, there are additional States where  
1736 rates are in fact coming down and that is as a result of the  
1737 way system is working today.

1738           Mr. {Boucher.} All right. Mr. Krogh, let me ask you to  
1739 respond if you like to the answer Mr. Hopfinger just provided  
1740 and additionally if you would, Sheriff Goad in his testimony

1741 talked about the fact that the commissions that are received  
1742 by correctional authorities are often applied toward services  
1743 for inmates just as rehabilitative services. What is your  
1744 view about whether those services should be financed by the  
1745 commissions on telephone calls as compared perhaps to  
1746 government simply providing through direct appropriations the  
1747 money necessary for those essential services?

1748         Mr. {Krogh.} Yes, Mr. Chairman, it is true just turning  
1749 to Mr. Hopfinger's comments first. It is true that in some  
1750 States the rates have come down as a result of decisions made  
1751 by either the State legislature or correctional authorities  
1752 but the point is that the majority of States, you still have  
1753 and other jails and prison systems, you still have exorbitant  
1754 rates where the bidding system has not been reformed and so  
1755 you have violations of in all these other States, violations  
1756 of the Communications Act because they are charging  
1757 unreasonable rates.

1758         Mr. {Boucher.} Okay. Come to the second part if you  
1759 would.

1760         Mr. {Krogh.} And in terms of the prison welfare  
1761 programs, I really do think that there is no justification  
1762 for imposing a regressive tax on the users of those programs  
1763 which is what the commission rates are. If there is a  
1764 necessary program, it really ought to be funded out of the

1765 budget.

1766 Mr. {Boucher.} Out of the government's budget.

1767 Mr. {Krogh.} Yes.

1768 Mr. {Boucher.} Under which the facility is operating.

1769 Mr. {Krogh.} Yes and I think things that are more

1770 voluntary that are more discretionary really the problem as I

1771 said is that you are taking the choice away from the

1772 prisoners and their families as to whether they would rather

1773 have reasonable rates.

1774 Mr. {Boucher.} That's fine. Thank you very much, Mr.

1775 Krogh.

1776 Mr. {Krogh.} Yes.

1777 Mr. {Boucher.} My time is expired. The gentleman from

1778 Florida, Mr. Stearns.

1779 Mr. {Stearns.} Thank you, Mr. Chairman.

1780 Mr. Kelsey, in your opening statement you had mentioned

1781 that Australia, Brazil, France, Israel, Russia and the United

1782 Kingdom have already adopted legislation to control this

1783 burst of sound that comes from advertisements. How has it

1784 worked, do you know? And first of all, how long ago did they

1785 adopt this legislation? How long ago did they adopt it?

1786 Mr. {Kelsey.} I believe most of the countries in the

1787 last few years and I highlight in particular in Australia,

1788 the trade group that represents the broadcasters there went a

1789 step further and offered technical assistance to broadcasters  
1790 and many in Australia and UK's law in particular are very  
1791 similar to the measure that Representative Eshoo has put  
1792 forth.

1793 Mr. {Stearns.} Okay. And have they been successful?

1794 Mr. {Kelsey.} I don't know that. I can get back to  
1795 you, yeah.

1796 Mr. {Stearns.} Mr. Starzynski, so the argument is okay  
1797 we have adopted legislation, we don't know if it will solve  
1798 the problem. It is similar to what the gentlelady from  
1799 California has authored. So the question is when would you  
1800 think that you would have the solution here, you said  
1801 September?

1802 Mr. {Starzynski.} Well, we have the recommended  
1803 practice that will be voted on by the membership this summer  
1804 and released in September. We think that will go well and  
1805 that is through the ATSC and we have got a lot of technology  
1806 happening as we speak. I cited some new technology we are  
1807 putting on the air at WNBC. Hopefully, fingers crossed,  
1808 within the next couple of days that will apply a technical  
1809 solution to the problem without having the creative folks who  
1810 are very concerned about the quality of the sound get back to  
1811 us with kind of a backlash and us altering their sound. So  
1812 technology has gotten us to a point where we can apply good

1813 loudness practices but not alter the creativity of our  
1814 suppliers.

1815         Mr. {Stearns.} Well, the gentlelady's legislation has  
1816 urged you on here and given a little bit more incentive to do  
1817 it.

1818         Mr. {Starzynski.} There is no question that it has.  
1819 The awareness level in the industry right now is tremendous.

1820         Mr. {Stearns.} And with that in mind, perhaps the way  
1821 to solve this problem is because Mr. Kelsey is saying these  
1822 countries adopt it but they couldn't do anything without the  
1823 technical advice of people like yourself, so the legislation  
1824 might pass but nothing is going to happen without you folks.  
1825 So you folks are on the issue right now so it looks like you  
1826 are ready with a solution and then that would be sometime  
1827 this year you would have a solution and then we could assume  
1828 that would be promulgated throughout the broadcast industry?

1829         Mr. {Starzynski.} That is right as I have said before.

1830         Mr. {Stearns.} And what assurance would we have that  
1831 after you have the solution that everybody would adopt it

1832         Mr. {Starzynski.} With the level of awareness that we  
1833 have right now and we are all--we are not disputing the fact  
1834 that there is a problem out there. We all know it. We want  
1835 to fix it.

1836         Mr. {Stearns.} No, no, but the question is after you

1837 have a solution, how soon would everybody adopt your solution  
1838 and what assurance would we have that they would without  
1839 legislation?

1840 Mr. {Starzynski.} The assurance is they definitely want  
1841 to solve the problem and to answer your timeframe on this.

1842 Mr. {Stearns.} Yes.

1843 Mr. {Starzynski.} It is going to vary based on the  
1844 sophistication of the broadcast group or the operator that  
1845 you are speaking about. In terms of NBC Universal with all  
1846 of our resources, we have been able to attack this for the  
1847 past couple of years directly but it is taking us a little  
1848 while to get there because we require technology to let us do  
1849 it. And you also need to understand the proper ways to apply  
1850 the standard. I think that the rollout will be a little bit  
1851 different across the board as it pertains to different levels  
1852 of sophistication in the industry only because of budgets and  
1853 that kind of thing but the key to all of it now is we have a  
1854 roadmap that will be in place to help everyone out with this  
1855 and there is no more ambiguity.

1856 Mr. {Stearns.} Okay. So if you were writing this  
1857 legislation, you say okay give us a little hiatus here. How  
1858 long before we can say okay you haven't done anything. We  
1859 are going to pass this legislation.

1860 Mr. {Starzynski.} Oh, I hope that it never comes to

1861 that. I hope that what happens you find that we self-  
1862 regulate this and, you know, somebody said this before and I  
1863 think it is really true, engineers want to solve problems and  
1864 I think the experts are on it and they want to solve this  
1865 issue for you guys for all of America.

1866 Mr. {Stearns.} Okay. Mr. Doyle and Ms. Beasley, the  
1867 question is that the FCC went out and hired an independent  
1868 contractor, the Mitre Corporation, to determine if there was  
1869 harmful interference. If low-power FM stations don't cause  
1870 harmful interference is what basically this independent  
1871 report said, then the question is why do we need section five  
1872 of the bill which requires the FCC to retain third adjacent  
1873 channel protection for full-power, noncommercial FM stations  
1874 that broadcasting services via a sub-carrier frequency. So I  
1875 mean if you have an independent report that says it is no big  
1876 problem, why would we need section five? I mean you dispute  
1877 the independent Mitre disputed?

1878 Ms. {Beasley.} We believe that there are flaws within  
1879 the Mitre report?

1880 Mr. {Stearns.} Do you have an independent report of  
1881 your own.}

1882 Ms. {Beasley.} The industry has provided a report that  
1883 outlines the flaws in the Mitre report.

1884 Mr. {Stearns.} Okay.

1885 Ms. {Beasley.} That being said if I may go on.

1886 Mr. {Stearns.} Oh sure.

1887 Ms. {Beasley.} My report, I am not an engineer but  
1888 based on my understanding the Mitre report reviewed seven  
1889 sites and we can just take away two of the sites if you will  
1890 because one site was related to a reading service and one  
1891 task related to translators so there were five other sites  
1892 and there was significant interference found at these five  
1893 sites relative to Walkmans and boom boxes. Now, Ms. Leanza,  
1894 referred to south Florida stations, people, you know, going  
1895 through, riding through hurricanes if you will. I am from  
1896 south Florida. I was there.

1897 Mr. {Stearns.} I understand.

1898 Ms. {Beasley.} I was there when Hurricane Wilma was and  
1899 as well as Hurricane Charley and it is important to note that  
1900 people do not go out and they don't listen to their car  
1901 radios.

1902 Mr. {Stearns.} No, I understand the case. I  
1903 understand. We are just trying to understand if the FCC has  
1904 an independent contractor that says there is no big problem  
1905 why suddenly you are disputing it.

1906 Ms. {Beasley.} Well we do and it is on record that we  
1907 have and there is a report.

1908 Mr. {Stearns.} Okay. Let me just go then.

1909 Mr. {Doyle.} Excuse me, could I provide some FCC input  
1910 into this?

1911 Mr. {Stearns.} Sure, Mr. Doyle.

1912 Mr. {Doyle.} Radio reading services are delivered on  
1913 sub-carrier frequencies. These tend to be more fragile than  
1914 the main transmission and in fact the Mitre report did find  
1915 limited amount of interference to the sub-carriers that a  
1916 radio reading service would be carried on. And the  
1917 commission, on it's own in developing these rules imposed  
1918 this requirement on low-power stations to ensure that this  
1919 vital service would not be degraded by low-power stations.

1920 Mr. {Stearns.} Thank you. Mr. Krogh, I guess a  
1921 standard question in this issue is it a constitutional right  
1922 for an inmate to have access to a phone? Is that yes or no?  
1923 I don't know. Does an inmate have to have access to a phone,  
1924 just yes or no, do you know?

1925 Mr. {Krogh.} I--that really hasn't played a role in the  
1926 FCC proceedings and so I don't really don't have a answer on  
1927 that.

1928 Mr. {Stearn.} Okay. And is it the right that they have  
1929 to have rates that are low? I mean I think we would all like  
1930 them have rates but it is, you know, generally when I go out  
1931 to buy something it is what the market will bear and so what  
1932 we are doing as the government is dictating that the rates

1933 have to be low to give inmates this right to have access to  
1934 the phone. The families don't have to accept these collect  
1935 calls. They can come in and see them or perhaps if they are  
1936 geographically a long ways away perhaps they could restrict  
1937 their calls because if you make it a lot cheaper they are  
1938 going to call more and perhaps it might even be the same  
1939 rate. So this \$400, this \$395 a month you talk about, if the  
1940 rates a lot cheaper, perhaps they are going to make more  
1941 calls and they will still rack up to \$395 so at some point  
1942 somebody is going to have to make a consumer decision we  
1943 don't want to pay this.

1944 Sheriff Goad, your argument is basically that you use  
1945 these excessive funds for rehabilitation and services to help  
1946 the inmates. In your opinion, I think the chairman touched  
1947 on it, do you believe that the government should provide  
1948 these or do you think that it should be done the way you are  
1949 doing it?

1950 Sheriff {Goad.} Well, I think it should be done the way  
1951 we are doing it. I think in these hard economic times we are  
1952 constantly being cut on budgets. We find that these funds  
1953 allow us to provide many of these indigent inmates with the  
1954 services they need along with undergarments, socks, Bibles.

1955 Mr. {Stearns.} Your biggest argument I thought was the  
1956 security.

1957 Sheriff {Goad.} Yes.

1958 Mr. {Stearns.} When you talked about that you are  
1959 saying if these somehow the government stepped in and  
1960 prevented you from having the rates that you feel are  
1961 appropriate then you would not be able to provide the survey,  
1962 the recording, the watch on terrorists lists and things like  
1963 that.

1964 Sheriff {Goad.} Correct, criminal investigations.

1965 Mr. {Stearns.} Criminal investigations which is part of  
1966 our national security.

1967 Sheriff {Goad.} Absolutely.

1968 Mr. {Stearns.} And depending upon the inmate, whether  
1969 he is there for the severity of the crime would impact how  
1970 much attention you have to do for that inmate and his  
1971 telephone call.

1972 Sheriff {Goad.} Yes, sir, they even circumvent some of  
1973 our phone systems where they actually do three-way calling.  
1974 They will call someone outside the facility, get several  
1975 people on lines, a party call and proceed to conduct business  
1976 as usual.

1977 Mr. {Stearns.} Yeah, a lot of these calls are not shall  
1978 we say, felicitous calls. These are calls with intent to  
1979 perhaps commit more crime or to do witness tampering and  
1980 things like that, is what you are saying.

1981 Sheriff {Goad.} Correct, we have had intimidation of  
1982 witnesses. We have also had other crimes.

1983 Mr. {Stearns.} You have got to have the funds to do  
1984 that security survey in effect or we are really putting our  
1985 citizens at danger.

1986 Sheriff {Goad.} Yes, sir, that is correct.

1987 Mr. {Stearns.} Okay. All right. Thank you, Mr.  
1988 Chairman.

1989 Mr. {Weiner.} [Presiding] Just to yield myself a brief  
1990 moment or two just to clarify a couple of things on the  
1991 record.

1992 This notion of a free market, I don't know who can  
1993 answer this. A free market, will that dictate that if  
1994 someone has a calling charge, collect call charge 630 percent  
1995 higher than the market, tell me a little bit about what the  
1996 family can do to shop around for a lower rate when someone is  
1997 making a collect call to them from a prison. Perhaps, Mr.  
1998 Krogh, maybe you can explain how the free market works in  
1999 this instance.

2000 Mr. {Krogh.} Well, there is no free market in prison  
2001 calling. There is the exclusive service provider who  
2002 provides all the call and you have no choice and so because  
2003 of that if we are going to continue with exclusive service  
2004 contracts, the rates have to be regulated. The FCC has broad

2005 authority to regulate interstate telecommunications including  
2006 and there are no exceptions for prisoners. Section 201(b) of  
2007 the Act requires that rates be just and reasonable with no  
2008 exceptions and the families who are paying for these collect  
2009 calls should have the benefit of that Federal Law as much as  
2010 anyone else.

2011 Mr. {Weiner.} Right. I think that most members of this  
2012 committee and apparently the gentleman from Florida would  
2013 agree that we should have the free market. Let's let market  
2014 forces be brought to bear. Let's let more than one operator.  
2015 Let's let 800 numbers function and I think that that is the  
2016 point.

2017 Mr. Doyle, you are recognized for five minutes.

2018 Mr. {Terry.} Parliamentary inquiry. Don't we go back  
2019 and forth?

2020 Mr. {Weiner.} Certainly, we do.

2021 Mr. {Terry.} Well, you just spoke.

2022 Mr. {Weiner.} Was that a line of questioning? I  
2023 thought it was just a point of clarification.

2024 Mr. {Terry.} I think he asked his question.

2025 Mr. {Weiner.} If the gentleman insists, the gentleman  
2026 from Nebraska is recognized for five minutes.

2027 Mr. {Terry.} Thank you. Let me start with the three on  
2028 this side and just work down the table. Let me just give an

2029 editorial comment more than a question and certainly I think  
2030 the least sympathetic characters are the ones that are in  
2031 prison but there is something distasteful about taking  
2032 advantage of them, too, which I think is the underlying  
2033 premise for this act. Mr. Hopfinger, you made a good point  
2034 and that sheriff, that there are security concerns and  
2035 technologies that have to be woven in here that add to the  
2036 expense. I think that is extremely fair and a good point. I  
2037 guess the issue is then how much of a gap is there when you  
2038 add in the cost of this additional technologies where it is  
2039 just becoming the in essence, I guess, the slush fund for the  
2040 jails or the prisons. Mr. Krogh, I will give you about 15  
2041 seconds because I got a couple of other things.

2042 Mr. {Krogh.} Yes, I think Mr. Hopfinger has been unduly  
2043 modest. I would like to put in a plug for Securus. Securus,  
2044 for example, in Florida is able to provide collect calling,  
2045 interstate collect calling for 4 cents a minute plus a  
2046 connection charge of \$1.20 which is equivalent to 14 cents a  
2047 minute for a 12-minute call and they do that elsewhere so  
2048 they can do it. They can cover all of the these expensive  
2049 security functions and all the other monitoring and  
2050 everything else that they have been talking about at those  
2051 very reasonable rates. Plus, in Florida, they are paying out  
2052 of that low rate, a 35 percent commission. So in Florida you

2053 can have it all.

2054 Mr. {Terry.} All right. Well, I will take my time back  
2055 and I will just say I think this does a raise a concern and  
2056 my message back to Sheriff Goad is perhaps to communicate  
2057 that you have been on a conservative, pro-justice side, there  
2058 is concerns about the telephone rates.

2059 The next group on audio sound, it is a real concern.  
2060 You guys know that. Mr. Starzynski, close enough. I will  
2061 follow up on Cliff's notes, the public demands this. They  
2062 want action from us so the message back, Mr. Donovan, is and  
2063 to you, is and NAB and everyone else that is involved in  
2064 here, the sooner the better. If this doesn't get cleared up,  
2065 if you guys will vote and address this issue in September.  
2066 If we come back here this same time next year and most of the  
2067 TV stations haven't resolved this, this is going to pass.  
2068 That is my message to you. In our household it is so  
2069 annoying that the habit that we have is when the commercials  
2070 come on we just hit mute, not because we don't want to hear  
2071 the commercial but the decibel level goes up significantly.

2072 Mr. {Starzynski.} Right and that is not a good place  
2073 for us to be.

2074 Mr. {Terry.} And that is not a good place. It is self-  
2075 defeating.

2076 Mr. {Starzynski.} Right.

2077 Mr. {Terry.} Last, let us go to my major issue with Mr.  
2078 Doyle and, Mr. Doyle, who is no relation to the author of  
2079 this bill, just that I would.

2080 Mr. {Doyle.} That is correct. My side is not really  
2081 good at breeding that much so we.

2082 Mr. {Terry.} Too much information but there was a  
2083 suggestion that in the Mitre study not only was it the  
2084 reading but five of seven of the other sites had  
2085 interference? That is not my understanding. Is that  
2086 accurate?

2087 Mr. {Doyle.} The Mitre study showed that if we threw  
2088 out one outlier case that there was no interference at  
2089 distance for LP hundred stations, your basic low-power  
2090 station at distances greater than 333 meters. That  
2091 interference became common under 250 meters and severe within  
2092 100 meters of the LPFM transmitter site. It has never been  
2093 the commission's position that there would be no interference  
2094 but as I tried to explain in my test imony, we have ample  
2095 experience with translators to figure out how to make this  
2096 work.

2097 Mr. {Terry.} All right.

2098 Ms. {Leanza.} Mr. Terry, would you mind if I just?

2099 Mr. {Terry.} You have 21 seconds.

2100 Ms. {Leanza.} The area of interference we are talking

2101 on the ground of a low-power radio station, we are talking  
2102 .0013 of the geographic area of a full-power radio station so  
2103 tiny area. If you are next door to a low-power radio station  
2104 in the same building as a low-power radio station, you might  
2105 not be able to hear one of the radio stations. Other than  
2106 that, there is not an issue.

2107 Mr. {Weiner.} The gentleman from Pennsylvania, Mr.  
2108 Doyle, is recognized for five minutes.

2109 Mr. {Doyle of Pennsylvania.} Thank you. Mr. Doyle, and  
2110 we are not related for the record. So 10 years ago the  
2111 committee heard the fears from broadcasters that if the FCC  
2112 license these low-power FM stations on third adjacent that  
2113 the dial was going to be drenched in oceans of interference.  
2114 So when we passed the Radio Broadcasting Preservation Act on  
2115 an appropriations rider, Mr. Doyle, I take it to mean that  
2116 all low-power FM broadcasting has stopped on those third  
2117 adjacent frequencies?

2118 Mr. {Doyle.} Well, yes and no. We certainly have  
2119 carefully followed the directions from Congress and not  
2120 licensed so-called low-power FM stations. On the other hand,  
2121 what I have tried to explain is that FM translators are  
2122 technically indistinguishable from low-power FM stations and  
2123 that for example, in the chairman's own district, the station  
2124 he was concerned about, eight translator stations operate

2125 without effective breach.

2126           Mr. {Doyle of Pennsylvania.} Right and I am looking at  
2127 page five of your testimony where the FCC says there is 1,800  
2128 of these translators already broadcasting right now on the  
2129 same frequencies that there noncommercial groups want to  
2130 broadcast on, is that correct?

2131           Mr. {Doyle.} Well, most of these translators are  
2132 actually in the non-reserved band, the 92 to 108 as opposed  
2133 to the 88 to 92 part where noncommercial stations simply  
2134 broadcast. Most low-power licensing has occurred in the part  
2135 of the band where there are not noncommercial stations.  
2136 There are some but by and large, that is not the problem.

2137           Mr. {Doyle of Pennsylvania.} But we have translators on  
2138 third adjacent?

2139           Mr. {Doyle.} Absolutely.

2140           Mr. {Doyle of Pennsylvania.} Okay. So, Ms. Beasley,  
2141 does your organization or are you personally, are you  
2142 advocating for the elimination of these translators?

2143           Ms. {Beasley.} We do not have or use translators within  
2144 our company so it is the NAB's position that it is my  
2145 understanding that full-power FM stations use translators for  
2146 fill-in to cover the mass.

2147           Mr. {Doyle of Pennsylvania.} But NAB is not advocating  
2148 that we eliminate translators and do you think these

2149 translators cause oceans of interference?

2150 Ms. {Beasley.} I can't speak to that because I  
2151 personally do not, we do not have translators.

2152 Mr. {Doyle of Pennsylvania.} I don't think that is the  
2153 NAB's position. I guess, Ms. Leanza, who owns and operates  
2154 the translators?

2155 Ms. {Leanza.} By and large, most full-power  
2156 broadcasters have some sort of translators. It depends on  
2157 what type of service they are providing.

2158 Ms. {Beasley.} We do not.

2159 Ms. {Leanza.} Right, not no, certainly you don't but  
2160 many, many do. It is a widespread use. It is not an  
2161 atypical, unusual use.

2162 Mr. {Doyle of Pennsylvania.} So if they don't cause  
2163 interference and they are technically identical and these  
2164 translators don't have some special magical power to work  
2165 then surely these translators must be less powerful than an  
2166 LPM broadcast.

2167 Mr. Doyle, full-power FM stations sometimes run up to  
2168 100,000 watts, while a noncommercial FM station can run up to  
2169 100 watts so I am assuming these translators must be less  
2170 powerful than that. How powerful are these translators that  
2171 don't cause interference when they are at third adjacent from  
2172 another station?

2173           Mr. {Doyle.} Our rules permit a translator up to 250  
2174 watts.

2175           Mr. {Doyle of Pennsylvania.} 250 watts so two and a  
2176 half times more powerful than any LPFM station so what you  
2177 are telling me is and I hope my colleagues will listen to  
2178 this, is that what we call a rose by any other name would  
2179 smell as sweet but when it comes to FCC and the big  
2180 broadcasters this name is critical. Translators that serve  
2181 the interest of big broadcasters work just fine on these  
2182 third adjacent channels and there is no complaints and no  
2183 issues about interference but when a low-power station run by  
2184 community groups, schools, churches, local governments cause  
2185 interference, somehow in the same adjacent channel these  
2186 somehow cause interference. I just hope once and for all we  
2187 can sort of eliminate this doubletalk that has been taking  
2188 place for years.

2189           I want to talk about interference, too. Now, Ms.  
2190 Beasley, in your statement you referenced the Mitre report  
2191 and you said that there was interference caused by low power  
2192 FM stations. I read that study and in the most extreme  
2193 circumstance it was found that the interference was .13  
2194 percent of the population inside the protected zone of a  
2195 full-power station. Just for my note now, you find that to  
2196 be an unacceptable level of interference?

2197 Ms. {Beasley.} What I read last night was there was  
2198 significant degradation at these five sites when you are  
2199 testing with boom boxes and Walkmans.

2200 Mr. {Doyle of Pennsylvania.} .13 percent but you found  
2201 that, you think that is unacceptable?

2202 Ms. {Beasley.} It is significant such that well if you  
2203 can't get a signal, if you can't hear the programming, if  
2204 there is static and if you are operating when there is a  
2205 hurricane going through your area and we are providing  
2206 information to the masses and we, yes.

2207 Mr. {Doyle of Pennsylvania.} So I take that as a yes,  
2208 okay. I am curious I see that the NAB has pushed for  
2209 allowing broadcasters to put HD radio stations next to and  
2210 along with their analog broadcast but the engineers found  
2211 that an average of .6 percent of the population inside the  
2212 protected zone could have their listening effective. Now,  
2213 that is not a worse case scenario like low-power's .13  
2214 percent. That is an average finding .6 percent, so that is a  
2215 lot more interference than the low-power stations would cause  
2216 even in a worse case scenario.

2217 So, Mr. Doyle, let me make sure I understand this  
2218 correctly. The NAB has endorsed this .6 level of  
2219 interference as acceptable for HD radio?

2220 Mr. {Doyle.} I don't really understand.

2221 Mr. {Doyle of Pennsylvania.} Has the NAB filed a  
2222 request to multiply the power of these digital signals by  
2223 1,000 percent?

2224 Mr. {Doyle.} No, they asked to increase it by tenfold  
2225 from 1 percent to 10 percent of the analog power level. The  
2226 issue there, Mr. Doyle, I think is different. That is a  
2227 question of digital into analog and I am not sure that it  
2228 correlates to the analog into analog technical dispute that  
2229 is your bill is focused on.

2230 Mr. {Doyle of Pennsylvania.} So let me ask you one  
2231 final question, Mr. Doyle. You are the expert at the FCC.  
2232 You have studied this issue backwards and forwards. Twice  
2233 the FCC and bipartisan votes have recommended that Congress  
2234 lift this prohibition of third adjacent channel. Do you  
2235 think that passing this bill will in anyway hurt public radio  
2236 stations like my friend, Mr. Walden, is concerned about or  
2237 this will cause any interference of a major proportion  
2238 outside that 100-foot zone that you thought? I mean what  
2239 basically happens so that finally communities like mine who  
2240 can't get LPFM, can't get an LPFM station in the City of  
2241 Pittsburgh. There are a lot of places in this country, 140  
2242 million people don't have access to this valuable service  
2243 because of this rule which apparently doesn't seem to cause--  
2244 do you see any harmful effects by allowing us to use third

2245 adjacent for LPFM?

2246 Mr. {Doyle.} The commission's judgment was not that  
2247 there would be no interference. It was that the interference  
2248 would be tightly limited to the immediate environment of the  
2249 LPFM transmitter site and looking at the significant benefits  
2250 of an expanded LPFM service, decided that the benefits far  
2251 outweighed the very, very limited interference that would  
2252 occur typically within 100 or 200 meters of the LPFM  
2253 transmitters.

2254 Mr. {Weiner.} Thank you, Mr. Doyle

2255 Mr. {Doyle of Pennsylvania.} Thank you very much.

2256 Mr. {Weiner.} Mr. Walden is recognized for five  
2257 minutes.

2258 Mr. {Walden.} Thank you very much, Mr. Chairman.

2259 Mr. Doyle, I had a question for you. Do LPFM applicants  
2260 have priority on frequency over existing translators?

2261 Mr. {Doyle.} LPFM has priority over no one right now.  
2262 The priority relationship between translators and LPFM  
2263 stations is a first-come, first-served rule so they are  
2264 coequal so that today.

2265 Mr. {Walden.} So one can't bump the other?

2266 Mr. {Doyle.} That is correct.

2267 Mr. {Walden.} Okay. Talk to me about the requirements  
2268 on LPFM. Do they have to have a main--do they fall under the

2269 main studio rule?

2270 Mr. {Doyle.} They do not have a main studio rule. They  
2271 must be local. We don't have staffing requirements for them.  
2272 We don't have public inspection files.

2273 Mr. {Walden.} So they are--I want to go back to that.  
2274 So low-power FM, do they have a requirement to serve their  
2275 community like commercial broadcasters do and how do they  
2276 identify their compliance with that if they don't have a  
2277 public file or a main studio? What does the FCC require?

2278 Mr. {Doyle.} Well, every station must be license must  
2279 be held by a local community organization.

2280 Mr. {Walden.} Understood.

2281 Mr. {Doyle.} It must be operated on a noncommercial  
2282 basis.

2283 Mr. {Walden.} And how do you monitor that point because  
2284 I have heard from people that they are out basically selling  
2285 advertising. Are they allowed to do that?

2286 Mr. {Doyle.} No, they are.

2287 Mr. {Walden.} And do you take enforcement actions?

2288 Mr. {Doyle.} Not my division directly.

2289 Mr. {Walden.} Could you provide me with enforcement  
2290 actions you have taken and complaints you have received, for  
2291 the record?

2292 Mr. {Doyle.} We would be very happy to do so and there

2293 have been some related to violations of our underwriting rule  
2294 so you are correct on that.

2295 Mr. {Walden.} I thought so. I want to go back though  
2296 as a citizen I have the right to go into any commercial radio  
2297 station. I assume public broadcast, as well, and look at  
2298 their public file to see how they are addressing the issues  
2299 that are important to their community. What is the  
2300 requirement for an LPFM? What is my right as a citizen to go  
2301 in and see what they have identified as their community  
2302 issues and how they are addressing them? Do I have right to  
2303 a public file?

2304 Mr. {Doyle.} When the commission created this service  
2305 they decided that it would work best with very limited  
2306 reporting and filing responsibilities and they do not have.

2307 Mr. {Walden.} Do they have to do community  
2308 ascertainment? Do they have to decide what is important to  
2309 their community?

2310 Mr. {Doyle.} No, but certainly.

2311 Mr. {Walden.} Okay.

2312 Mr. {Doyle.} Like every other station, every eight  
2313 years their license comes up for renewal and the public is  
2314 welcome to comment on whether the station is operating in the  
2315 public interest.

2316 Mr. {Walden.} And that public interest though for other

2317 broadcasters, that is pretty well spelled out. They have to  
2318 serve their community, right? So you are telling me these  
2319 LPFMs don't have to serve their community? How do I know? I  
2320 mean they don't have to identify?

2321 Ms. {Leanza.} They have the same obligations.

2322 Mr. {Walden.} Oh, they do. So they do have a public  
2323 file requirement?

2324 Ms. {Leanza.} There is not a public file.

2325 Mr. {Walden.} And they have a main studio requirement  
2326 where I can go in and look?

2327 Ms. {Leanza.} But they are licensed also under the  
2328 Communications Act. They have an obligation to serve the  
2329 public.

2330 Mr. {Walden.} I don't think your mike is on, by the way  
2331 as an old radio guy, or just get real close to it. So but I  
2332 am trying to get to this point of they can come into--the  
2333 public can go into any radio, commercial or public broadcast  
2334 station and look in the public file. My question is do LPFMs  
2335 have to have a public file?

2336 Ms. {Leanza.} Currently, under the rules, they do not.

2337 Mr. {Walden.} And do they have to identify what the  
2338 issues of concern are in their community and address those  
2339 issues?

2340 Ms. {Leanza.} They do generally speaking because they

2341 are subject to the same public interest standard that all  
2342 broadcasts are subject to.

2343 Mr. {Walden.} So, Mr. Doyle, is that correct? They  
2344 have to identify community interests on a quarterly basis and  
2345 speak to how they address them or not?

2346 Mr. {Doyle.} The quarterly issues program requirement  
2347 does not apply to low-power stations.

2348 Mr. {Walden.} So how do you ever measure them when it  
2349 comes up to license renewal whether they have served their  
2350 community? What is the standard you apply?

2351 Mr. {Doyle.} Well, while listeners would not have the  
2352 ability to review a station's issues programs list, they have  
2353 the same opportunities as listeners of any station to come to  
2354 the commission with their concerns about the programming that  
2355 they have heard on the station during the prior license term.

2356 Mr. {Walden.} Are the LPFMs required to have the  
2357 Emergency Alert System capabilities too to notify their  
2358 listeners in the event of an emergency?

2359 Mr. {Doyle.} They do have an EAS requirement.

2360 Mr. {Walden.} Okay. And they are not a priority  
2361 station, though I assume?

2362 Mr. {Doyle.} I don't think any.

2363 Mr. {Walden.} None are primaries. Okay. All right.

2364 Ms. {Leanza.} But they do most of them are setup

2365 automated so they can transmit through that signal  
2366 automatically at any time.

2367 Mr. {Walden.} Yeah, they are allowed to do unattended  
2368 operation as well, right? Is there any requirement of local  
2369 programming on those LPFMs or could they just download  
2370 satellite programming and rebroadcast it?

2371 Mr. {Doyle.} Our licensing criteria favor those  
2372 stations that pledge to do at least eight hours of locally  
2373 originated programming but there is no local program  
2374 origination requirement.

2375 Mr. {Walden.} All right. Thank you.

2376 Ms. {Leanza.} That there is on any other station.  
2377 There is not such obligation.

2378 Mr. {Walden.} Thank you, Mr. Chairman.

2379 Mr. {Weiner.} Thank you. Mr. Rush, there is less than  
2380 a minute left on the clock on the floor. Would you like to  
2381 try to squeeze in now or do you just want to be the first  
2382 when we come back? We are going to recess until about 12:25.  
2383 I appreciate your patience when we do promptly. There is  
2384 nine of you. Maybe you can go play baseball or something.  
2385 The committee is in recess until approximately 12:30.

2386 [Recess.]

2387 Mr. {Weiner.} The committee has returned from recess.  
2388 The gentlewoman from California is recognized for five

2389 minutes.

2390 Ms. {Eshoo.} I thank the chairman. It is nice to see  
2391 you in the chair and I apologize both to committee members  
2392 and to the witnesses that are here today, especially those  
2393 that have an interest in the CALM Act which I am the author  
2394 of. I have three places that I needed to be at the exact  
2395 same time today and all of them important, so I apologize for  
2396 being late. I would like to submit my opening statement for  
2397 the record.

2398 Mr. {Weiner.} We have got to get you one of those  
2399 translator devices they were talking about. You can be  
2400 everywhere at once.

2401 Ms. {Eshoo.} Yeah, I would like to submit my statement  
2402 for the record and I would like to take this opportunity to  
2403 thank not only members of the committee that are cosponsors  
2404 of the CALM Act but also point to Chairman Boucher because he  
2405 has had a commitment to the bill and we wouldn't be a part of  
2406 this hearing, this bill would not be part of the hearing  
2407 today.

2408 I think unless someone has said this, this is the bill.  
2409 It is essentially a one-page bill. This is not complicated  
2410 and while I don't think I need to reemphasize why the change  
2411 is needed, it is worth saying that I think consumers have  
2412 waited too long for this change to be made.

2413 I am thrilled that there is technology and the  
2414 confidence that there is technology that will address this.  
2415 I come from the technology capital of the United States of  
2416 America, Silicon Valley. I have no doubt that technology can  
2417 take care of this and the technologists need to work hand-in-  
2418 hand with the FCC. You are ready to go. This bill passes  
2419 and is signed into Law, then you will have a key role in  
2420 that. I don't find the bill menacing, most frankly, because  
2421 all it does is instruct the FCC within a year of enactment to  
2422 come up with a solution.

2423 There were hearings in the '60s. There were hearings in  
2424 the '70s. There were hearings in the '80s. It is now the  
2425 21st century. There is no reason for people to have to hit  
2426 their mute buttons. There just isn't. I think it is a  
2427 disadvantage to advertisers who pay a lot of money and how  
2428 the broadcasters really keep themselves going, the  
2429 programming and the networks.

2430 So I have to say in 16 and a half years in Congress, I  
2431 have never had a bill that was so embraced by so many. I  
2432 don't even get to finish my sentence about what the bill  
2433 would accomplish but people say absolutely. Good luck. We  
2434 need to do this. It is a great source of irritation to me.  
2435 So while this is a profoundly sobering time in the history of  
2436 our nation, I by no means see the CALM Act as being something

2437 that is going to resolve, you know, huge, daunting, national  
2438 problems. It, frankly, is way down the list when we examine  
2439 the great challenges that America has but I do think that it  
2440 is something that we should and that we can take care of.

2441 I think consumers have had it. Newspapers have  
2442 editorialized in different parts of the country. Consumers  
2443 know what this is. You mention it. It is bipartisan. It is  
2444 a bipartisan irritant. Let me put it that way. So to the  
2445 technologists, I am very pleased that you are taking this  
2446 seriously and than you think that the answer is around the  
2447 corner. You can take that great message to the FCC and I  
2448 look forward to this bill passing with huge support in both  
2449 the House and in the other body and I want to thank everyone  
2450 that has been involved in this and those that have supported  
2451 it and as well as those that have questions. I think that  
2452 you should take a deep breath, stay very calm, if you don't  
2453 mind my using the title of the bill and that this one-page  
2454 bill will bring some relief, a lot of relief to a lot of  
2455 people across the country.

2456 With that, I will yield back the balance of my time.  
2457 Mr. Chairman, thank you and I am going to return to my other  
2458 committee and look forward to great vote on this. Thank you  
2459 very, very much.

2460 [The prepared statement of Ms. Eshoo follows:]

2461 \*\*\*\*\* INSERT 11 \*\*\*\*\*

|  
2462 Mr. {Weiner.} The chair yields himself five minutes.

2463 If we could return a moment to the Family Telephone

2464 Connection Protection Act, in the conversation between Mr.

2465 Stearns and I think the sheriff and maybe Mr. Hopfinger.

2466 There was the position posited that perhaps telephone contact

2467 with the outside world is problematic. There is plans to

2468 sharing of information that might be deleterious. That is

2469 contrary to what other findings that we have seen that say

2470 that frankly keeping connection not just inside the jail but

2471 having a connection outside with the world is actually

2472 salutary to their rehabilitation.

2473 Mr. Krogh, do you want to weigh in on that discussion

2474 and then, Mr. Hopfinger, I will give you another chance to

2475 expound on what you were saying.

2476 Mr. {Krogh.} Yes, the studies have uniformly

2477 demonstrated that maintaining these communications is very

2478 important for rehabilitation and especially in situations

2479 where you have got inmates who are very far away from their

2480 families, sometimes in other States. And it is crucial to

2481 have reasonable rates so that they can maintain these ties

2482 with the community and their families. And you can also have

2483 good security. Securus, as I mentioned, provides all of

2484 these security functions in a number of States and apparently

2485 they are able to do this and still make a profit at very  
2486 reasonable rates. Florida and New Mexico are two examples.  
2487 So there is no inconsistency between having reasonable rates  
2488 so you have plenty of ties between maintaining these ties  
2489 between the prisoners and their families.

2490 Mr. {Weiner.} Is there any evidence that the Federal  
2491 Government, the Federal Penal System which has an 800 number  
2492 for which families pay I think 7 cents a minute? Is there  
2493 any sign that those are less safe, any signs that there is  
2494 any more sharing of information, any more witness tampering?  
2495 Is there any evidence at all to support the thesis that maybe  
2496 having barriers to people making phone calls like a 600  
2497 percent additional cost compared to what the Federal  
2498 Government charges? Is there any evidence at all to support  
2499 the theory that that somehow reduces recidivism or it reduces  
2500 witness tampering or anything like that? Is there any  
2501 evidence that you have seen in your experience that shows  
2502 that?

2503 Mr. {Krogh.} I haven't seen anything that shows that  
2504 there are problems in the Federal system which has debit  
2505 calling and at a fairly reasonable rate and again, if you  
2506 have got--you can have all of the security functions so you  
2507 can keep control over that call and still have a reasonable  
2508 rate.

2509 Mr. {Weiner.} Mr. Hopfinger, do you want to take the  
2510 contrary position?

2511 Mr. {Hopfinger.} Let me say, we concur that contact  
2512 with the outside world by inmates is certainly appropriate.  
2513 We wouldn't be in business if that contact didn't occur but  
2514 every system that we install must be customized and looked at  
2515 on an individual basis. Mr. Krogh has discussed large  
2516 Department of Correction facilities where there are low  
2517 rates. The Federal facilities that have a large number of  
2518 inmates where there are low rates. Those things don't  
2519 necessarily fit especially in the city and small county jails  
2520 because just simply the volume of calls is not there in which  
2521 to recover the cost.

2522 We absolutely want to provide as much service and  
2523 complete as many calls as we can but it must be done so on a  
2524 secure basis. Our concern with the bill is it would mandate  
2525 something that would not fit in many of the facilities.  
2526 Plus, the fact the bill goes well beyond talking about just  
2527 rates. It mandates other issues that would in fact actually  
2528 increased the cost to both our services and to the  
2529 correctional facilities. So that is our concern.

2530 Mr. {Weiner.} Thank you. Let me just move on briefly  
2531 to the CALM Act. I am curious why this is such a difficult  
2532 technological fix. Certainly, that if someone wants to

2533 advertise on a local TV station that they are told that they  
2534 have to provide the advertisement in a certain format. It  
2535 has got to be on a certain size disc or a certain size tape.  
2536 I am sure they are told that it has to be of a certain  
2537 length, a certain duration and it has to be of a certain  
2538 quality in order. Why can't you just say it has got to be no  
2539 louder than X? Why don't you say as a standard for what you  
2540 are going to accept for advertising, you have got to be in  
2541 this category? They play the tape, if it is not you say you  
2542 have got to go back to your shop and fix it. Tell me why  
2543 that intuitive reaction to this problem is technologically  
2544 difficult. Mr. Donovan, fire away?

2545       Mr. {Donovan.} I think essentially you are correct and  
2546 which is why you are seeing policies that have been  
2547 established by the major networks, for example, that have  
2548 precisely that in which they would like their advertising and  
2549 their programming to be sent to them in a certain way. You  
2550 do have a variety of program suppliers and advertisers and  
2551 what have you bringing in the inputs. You have local  
2552 advertising. You have national spot advertising, syndicated  
2553 programming, network programming but that is all, candidly,  
2554 it is all being worked out. The networks have established a  
2555 policy to do that so conceptually, you are right. This is  
2556 something that needs to be done and is being done. Where it

2557 got a little bit tricky here, and I will let Jim go into  
2558 detail on this but where it got tricky is that you want to  
2559 make sure that while you are controlling the advertising  
2560 aspects in terms of loudness and what have you. You don't  
2561 want to squelch the benefits of the digital system, i.e., the  
2562 Dolby 5.1 which has tremendous dynamic range for consumers  
2563 that bought surround sound, theater sets and  
2564 what have you because if you just put a level right across  
2565 the board, not only would you hit the advertising but you  
2566 would also hit the program. So that is what has made it a  
2567 little bit tricky as we move forward with digital which is  
2568 why, I mean we have been working on this since 2007 and I  
2569 think that Jim will tell you we are there. I mean you are  
2570 literally several months away from actually working out an  
2571 ATSC standard that will resolve it. But the concern we have  
2572 now, sir, is that as I said, engineers are problem solvers  
2573 and we are there. Once you create a--and there are winners  
2574 and losers whenever you have these engineering battles. Once  
2575 you create a new venue, which is okay now we are going to  
2576 kick it over to the FCC for a rule, what you sometimes do and  
2577 it is true in any standard setting issue that gets kicked  
2578 over to the commission, you create a jump ball.

2579       Mr. {Weiner.} I understand that and I heard that in the  
2580 testimony but if you look at our punch list of the reasons

2581 people comment opposed legislation like one of the general  
2582 reasons is we agree, we are on it, got you covered, no need  
2583 to pass any legislation and it doesn't--it strikes some of us  
2584 who obviously are not technology people like you are.

2585 Mr. {Donovan.} Right.

2586 Mr. {Weiner.} That it seems like a relatively easy fix  
2587 was coming and it never arrived.

2588 Mr. {Donovan.} And so it is here.

2589 Mr. {Weiner.} I know, I hear you. Mr. Starzynski,  
2590 maybe you can just answer why you can't just say look, here  
2591 is your checklist of things, the requirements you need to  
2592 have and being excessively loud when you are selling.

2593 Mr. {Starzynski.} You have hit the critical part of the  
2594 issue. So we publish a content specification, a delivery  
2595 spec that goes out to all of our suppliers. It doesn't  
2596 matter if they are program suppliers or if they are  
2597 commercial suppliers. We ask them to hit a target level like  
2598 I said in my testimony. The issue has been that with the  
2599 digital transition and moving off of analog and going to  
2600 digital with all this great range that we have been speaking  
2601 about, there is the opportunity there to have problems with  
2602 controlling your loudness if you don't understand the new  
2603 techniques that are involved or if you don't own the  
2604 equipment that is necessary that I spoke about before, which

2605 kind of changes the game in the way all of this is done  
2606 through the ITU standard and which the gentleman from  
2607 Consumer Reports spoke about.

2608         So the ATSC recommended practice goes right to the heart  
2609 of that and it says you will use this standard to measure  
2610 your sound and you will take those readings and you will  
2611 deliver your content as asked in the program spec. And we  
2612 all put this in there but I think what you are getting at is  
2613 the issue is that, you remember I spoke a little bit before  
2614 about the culture change. We have had a lot of folks mixing  
2615 sound with old analog techniques for a very long time using  
2616 meters that protected the electronics, not meters,  
2617 contemporary meters like the ones that work like your ears  
2618 do. So we get this out in the industry. We have got a  
2619 roadmap on where we need to go with this. Technology is  
2620 catching up on this. Things are becoming cheaper and the  
2621 bill that is out in front of us today really has raised such  
2622 a level of awareness across the industry that it is like a  
2623 no-brainer that this is got to happen. We are not disputing  
2624 that there is a problem here. We got to fix the problem and  
2625 again and this just rains true, the engineers that are kind  
2626 of working on this whose living is based on this, want to go  
2627 out there and fix this and make it right for the public. Is  
2628 that helpful?

2629 Mr. {Weiner.} It was. Thank you.

2630 Mr. {Kelsey.} Can I just quickly add, I think one of  
2631 the things that we saw with the DTV transition is that many  
2632 broadcasters are different and I think that the broadcasters  
2633 that step up and adopt the standard should definitely be  
2634 commended for changing this but, you know, a standard is one  
2635 of the key way to make sure that listeners in Dallas  
2636 experience the same type of viewing as listeners in New York.  
2637 And so, you know, I would urge the committee and also the  
2638 FCC.

2639 Mr. {Weiner.} We are used to a higher volume in New  
2640 York but what can I do about that? Do you have one final you  
2641 want to?

2642 Mr. {Donovan.} One final point on that is because when  
2643 the ATSC standard was adopted it includes a number of  
2644 voluntary components to that standard, and to Chairman  
2645 Boucher's initial comment, question, even though they are  
2646 voluntary, they are adopted throughout the industry. So it  
2647 is not a question that you have to have this or something  
2648 won't get done. This will get adopted and disseminate  
2649 throughout the entire industry.

2650 Mr. {Weiner.} Thank you. And before I yield to Mr.  
2651 Rush, just would request unanimous consent that two  
2652 editorials about the high cost of phone service being charged

2653 to inmates by Errol Louis of The Daily News be included in  
2654 the record. Without objection, so ordered not.

2655 [The information follows:]

2656 \*\*\*\*\* INSERTS 17, 18 \*\*\*\*\*

|  
2657 Mr. {Weiner.} Mr. Rush, you are recognized for such  
2658 time as you may need.

2659 Mr. {Rush.} Thank you, Mr. Chairman. Boy oh boy oh  
2660 boy, I think I have heard it all. Mr. Chairman, let me just  
2661 start by first of all I want to thank you for obtaining  
2662 support 20 media justice organizations around the country in  
2663 support of this bill. Would you please express my thanks and  
2664 gratitude to all of them, please?

2665 I want to also, Mr. Chairman, and members of the  
2666 subcommittee, announce that my bill H.R. 1133 has been urged  
2667 to be adopted by the American Correctional Association in  
2668 support of the goals in this legislation ensuring access and  
2669 reasonable rates for telecommunication services.

2670 Now, I want to, Mr. Hopfinger, you have really kind of  
2671 stretched the issue so thin, I don't really know how to  
2672 express how preposterous I think it is. Are you trying to  
2673 tell me that this grandmamma who got a grandson that she been  
2674 trying to raise in the poor community. She is on a fixed  
2675 income. Are you trying to tell me that your company has a  
2676 right to snatch her hard, her dollars first of all, she is on  
2677 a fixed income, to pay for you gouging her grandson who is  
2678 the inmate and somehow you justify it by saying that you are  
2679 on the lookout for Al-Qaeda or Al-Qaeda operatives? Are you

2680 trying to tell this subcommittee that that is a part of your  
2681 rationale?

2682 Mr. {Hopfinger.} Congressman, we are not trying to  
2683 gouge anyone. Our rates try to be compensatory in offering  
2684 the services we do and we offer those services in a manner  
2685 that we hope protects the public and the safety of the  
2686 inmates. The rates are higher in most correctional  
2687 institutions because of those requirements.

2688 Mr. {Rush.} All right. All right. Sheriff Goad.  
2689 Sheriff {Goad.} Yes, sir.

2690 Mr. {Rush.} You have indicated that you have some  
2691 services that are paid for, a lot of programs that are paid  
2692 for by these exorbitant rates, these excessive rates that  
2693 inmates are being charged.

2694 Sheriff {Goad.} Yes, sir.

2695 Mr. {Rush.} Can you give us an idea of some of those  
2696 services?

2697 Sheriff {Goad.} Yes, sir. The inmate, a lot of it is  
2698 inmate welfare funds.

2699 Mr. {Rush.} What do you mean by that?

2700 Sheriff {Goad.} Underwear, socks, toothbrushes,  
2701 toothpaste.

2702 Mr. {Rush.} In the absence of these funds, in the  
2703 absence of this business arrangement between this company or

2704 whatever company they are.

2705 Sheriff {Goad.} Yes, sir.

2706 Mr. {Rush.} Are you saying that your inmates would be  
2707 forced to run around naked? Is that what you are saying?

2708 Sheriff {Goad.} No, sir, I would not.

2709 Mr. {Rush.} All right. Well then what alternatives are  
2710 there?

2711 Sheriff {Goad.} In the past prior to some of the things  
2712 that are in place now with the resources that we have, a lot  
2713 of your community people provided these issues to such as  
2714 underwear and socks and some other things to our inmates.

2715 Mr. {Rush.} And are you saying that there is no  
2716 responsibility first and foremost by the government of  
2717 Maryland to provide these kinds of items for the inmates?

2718 Sheriff {Goad.} No, sir, I would not say that.

2719 Mr. {Rush.} Okay. And so then the little old  
2720 grandmamas or these single mothers who have small children  
2721 and one or two who might be incarcerated, are you saying then  
2722 that they should be taking food off their table to pay for  
2723 underwear that really is the responsibility of the State of  
2724 Maryland? Is that what you are telling this committee?

2725 Sheriff {Goad.} No, on that note I would not say that.  
2726 I would say that we are providing a service to the inmates  
2727 and of course that service is not.

2728 Mr. {Rush.} What other laudable program besides making  
2729 sure that the inmates, you know, have Michael Jordan  
2730 underwear, what other laudable programs you got?

2731 Sheriff {Goad.} We do anti-recidivism programs. We  
2732 have age education, basic adult education which is GED,  
2733 substance abuse programs along with child.

2734 Mr. {Rush.} And what percentage are these commissions  
2735 go toward those programs?

2736 Sheriff {Goad.} Most all of the commissions that we  
2737 receive is generated back into our facility.

2738 Mr. {Rush.} Okay. For your exemplary employees that  
2739 you might have, do you have exemplary employees in your?

2740 Sheriff {Goad.} Yes, sir.

2741 Mr. {Rush.} And do you give them a bonus?

2742 Sheriff {Goad.} No, sir, I do not.

2743 Mr. {Rush.} Are you aware of any State prison, board or  
2744 prison system that gives its employees bonuses?

2745 Sheriff {Goad.} Currently, sir, I do not have that  
2746 information.

2747 Mr. {Rush.} You don't have that information so you are  
2748 saying then that most of the--that there are no--none of  
2749 these commissions go toward bonuses for your employees?

2750 Sheriff {Goad.} Can I say that specifically, no sir,  
2751 but I don't have that information in front of me currently.

2752 Mr. {Rush.} Okay. Let me make sure you understand?  
2753 All right. You are the sheriff of what county?  
2754 Sheriff {Goad.} Allegany County.  
2755 Mr. {Rush.} Allegany County. Is there any employees in  
2756 Allegany County that receive a bonus?  
2757 Sheriff {Goad.} No, sir.  
2758 Mr. {Rush.} That is no, okay.  
2759 Sheriff {Goad.} No, sir.  
2760 Mr. {Rush.} Okay. How does the bidding process, how  
2761 did you select and what company do you have to give?  
2762 Sheriff {Goad.} What company do we have?  
2763 Mr. {Rush.} Yeah, do you use?  
2764 Sheriff {Goad.} We use a company with Securus.  
2765 Mr. {Rush.} Securus, okay, how did you select them,  
2766 Securus?  
2767 Sheriff {Goad.} We actually put out a RFB.  
2768 Mr. {Rush.} And what did you make that decision based  
2769 on? What did you make the decision based on?  
2770 Sheriff {Goad.} Based on the software, their security  
2771 equipment.  
2772 Mr. {Rush.} Okay. How much influence did the cost of  
2773 that or your remuneration or your commission, what percentage  
2774 had an influence on your--let me ask the question correctly.  
2775 How much bearing did the cost that or the commission that you

2776 were going to receive, how much bearing did that have on your  
2777 decision to hire Securus?

2778 Sheriff {Goad.} Not a large bearing?

2779 Mr. {Rush.} But some bearing, is that correct, some  
2780 bearing?

2781 Sheriff {Goad.} Based some bearing, yes, sir.

2782 Mr. {Rush.} Okay. And if in fact you did not have this  
2783 organization or have this kind of arrangement then you would  
2784 be--where would you get the money to make up the hole in your  
2785 budget? Where would you get that money from?

2786 Sheriff {Goad.} If we failed, if the resources were  
2787 terminated we would have to go back to the county and look at  
2788 the burden on the taxpayers.

2789 Mr. {Rush.} Okay. Explain to me how you think that  
2790 your program creating and charging these families, not  
2791 necessarily the inmates how does that have an effect on the  
2792 recidivism issue in your county?

2793 Sheriff {Goad.} Well, our recidivism for some is higher  
2794 than others. Some of our recidivism is very low. I think  
2795 again as I mentioned in my testimony, I think communication  
2796 is very essential.

2797 Mr. {Rush.} Are you elected to office?

2798 Sheriff {Goad.} Yes, sir.

2799 Mr. {Rush.} Okay. And so in your past campaign for

2800 office have you ever ran on--had a part of your--how long  
2801 have you been a sheriff first of all?

2802 Sheriff {Goad.} I am on my 15th year, my fourth term.

2803 Mr. {Rush.} So you ran three times or four times?

2804 Sheriff {Goad.} Four times.

2805 Mr. {Rush.} Okay. And have you ever included in your  
2806 campaign material for reelection that you are able to justify  
2807 to your voters or highlight to your voters that because you  
2808 have high cost telephone service that you have these and this  
2809 arrangements with this company that you are able to have a  
2810 detrimental effect on recidivism rate?

2811 Sheriff {Goad.} Have I ever? No, sir, I have not.

2812 Mr. {Rush.} Okay. And so that is not a claim that you  
2813 might, that you would promote?

2814 Sheriff {Goad.} No.

2815 Mr. {Rush.} Do your voters know that they are being  
2816 gouged or being overly charged on these rates that that is a  
2817 policy?

2818 Sheriff {Goad.} Well, I can't speculate on that but I  
2819 do know that the majority of the public isn't familiar with  
2820 our rates.

2821 Mr. {Rush.} All right. Mr. Krogh, you mentioned in  
2822 your testimony that a few States have taken action to require  
2823 that the cost be the dominant factor in determining which

2824 bidder wins an exclusive contract with the State correctional  
2825 facility and the price includes permitted charges and  
2826 connection charges. Do you have any other information on the  
2827 effects such decisions have had on these services?

2828 Mr. {Krogh.} Well, generally just simply that the  
2829 higher the rate, the less calling there is and the less  
2830 communication that there is by the prisoners and the families  
2831 often have to refuse calls.

2832 Mr. {Rush.} Right. Can you respond if you will to Mr.  
2833 Hopfinger and Mr. Goad that maximum security is dependent on  
2834 Mr. Hopfinger's company charging excessively for phone  
2835 service for inmates and Sheriff Goad's agency organization  
2836 receiving high commissions from the actions of Mr.  
2837 Hopfinger's organization? Can you comment on that fact?

2838 Mr. {Krogh.} Yes, as I have mentioned, Securus and  
2839 other service providers are able to provide these services  
2840 with all of the required security functions.

2841 Mr. {Rush.} No, I am not talking about the security  
2842 functions in that regard in terms of instrumentality. I am  
2843 talking about the maximum security?

2844 Mr. {Krogh.} Well, I mean to the extent that the  
2845 telephone service has any impact on national security one way  
2846 or the other, they can meet whatever Securus security  
2847 requirements are imposed on them by the correctional

2848 department or the authorities, they can meet those all those  
2849 requirements at very reasonable rates and so they shouldn't  
2850 be charging higher than that.

2851 Mr. {Rush.} Yes, so am I to believe or the members of  
2852 the subcommittee to believe that those State and those  
2853 counties that don't have exorbitant rates that they are  
2854 somehow less concerned about national security than the ones  
2855 who charge exorbitant rates?

2856 Mr. {Krogh.} No, I don't think that we can draw that  
2857 conclusion. The Federal Bureau of Prisons has reasonable  
2858 debit rates for prisoners. I am sure they are the state of  
2859 the art in terms of the security, all the security functions  
2860 that you need and these States have the reasonable rates  
2861 there is a variety of States, Florida, New Mexico, Nebraska,  
2862 New York, all of these States I am sure are just as they are  
2863 focusing on these security functions especially New York as  
2864 much as any other correctional authorities in other State and  
2865 they have come to the conclusion they don't need to charge  
2866 these exorbitant rates to maintain all the security functions  
2867 they need.

2868 Mr. {Rush.} Mr. Chairman, well let me just ask one  
2869 additional question here. Sheriff Goad, what equipment do  
2870 you use for monitoring and tracking inmate calls?

2871 Sheriff {Goad.} The equipment is provided through

2872 Evercom with Securus Communication.

2873 Mr. {Rush.} Okay. And where is it located at?

2874 Sheriff {Goad.} In my facility.

2875 Mr. {Rush.} In your facility. Okay. Does that  
2876 equipment provide you additional security measures?

2877 Sheriff {Goad.} It provides me the ability to monitor  
2878 those inmates that I have in my facility, yes, sir.

2879 Mr. {Rush.} Okay. It provides--so lacking that  
2880 equipment you couldn't monitor your inmates?

2881 Sheriff {Goad.} No, sir.

2882 Mr. {Rush.} Okay. Is there any other equipment  
2883 available to you off the shelf?

2884 Sheriff {Goad.} I have, no, not off the shelf but I  
2885 also have video cameras is the only other use of security  
2886 equipment that we use but they are not audio. They are just  
2887 video.

2888 Mr. {Rush.} Okay. If you had multiple carriers and the  
2889 inmates had a choice, would your ability to monitor your  
2890 inmates, would that be hindered at all?

2891 Sheriff {Goad.} I am not a technical person but I don't  
2892 know how that would work.

2893 Mr. {Rush.} You don't know how that would work.

2894 Sheriff {Goad.} I am not sure how multiple carriers  
2895 would actually work if you had numerous providers.

2896 Mr. {Rush.} Okay. But you don't--so you are not sure  
2897 whether or not it would be a hindrance?

2898 Sheriff {Goad.} Right.

2899 Mr. {Rush.} Right, now is that what your answer  
2900 indicates?

2901 Sheriff {Goad.} To me and again I am not a technical  
2902 person.

2903 Mr. {Rush.} Right.

2904 Sheriff {Goad.} It seems to me if the more providers I  
2905 had it would be a hindrance to us trying to provide each  
2906 inmate with each particular provider that they so chose.

2907 Mr. {Rush.} Okay.

2908 Mr. {Weiner.} Would the gentleman yield for a moment?  
2909 Is there any reason you can't just have a series of different  
2910 800 numbers that people can dial and then the surveillance  
2911 equipment is all just on the hardware? I mean why couldn't  
2912 you have a choice of five or six different 800 numbers you  
2913 can dial?

2914 Sheriff {Goad.} Can I defer to Mr. Hopfinger?

2915 Mr. {Weiner.} Certainly.

2916 Sheriff {Goad.} Technically, I do not know.

2917 Mr. {Weiner.} I hear you now. Go ahead, Mr. Hopfinger.

2918 Mr. {Hopfinger.} Yes, what happens is when an 800  
2919 number is called the system loses all track of where the call

2920 actually terminates. All we know is an 800 number was called  
2921 and then there is a series of numbers dialed after that. The  
2922 system wouldn't know where that call actually terminated, who  
2923 received that call, whether it was a call next door or across  
2924 the nation.

2925 Mr. {Weiner.} And that failure of knowing who the  
2926 inmate is calling provides a security risk you say?

2927 Mr. {Hopfinger.} Absolutely.

2928 Mr. {Weiner.} Got you. Thank you, Mr. Rush.

2929 Mr. {Rush.} Yeah, and my final question, how much--so  
2930 your, Mr. Hopfinger, your business activities is centered on  
2931 exclusively incarcerating individuals in a jail system. That  
2932 is your market? That is your niche in the market, is that  
2933 right?

2934 Mr. {Hopfinger.} Yes, Congressman Rush. We are  
2935 exclusively an inmate telecommunication service provider.

2936 Mr. {Rush.} Okay. So you actually have a captive  
2937 audience. That is what you, I mean, you are saying you have  
2938 a captive audience, right?

2939 Mr. {Hopfinger.} Well, I wouldn't consider it a captive  
2940 audience because I have a lot of other competitors out there  
2941 that want so business so I don't get all that business.

2942 Mr. {Rush.} It is very lucrative, right?

2943 Mr. {Hopfinger.} No, sir, it is not. If you will look

2944 at our SEC filings, we actually operated at a loss in 2008  
2945 and most of the inmate telephone service providers, I met  
2946 with two presidents last week and they are hoping for a low  
2947 single digit return on their investment this year.

2948 Mr. {Rush.} Okay. Well, thank you. I yield back the  
2949 balance of my time.

2950 Mr. {Weiner.} I thank you, Mr. Rush, the author of the  
2951 bill. Hopefully, we will have quieter TV commercials, we  
2952 will have community broadcasters be able to tell everyone  
2953 that information without interference and then I guess  
2954 prisoners will be able to call home and brag about it less  
2955 expensively.

2956 I ask unanimous consent to keep the record open for an  
2957 appropriate period of time for members to submit opening  
2958 statements and questions for the record. I thank--without  
2959 objection, so ordered and I thank all of the witnesses for  
2960 their patience and their excellent testimony. The committee  
2961 is adjourned.

2962 [Whereupon, at 1:07 p.m., the subcommittee was  
2963 adjourned.]