



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel

Washington, D.C. 20230

October 2, 2009

The Honorable John D. Rockefeller, IV
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for the opportunity to present the Administration's views on the current version of S. 251, the Safe Prisons Communications Act of 2009, as reported by the Senate Committee on Commerce, Science and Transportation on August 5, 2009. The proposed legislation addresses the unlawful use of cell phones in prisons. The Administration shares the Committee's view that it is intolerable that prisoners have carried out criminal enterprises, including murder, from within correctional facilities by using smuggled cell phones. The Administration believes that all effective avenues to put an end to this activity should be considered and appreciates the interest in using jamming technology to serve as a tool in that effort.

There are a number of technological approaches available to prisons seeking to block harmful and unauthorized use of cell phones by inmates. We support the bill's goal of assuring that effective, appropriate tools are made available quickly to prisons. In order to achieve this goal, we urge the Committee to amend S. 251 to give state prison officials access to technology to disrupt prison cell phone use in a manner that protects nearby public safety and Federal Government spectrum users from harmful disruption of vital services, and preserves the rights of law abiding citizens to enjoy the benefits of the public airwaves without harmful interference.

We recommend four modifications to the bill that would remove barriers to rapid deployment of technologies to combat the illegal cell phone use problem. First, the authority to grant waivers to the longstanding Communications Act prohibition against harmful interference should be broadened from solely granting permission to jam to a more flexible process that encourages the use of a range of technologies that could be effective at blocking unauthorized cell phone use by inmates. There are other, possibly more effective, tools available to prison officials aside from those that jam all calls in a given radio channel. Existing wireless network technologies can be used to catch and block groups of cell phone numbers that are automatically identified to be operating in a prison. These technologies (also known as managed access systems) enable a targeted blocking of unauthorized users, while preserving the ability of public safety officials to make calls necessary to their mission in the prison area, and even allow all callers who

happen to be in the area to place 911 calls. Such managed service approaches have the additional benefit that they do not actually jam the airwaves, thus reducing the unwanted impact on the public and enabling the Federal Communications Commission (Commission) to approve operation of these technologies without the same degree of interference testing that is necessary for jamming technologies. These and other technologies (such as detection systems which enable prison guards to detect and apprehend inmates using cell phones) were the subject of a series of live tests recently in a Maryland State prison facility. Early reports from those tests were considered promising by prison and industry observers. While the bill wisely recognizes that alternatives to jamming exist, it does not integrate them into the waiver process. On final passage, the bill should encourage the Commission to consider alternate approaches to jamming. Further, the bill ought to clarify that the Commission may, in exercise of its authority as an expert agency, require that those seeking waivers for jamming demonstrate that there are no less intrusive, non-jamming alternatives that would meet their needs. We have other concerns about the implementation of the bill. In particular, we are concerned about the bill's interaction with the existing statutes governing pen registers and trap-and-trace technology. We would welcome the opportunity to work with the Congress as we consider ways to address these concerns.

Second, the Commission should be authorized to grant streamlined approval of non-jamming approaches. Even if jamming may be appropriate in certain very limited circumstances, we believe that it is appropriate policy for the Commission to encourage the development and deployment of non-jamming approaches, such as those described above. This streamlined process would afford correctional authorities a more expeditious means of combating the serious problem of illegal inmate use of cell phones.

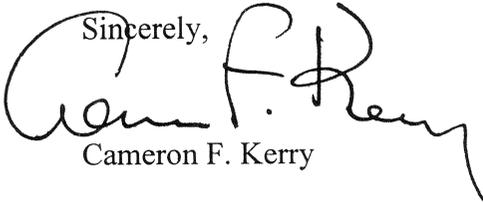
Third, the bill significantly erodes the President's right to manage the spectrum use of the Federal Government. National Telecommunications and Information Administration (NTIA), on behalf of the President, authorizes the use of radio frequencies by Federal entities, including the Bureau of Prisons. The Commission has primary responsibility for commercial spectrum of the type typically used from within state prisons. The bill would extend the Commission's authority to include authorization of jamming technology use by the Bureau of Prisons. Therefore, the bill should be amended to delete the reference to the Bureau of Prisons, since NTIA has the authority to address the unlawful use of cell phones in Federal prisons.

Fourth, while the revised bill takes steps to accommodate the interference concerns of local public safety groups and commercial providers, it omits consideration of potential interference effects on Federal systems. Petition procedures must take into account potentially affected Federal operations and require coordination with NTIA. The Commission should be empowered to grant a petition only if it finds that there is no potential for harmful interference with existing or contemplated Federal operations.

The longstanding radio spectrum regulation principle, embodied in the Communications Act for 75 years, is to preclude harmful interference and not to block access to receipt of information transmitted wirelessly. This approach is at the foundation of a wireless industry that has brought the public continuing technical innovation, increased public safety, and supported vital national defense functions. With the changes we propose

here, we believe it is possible to provide prison officials with the tools they need to thwart illegal activity stemming from the use of cell phones within prison walls, while preserving the regulatory principles on which our communications infrastructure depends.

We appreciate the opportunity to present the Administration's views on S. 251 and look forward to working with Congress on this issue. We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter from the viewpoint of the Administration's program.

Sincerely,

Cameron F. Kerry

cc: The Honorable Kay Bailey Hutchison
Ranking Republican Member

The Honorable John F. Kerry
Chairman, Subcommittee on Communications and Technology

The Honorable John Ensign
Ranking Republican Member, Subcommittee on Communications and
Technology