

**CONTRABAND CELL PHONES IN
CORRECTIONAL FACILITIES: PUBLIC SAFETY
IMPACT AND THE POTENTIAL IMPLICATIONS
OF JAMMING TECHNOLOGIES**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JULY 15, 2009

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ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on July 15, 2009	1
Statement of Senator Pryor	1
Statement of Senator Hutchison	2
Statement of Senator Begich	26
Statement of Senator Thune	28
Letter, dated January 26, 2009, from Tim Reisch, Secretary of Corrections—State of South Dakota Department of Corrections to Hon. John Thune	28

WITNESSES

Hon. John Whitmire, Texas State Senator	4
Prepared statement	5
Richard A. Mirgon, President-Elect, Association of Public-Safety Communications Officials (APCO) International	7
Prepared statement	9
Gary D. Maynard, Secretary, Maryland Department of Public Safety and Correctional Services	11
Prepared statement	13
Steve Largent, President and CEO, CTIA—The Wireless Association®	15
Prepared statement	16
John M. Moriarty, Inspector General, Texas Department of Criminal Justice ..	20
Prepared statement	22

APPENDIX

Hon. Barbara Mikulski, U.S. Senator from Maryland, prepared statement	35
Citizens United for the Rehabilitation of Errants (CURE), prepared statement	36
Jay Salkini, President and Chief Executive Officer, Tecore Networks, prepared statement	38
Letter, dated July 13, 2009, to Hon. John D. Rockefeller IV and Hon. Kay Bailey Hutchison from Jim Rubenstein, Commissioner, West Virginia Division of Corrections	40
Letter, dated August 4, 2009, to Hon. Jay Rockefeller and Hon. Kay Bailey Hutchison from Rep. Jerry Madden, Texas State House of Representatives ..	40
Letter, dated July 13, 2009, to Hon. Jay Rockefeller and Hon. Kay Bailey Hutchison, from Jon Ozmint, Director, South Carolina Department of Corrections	41
Letter, dated January 14, 2009, to Hon. Sam Brownback from Roger Werholz, Secretary, Kansas Department of Corrections	42
Letter, dated January 21, 2009, to Hon. John F. Kerry from Harold W. Clarke, Commissioner, The Commonwealth of Massachusetts, Executive Office of Public Safety and Security, Department of Correction	42
Letter, dated January 21, 2009, to Hon. Edward M. Kennedy from Harold W. Clarke, Commissioner, The Commonwealth of Massachusetts, Executive Office of Public Safety and Security, Department of Correction	43
Letter, dated January 20, 2009, to Hon. Blanche Lincoln from Larry Norris, Director, Arkansas Department of Correction	43
Letter, dated January 20, 2009, to Hon. Mark Pryor from Larry Norris, Director, Arkansas Department of Correction	44
Letter, dated December 17, 2008 to Hon. Mark Pryor from Larry B. Norris, Director, Arkansas Department of Correction	44
Letter, dated December 17, 2008 to Hon. Blanche Lincoln from Larry B. Norris, Director, Arkansas Department of Correction	45

IV

	Page
Letter, dated March 3, 2009, to Hon. Bob Corker, from George M. Little, Commissioner, State of Tennessee—Department of Correction	46
Letter, dated March 3, 2009, to Hon. Lamar Alexander, from George M. Little, Commissioner, State of Tennessee—Department of Correction	46
Letter, dated July 27, 2009, to Hon. John D. Rockefeller IV and Hon. Kay Bailey Hutchison from Anne Milgram, Attorney General and George Hayman, Commissioner—Department of Corrections, State of New Jersey, Office of the Attorney General, Department of Law and Public Safety	47
Letter, dated July 14, 2009 to Hon. John D. Rockefeller IV and Hon. Kay Bailey Hutchison from Harold Feld, Legal Director—Public Knowledge; Michael Calabrese, Vice President and Director Wireless Futures Program—New America Foundation; Sascha Meinrath, Director—Open Technology Institute; Jonathan Lawson, Executive Director—Reclaim the Media; Joshua Breitbart, Policy Director—People’s Production House; Stephen Renderos, Organizer—Main Street Project; Amanda Deloney, Network Coordinator—Media Action Grassroots Network (MAG-NET); Tracy Rosenberg, Acting Director—Media Alliance; Malkia Cyril, Executive Director—Center for Media Justice	48
Letter, dated July 13, 2009, to Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA—The Wireless Association	51

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WEDNESDAY, JULY 15, 2009

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m. in room SR-253, Russell Senate Office Building, Hon. Mark Pryor, presiding.

**OPENING STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. We will go ahead and call the hearing to order. This hearing is called, "Contraband Cell Phones Correctional Facilities: Public Safety Impact and the Potential Implications of Jamming Technologies." And I want to thank my colleagues for being here today. And I know that we have several other committees that are meeting right now, so we may have some Senators coming and going.

So what I'd like to do is just give a brief opening statement, then let the Ranking Member, Senator Hutchison, give hers, and then maybe dispense with other opening statements, unless Senators want to do that, and then hear from the panel, and then we'll have a robust discussion.

Over the past two decades, the number of wireless subscribers in the United States has grown from 3.5 million to about 270 million. At the same time, these devices have shrunk from the size of a brick to a little bigger than a matchbox. These cell phones can do much more than make a call. They can take pictures, they can surf the Internet, they can send text and e-mail messages.

While advances in technologies have benefited consumers, there's also a dark side. More and more, cell phones are being smuggled into prisons. Inmates are using them to continue criminal activity behind bars. In the worst cases, prisoners are organizing gang activity, intimidating witnesses, and ordering murders from their cells. This has to be stopped.

Correctional officers have stepped up efforts to find such devices by using phone-sniffing dogs and searching prisoners, visitors, and prison workers. In addition, there is technology being deployed to detect and locate and monitor contraband cell phones in prison. But the question remains, are these tools enough?

Some have suggested that wireless jamming technology would be effective in stopping the use of contraband cell phones. The FCC, however, has prohibited the testing of jammers by states as a violation of the Communications Act. In addition, groups have voiced concern that jamming may interfere with public safety and commercial wireless communications. There are also questions about how well jammers work and whether other technologies are better suited to address the problem.

We have an esteemed panel of witnesses to provide testimony on these issues. I want to thank our panel for being here today and making your time and testimony available to us. But before I introduce the panel, I would like to ask the Ranking Member, Senator Hutchison, to make her opening statement.

**STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Well, thank you, Mr. Chairman. I am very pleased to be here, and I so thank you for calling this hearing, because I will discuss the bill that I have introduced that I hope is going to give law enforcement and prison officials more capabilities to protect the public. And I look forward to talking about that.

In 2008 alone, corrections systems reported startling numbers of confiscated phones. California reported nearly 3,000 phones found with inmates. Mississippi had nearly 2,000. The problem is not unique to just states. The Federal Bureau of Prisons reports they confiscated more than 1,600 phones during 2008.

Cellular phones inside our Nation's penal system act as a force multiplier for criminals. A single phone can be shared among numerous inmates, and just a few phones inside a prison can lead to a coordinated attack on guards and facilitate escape attempts.

According to the Justice Center at the Council of State Governments, three inmates, including a convicted killer, arranged for their escape from a Kansas facility using a contraband cell phone. In Tennessee, an inmate used a cell phone to plot an escape that resulted in the death of a corrections officer. And in June of last year, inmates at three Oklahoma correctional facilities coordinated an outbreak of violence across the system, resulting in three deaths and many injuries.

Cell phones have been used to carry out threats and attacks against the public. One of our witnesses today, my friend, State Senator John Whitmire, was the target of a death row inmate using a cell phone. In one heartbreaking case, an inmate on trial for murder in Maryland orchestrated the assassination of a witness against him using a smuggled cell phone in prison. The witness was gunned down outside his home in front of his children.

Our law enforcement officers and prosecutors have a difficult job to do. Can you imagine how much more difficult it is when witnesses might be afraid to testify because an inmate inside a prison can threaten them and their family from the comfort of their prison cell? We're seeing a dramatic rise in the number of ongoing criminal enterprises orchestrated from prison cells via cell phone, including drug trafficking.

So what can be done? This morning, we will hear from a number of witnesses on the front lines. The states clearly have an impor-

tant responsibility. But, Mr. Chairman, we do too. To be successful, our corrections officers need as many tools as we can give them to prevent the use of phones if they evade detection and discovery. When a single call can result in someone's death, we have an obligation to exhaust every technology at our disposal.

At the moment, the FCC Act, Federal Communications Act, prohibits the use of jamming devices in all but a few cases. The prohibition against intentional interference serves an important purpose. Unregulated use of jamming technology could pose significant risk to commercial wireless operations and also public safety communications. I am mindful of those concerns, and I believe they are legitimate. But I'm also concerned that the efforts being made at the state level alone are not sufficient to keep pace with the scope of this problem.

In January, I introduced Senate Bill 251, the Safe Prisons Communications Act. I am joined in this bipartisan effort by several members of the Committee, and my lead co-sponsor is Senator Barbara Mikulski from Maryland. The bill preserves the general prohibition against intentional interference with wireless communications. However, it creates a process for correctional facilities to seek a waiver from the FCC to operate a wireless jamming device.

The bill does not grant this authority outright. It directs the FCC to conduct a robust rulemaking in which it considers whether it is in the public interest to allow waivers, and under what circumstances. The Commission will also conduct a device approval process that ensures that devices operate with the lowest possible power output and include other interference mitigating measures. Each correctional facility would have to apply individually for the ability to deploy jamming technology.

So, Mr. Chairman, let me say that AT&T and Verizon, the largest providers at this time, have worked with our staff to try to address the concerns which are legitimate of the wireless companies. And I want to work with them and continue to work with them. I also look forward to working with the representative of an organization that represents the wireless communications companies, because it's in everyone's interest that we not interrupt service to legitimate consumers.

However, we also need to make sure that when a person is incarcerated in prison, that the public should feel safe from that particular criminal. And that's the way it used to be before the sophisticated criminal and the sophisticated technology intervened. So I'm going to continue to work with everyone in this process, all of the public service providers, the prison and corrections facility representatives.

But, Mr. Chairman, we do have a responsibility here, and I hope that after this hearing and in working with all of the people and entities involved in this, that we will learn enough that we can move my bill and Senator Mikulski's bill and the bipartisan support that we have in a way that walks the very fine line to assure that service is not interrupted for legitimate people, but when someone goes to prison, that the public is safe from that person truly. And we need to work on it right now. Thank you, Mr. Chairman.

Senator PRYOR. Thank you. You mentioned Senator Mikulski from Maryland, and Senator Mikulski wanted to be here this morning, but she's voting on healthcare reform in the HELP Committee. And she and Maryland Governor O'Malley are deeply troubled that prisoners have been able to use cell phones to commit crimes from prison. It's a problem in Maryland and nationwide.

And Senator Mikulski wanted to thank the Commerce Committee for holding the hearing to try to address those troubling problems and try to find solutions to stop it. And I know that you and Senator Mikulski worked very hard on that.

What I'd like to do now is turn this over to our panel of witnesses. We'd ask that witnesses keep their opening statements to 5 minutes. And there's a light system there with a timer for your convenience. And what I'll do is just briefly introduce each one, and then just go down the row and let you make your 5-minute opening statement.

First, we're going to hear from the Honorable John Whitmire. He's a State Senator from Texas. Second, we'll hear from Mr. Richard Mirgon. He's the President-Elect, Association of Public-Safety Communications Officials—International. Then it'll be Mr. Gary Maynard, Secretary, Maryland Department of Public Safety and Correctional Services.

Next will be a very familiar face and friend here to this committee, Mr. Steve Largent, President and CEO of CTIA. And next we will hear from Mr. John Moriarty, Inspector General, Texas Department of Criminal Justice. Senator Whitmire?

**STATEMENT OF HON. JOHN WHITMIRE,
STATE SENATOR, TEXAS**

Mr. WHITMIRE. Thank you, Mr. Chairman and Members. And to my Senator Hutchison, thank you for bringing this timely topic to our attention. I've chaired criminal justice in the State Senate in Texas since 1993. And every time I thought I had seen everything, Senator, you see something else. And also, I can say is what you don't know is what scares you the most in this business.

In that context, last October, I received a call at the District office in Houston, returned that phone call, and this individual starts describing conditions on death row. Toward the end of the conversation—I assumed I was talking to a guard that was reporting circumstances. And I asked him, "Who are you and where are you?" He said, "I'm on death row. I'm an inmate." I said, "Well, how are you talking to me?" He said, "On a cell phone." I said, "Well, how'd you get the cell phone?" He said, "\$2,100 to a guard." I said, "How do you keep it charged?" "Oh, I have a charger."

That began a conversation over a period of about 2 weeks with a convicted capital murderer on our death row, working with the Inspector General, Mr. Moriarty. Two weeks later, his family was arrested because they had purchased the phone, given it to a correction officer, and this began the extreme issue of how to remedy cell phones in the State of Texas. We have 158,000 inmates located in 112 locations.

The Governor ordered a lockdown, cell-by-cell search. Hundreds of phones were discovered. We actually determined that Mr. Tabler, the inmate who had called me, was sharing a death-row

phone with nine other death-row inmates. The other nine inmates were members of very violent gangs still working on the streets of the State of Texas: Texas Syndicate, Texas Mafia. They had used 2,800 minutes on that one phone the month before his placing a call to me.

I can't stress to you how serious a public safety issue I think this is. After the arrest of his mother and grandmother, who had assisted in acquiring and paying the time on his phone, he threatened to have me killed. One of our conversations consisted of his talking about my family members. Law enforcement tells me he was threatening me, letting me know that he had done searches on my addresses and family members.

So I can't stress on behalf of the people that I represent, your constituents across this Nation, we've got to put a stop to it, have zero tolerance. I'm told that the jamming is one of the most valuable tools. We have used pat-downs, dogs, and metal detectors. I've demanded zero tolerance within our prison system. But we need this additional tool. And I thank you for allowing us to discuss it.

[The prepared statement of Mr. Whitmire follows:]

PREPARED STATEMENT OF HON. JOHN WHITMIRE, TEXAS STATE SENATOR

The fastest growing and most alarming development in the introduction of contraband within the Texas prison system is the inmate's use of cell phones. I am here today to support Senator Hutchinson's Senate Bill 251, which would allow the jamming of contraband cell phones within a prison setting. Based on my personal experiences of having a death row inmate, convicted of two senseless murders, call me several times on his cell phone while incarcerated on Texas' death row. These calls were made from the Polunsky Unit's death row section, which is supposed to be the securest part of the Texas prison system.

On October 7, 2008, my office received a phone message from an individual who claimed to be a personal friend of mine. Although I did not recognize the name, I returned the call later that evening. During the conversation, the individual admitted he really did not know me but he was contacting me to ask for assistance for a death row inmate he knew who had complaints about the conditions of his housing. Later in our conversations he admitted that he was that death row inmate and his name was Richard Tabler. Not being convinced or thinking it was even possible for him to make such a call, he proved his identity by holding the phone so that I could hear the unforgettable sounds of a prison in the background, the clanging of steel doors and hollering of voices.

Now convinced that he was a death row inmate and using a cell phone from prison I contacted John Moriarty, the Inspector General for the Texas Board of Criminal Justice, who heads up the agency with police powers to investigate crimes in prison. We agreed that I would continue to accept these calls while his office opened an investigation to locate and seize the phone from inmate Tabler. In subsequent cell phone conversations inmate Tabler discussed my two daughters, where they lived and other details that he wanted me to know he knew. Frankly, that scared the hell out of me and convinced me that an inmate having this ability represented a major public safety issue.

While working with John Moriarty, I continued to accept the phone calls to gain information to assist the investigation. Soon inmate Tabler began to ask favors, such as a special visit from his mother who lived out of state. The issue came to a conclusion on October 20, 2008, when a cross state police sting operation took place leading to the arrest of Tabler's mother when she arrived at the Austin—Bergstrom International Airport on a flight from her home in Georgia. Prison officials found inmate Tabler in possession of a cell phone on death row. Inmate Tabler's mother and sister were indicted with the Felony criminal offense of assisting an inmate to obtain a contraband cell phone in prison. As the investigation continued, a letter was received by OIG from inmate Tabler threatening retaliation by having me murdered.

I then found out that this was not the first cell phone confiscated from death row, and that it was indeed the 19th cell phone that year and that 670 cell phones had been found system wide within the Texas Department of Criminal Justice (TDCJ)

in 2008. I became even more concerned when it was revealed that Tabler was not the only death row inmates using this cell phone, as many as nine death row inmates had made over 2,800 phone calls from the same cell phone during the past month alone. I was also alarmed that some of these inmates were identified as members of prison gangs including the Texas Syndicate, Aryan Brotherhood of Texas and the Crips. The potential for an inmate to orchestrate an assortment of crimes and harass victims is a very real and present danger.

On October 20, 2008, based on the developing investigation, Governor Rick Perry ordered the Texas Board of Criminal Justice to take immediate action to increase prison security by locking down the entire system and conducting individual cell searches in all 112 prison units and of all the 156,000 inmates.

Due to these major security breaches within TDCJ and the presence of cell phones within the Death Row housing of the Polunsky Unit, I called an emergency meeting of the Senate Committee on Criminal Justice on October 21, 2008. Following the public hearing I sent a letter to Oliver Bell, Chairman of the Texas Board of Criminal Justice, and Brad Livingston, Executive Director of the Texas Department of Criminal Justice. It reads:

After Tuesday's hearing concerning the overwhelming amount of contraband in our prisons, I am convinced that an urgent, sustained response is required to implement zero tolerance on contraband. The prevalence of contraband is well documented and has been widely publicized including:

- May 2008 media report alleging that corrupt officers were taking over a prison.
- May 2008 KPRC news station of charges of prison corruption.
- May 2008 media reports of prison warden removed for corruption.
- May 2008 media reports of the Terrell Unit lockdown over contraband issues.
- May 2008 TDCJ commitment to investigate roadside clash with KPRC news crew.
- May 2008 TDCJ termination of prison captain due to corruption.
- June 2008 Criminal Justice Legislative Oversight Committee held hearing on prison corruption.

I will not even attempt to list the media coverage prior to or after the hearing held October 21, 2008, along with the Governor's order for a statewide lockdown of the entire prison system to search for contraband. I am totally convinced that unless the following improvements are immediately implemented, significant safeguards will not be in place:

- A complete search of all individuals entering a prison to include the use of electronic metal detectors (only 22 units out of 112 have these machines), searching of property and pat down searches, monitored by law enforcement and ranking prison officials.
- *Cell phone jamming blockers and monitoring systems.*
- Increased and constant use of drug detection dogs or systems.
- Rewards for inmates and correctional officers reporting contraband violations.
- Vigorous prosecution of alleged violators and strong punishment.
- Maximized use of surveillance cameras with the capability to digital record the video and audio. Equipment must be in all areas of each unit (TDCJ has 5000 old cameras among 112 unit, many not operative, while Texas Youth Commission with 14 units has 8,000 new digital cameras with recording capability).
- Long term movements to professionalize the correctional officer positions and their supervisors, with increased compensation and higher entry standards.

It is imperative that Mr. Livingston advise Mr. Bell, the Legislature and the State leadership in a very detailed, accurate, and urgent manor of the resources required to correct the observed and documented dysfunctions within TDCJ operations.

I understand the challenges of operating the second largest prison system in our nation, but we must respond to these challenges with a sense of urgency and have the will to conquer and overcome the barriers in front of us. The citizens of Texas deserve no less than our maximum efforts and will not settle for less than significant, sustained, and successful actions.

I would love to report to this committee that the intensive actions taken so far have resolved the problems of cell phones in prison; however, that is not the case:

- the additional money appropriated to TDCJ during our last legislative session will not be enough to fix this matter in the long term,
- and the enhancements to our criminal laws to aid prosecution of these matters and increased penalties will not in itself solve these problems.

Our problems and those of other states in combating contraband cell phones in our prison system continues and requires additional tools to correct this issue. Since the system wide lockdown and searches were completed, an additional 946 cells phones have been confiscated in the Texas prison system this year.

The authority to jam cell phones in specified prison property, will help render these contraband items useless. Cell phone jamming is a required element that is needed to resolve this problem.

**STATEMENT OF RICHARD A. MIRGON, PRESIDENT-ELECT,
ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS
OFFICIALS (APCO) INTERNATIONAL**

Mr. MIRGON. Chairman Rockefeller, Ranking Member Hutchison, and other members of the Committee, thank you for this opportunity to be here today. I am Richard Mirgon and I currently serve as the President-Elect of the Association of Public-Safety Communications Officials. We're widely referred to as APCO International. APCO International was established in 1935 and is the largest public safety communications organization in North America, representing nearly 16,000 members worldwide.

I come here with some unique experiences. During my career, I've spent 14 years as a Deputy Sheriff in Jefferson County, Colorado, where I spent my first year working at a large correctional facility. I then spent the last 18 years as a Director of Technology Services for Douglas County, Nevada, until my recent retirement in 2008.

As a member—as Director of Technology Services, I managed all public safety communications, information technology, emergency management for the county and first-responder agencies. Prior to that, I spent 4 years in the United States Air Force, where I had some experience dealing with radio frequency jamming.

All this shows that I have a full understanding of all these issues being discussed today. As a former Deputy Sheriff, I personally appreciate you scheduling this hearing to address an important, yet complicated, issue. This issue is very important to not only myself personally, but APCO International. And we do fully believe that something needs to be done to deal with these issues occurring in today's prisons.

However, APCO's position, as we stand today, we are in opposition to RF jamming for a number of reasons. And I would like to discuss five of those reasons. First, we believe it puts our public safety radio systems at significant risk for interference, and that puts the lives of first responders at risk.

A petition just recently filed with the FCC incorrectly asserts that these bands don't have interference today because the spectrum is properly regulated and managed. Yet, as many of you may recall, public safety is still working through rebanding issues brought about by unintended and unforeseen consequences from a major wireless carrier that has cost public safety hundreds of millions of dollars to correct and could, in the end, cost over \$2 billion.

Second, we do not believe it is effective. Since the early days of incarceration in jail, inmates have found ways to communicate with

the outside, everything from coded letters and messages to defeating high technology inmate phone systems. This technology will not be any different. Some very smart inmate in a prison who has a degree in engineering or just plain creative will devise some way, such as extending the antenna on the cell phone, to bypass the jamming. They potentially could take an amplifier out of another phone and use it to amplify their signal to bypass any jamming in that type of technology.

Third, this has been compared to how technology is used in other countries and how well it works. The problem is, our spectrum is not lined up as it is in other countries. In many European countries, that spectrum for public safety is entirely different from spectrum used for cell phones. Our spectrum is interleaved with the commercial wireless spectrum at this time.

Fourth, as I've referred to earlier in a petition that has been filed yesterday with the FCC, cell phones, it states, can have multiple unintended consequences if it is not done with adequate planning. Will every system have adequate planning? Assuming it does, will it stay that way? Anyone who's managed a radio system has stories about someone without proper knowledge or experience moving an antenna, modifying an antenna, making a change to a system, and causing unintended interference that has shut down systems.

Finally, we believe that there are more effective methods in dealing with cell phone use in institutions, such as here in D.C., where they use cell phone detectors, been working effectively. And for many years, cell phone interception was used in Nevada in casinos for casinos to derive additional revenue where they intercepted the signal and rerouted it. And, from an experienced public safety person, you couldn't make a cell phone call from inside a casino without that casino intercepting it. So we believe that there is proven, effective technology that would be less intrusive on public safety.

APCO fully appreciates that the sponsor and supporters are merely attempting to find solutions to a growing problem. If Congress should choose to move forward, we would like to make the following regulations: ensure that there is no possibility of interference with public safety communications; ensure that there is no possibility of interference with cellular 911 calls; eliminate the risk of diversion of cell phone jamming technology to illegal markets; continue to recognize the primary of public safety communications; require priority consideration of alternative methods in addressing this problem; provide an acceptable level of product quality; and potentially offer assurance bonds by the manufacturer of the equipment to allow for funding that could be used to correct any interference problems that may occur.

In closing, once again, APCO does not support jamming as it's designed today and believes other methods should be used to resolve this issue. However, we do look forward to working with the prisons and other folks to help solve this problem and get them a solution that is workable for everyone. Thank you.

[The prepared statement of Mr. Mirgon follows:]

PREPARED STATEMENT OF RICHARD A. MIRGON, PRESIDENT-ELECT, ASSOCIATION OF
PUBLIC-SAFETY COMMUNICATIONS OFFICIALS (APCO) INTERNATIONAL

Chairman Rockefeller, Ranking Member Hutchison, and other members of the Committee, thank you for the opportunity to be here today. As a former Deputy Sheriff, I personally appreciate you scheduling this hearing to address an important, yet highly complicated issue. I understand first hand the importance of combating organized criminal and gang-related networks inside and outside of our Nation's correctional facilities, as well as inside and outside of our national borders. Because of the established nexus between criminal enterprises and the funding of terrorism, I also understand that this is not just a matter of public safety or criminal justice, but of national and homeland security.

I am Richard Mirgon, and I currently serve as the President-Elect of the Association of Public-Safety Communications Officials International, more widely referred to as APCO International. I come here with some unique experiences. During my carrier, I spent 14 years as a Deputy Sheriff in Jefferson County, Colorado where for my first year I worked in a large correctional facility. I then spent the last 18 years as the Director of Technology Services/911 for Douglas County, Nevada, until my recent retirement in late 2008. As Director of Technology Services/911 for Douglas County, I managed all public safety communications, information technology and emergency management for the county and its first responder agencies. Prior to all this, I spent 4 years in the Air Force where I had some experience with Radio Frequency Jamming. All this allows me to have a full understanding if the issue that is being debated today.

For the benefit of those of you that do not know, APCO International was established in 1935 and is the largest public safety communications organization in North America, representing nearly 16,000 members worldwide, most of whom are state or local government employees, who build, supply, manage and operate communications systems and facilities for police, fire, emergency medical services and other state and local government public safety agencies. APCO serves the needs of more than 100,000 professionals in the public safety communications industry with training, frequency coordination, engineering, licensing, advocacy, and networking services and opportunities. APCO International is the largest FCC-certified frequency coordinator for Part 90, Public Safety Pool channels, and appears regularly before the FCC on a wide variety of public safety communications issues. APCO includes law enforcement, fire, EMS and other public safety professionals, that is composed of experienced, front line technical experts implementing and overseeing current systems in the field, and is solely focused on public safety communications (including voice, data and video, or radio and information technologies). Thus, we have long provided an informed safe haven for public safety to research, discuss, debate and come to consensus on issues of significance to our profession. As part of the Nation's criminal justice system, our members also interact on a daily basis with our correctional institutions and professionals.

When a death row inmate can illegally access a cell phone to call and threaten a state legislator and his family, something needs to be done. When criminals in lock up awaiting trial can access cell phones to get others to intimate or kill witnesses, something needs to be done. When drug trafficking leaders in prison can direct international drug smuggling operations from inside our correctional facilities, something needs to be done. Clearly, there is a need to confront this problem of illegal communications deriving from, among and into our correctional facilities. The question is, what is the best, most efficient and effective solution to realize the results we intend; and how do we do so without unintentionally creating other, possibly more severe problems? We look forward to working with you to help to come closer to these answers.

As long ago as the mid-1990s, the Southern Poverty Law Center provided extensive evidence and training to our law enforcement community on the emerging cooperation of domestic and international terrorists, organized crime, gangs, international criminal enterprises, drug cartels and others, including prison-based recruitment of extremists and ongoing criminal networks. Recent intelligence and criminal investigations, including the emerging problems in the U.S. Southwest Border, provide further evidence of this ongoing threat. Still, I strongly urge Congress and this committee to move carefully, thoroughly and comprehensively in addressing illegal communications of prisoners with others within and beyond our correctional institutions.

APCO's position is that we do not support cell jamming until such time that the vendors and user of this technology can prove that there will be NO negative impact on public safety networks and access to 9-1-1 by legitimate users and that all other viable alternative have failed.

APCO fully appreciates that the sponsor and supporters are merely attempting to develop a process to allow for the FCC to consider use of cell jamming technology in the correctional setting, and that the legislation does not intend to simply allow for acquisition and use of such technologies without a more comprehensive rule-making process by the FCC. Following is a breakdown of the eight categories that APCO suggest as the primary goals and objectives for Congress to incorporate if it should choose to move forward with this policy area:

- *Ensure that there is no possibility of interference with Public Safety Communications in or around correctional facilities, especially during an emergency.*
- *Ensure that there is no possibility of interference to cellular calls to 9–1–1 outside the prison.*
- *Eliminate the risk of diversion of cell jamming technology to illegal markets as contraband for terrorists and other criminals.*
- *Continue to recognize the primacy of public safety communications separate and apart from, as well as ahead of, other non-emergency, commercial interests.*
- *Require priority consideration of alternative means of addressing illegal cell phone use in correctional facilities.*
- *Provide for Acceptable Level of Product Quality.*
- *Require Users to post an assurance bond for each system deployed to insure funds are available to correct any interference problems created.*
- *Actively reach out, include and incorporate the experience, knowledge and perspectives of those in the military, public safety and national security communities (to include FBI, NTIA, NIST, NIJ, TSWG, SPAWAR and others) that are testing, researching and using cell jamming technology both here and abroad to gain their cooperation, experience and insights on this most important matter.*

Interference with Public Safety Communications

The public safety community is still dealing with the interference issues that developed with NEXTEL and the 800 MHz public safety systems, which led to a massive, multi-billion dollar project to relocate public safety radio systems. Thus, we must take every possible effort to avoid similar problems from cell-jamming equipment in prisons or elsewhere. Cellular jamming will likely not discriminate between voice and data traffic. Many public safety agencies rely heavily on wireless providers for their mobile computing backhaul needs. Access to data (tactical plans, records, GIS, documents, pictures) in the field can greatly affect the speed and efficacy responders have in dealing with a situation. The potential of jamming outside of the environment of a prison, even if the devices are carefully tailored to avoid public safety frequencies, may not just disrupt 9–1–1 calls, they may also disrupt responders who may need to use these cellular data services in response to an issue within or around the prison campus.

Interference with 9–1–1 Calls

APCO is concerned that the use of jamming devices could block 9–1–1 calls from wireless telephones outside the correctional facility, creating a serious threat to the safety of life and property. In many communities, the majority of 9–1–1 calls are from wireless telephones. We must ensure that these devices will not interfere with a cellular 9–1–1 call to a public safety answering point.

Diversion of Cell Jamming Technology

The current legislation establishes provisions for destruction of cell-jamming devices when no longer in use within prisons, thus addressing the problem of cell-jamming devices falling into the wrong hands. However, APCO encourages the committee and Congress to look at more accountable and that a registry is kept by a third-party entity, and that any device in use must be registered.

Primacy of Public Safety Communications

The most recent draft of the legislation continues to commingle and equate commercial and public safety interests. APCO strongly believes that public safety and emergency communications are a higher level priority concern, and must be dealt with separate and apart from non-emergency commercial communications issues.

Consider Alternative Means of Preventing Illegal Cell Phone Use in Prisons

Correctional facilities, wireless carriers and others should be required to explore other means of addressing this problem. For example, could prison security be enhanced to stem the flow of contraband into prisons? Are “cell sniffing” devices an option for finding cell phones behind prison walls? Could wireless carriers install

“microcells” to capture calls from within prisons and nearby areas, so legitimate calls can be separated from illicit calls?

Quality of Cell Jamming Technology

There seems to be a broad variety of equipment available to perform jamming. Some have military precision and that are developed by the defense industry, however others are relatively inexpensive devices which have little control aside from an on/off switch. Careful consideration must be given to exactly which form of device may be approved for these environments, as allowing a “jammer” may be allowing a device costing hundreds dollars to cripple a public safety system costing millions of dollars.

Incorporate Military, Public Safety & National Security Communities

APCO understands that the same technology that is proposed for providing cell jamming capabilities for purposes of illegal prison communications is currently utilized by our military and law enforcement agencies for protecting against radio controlled improvised explosive devices (RCIEDs). As well, APCO understands that NTIA has already approved FBI’s use of cell jamming technology for domestic capabilities against any potential RCIEDs, which often will be incorporated into Vehicle Borne IEDs that are commonly used against our troops and others by terrorists and insurgents in Iraq, Afghanistan and elsewhere. Indeed, DHS is currently funding the expansion of our domestic capabilities in this area.

APCO was recently informed that NIJ and SPAWAR have also tested cell jamming technology for purposes of domestic use, and possibly specifically as it pertains to correctional settings. The most recent draft of the legislation only requires FCC to include “at least one outside body” in its development of pilots and testing of such technologies. We would encourage Congress to provide more formal direction and assist to FCC by specifically including those entities and associations with experience in researching, testing, implementing and overseeing cell jamming capabilities, particularly as it relates to potential interference with priority and emergency communications.

We at APCO look forward to continuing to work with Congress, the FCC, and our criminal justice and industry partners to effectively and efficiently deal with the illegal smuggling and unauthorized use of cell phones and other means of communication into, within or deriving from our Nation’s correctional facilities. Again, I thank you for your time, consideration and shared concern for our Nation’s safety and security from crime and terrorism, including that stemming from our correctional facilities and occupants. As the leading association for public safety technology professionals, we at APCO share your unwavering belief that technology, when correctly governed, tested and applied, and when implemented and managed in an cost effective manner, helps us to realize significant progress in our Nation’s economic development, public safety, and national security. I am happy to answer any questions that you may have at this time.

Senator PRYOR. Our next witness, Mr. Maynard.

**STATEMENT OF GARY D. MAYNARD, SECRETARY,
MARYLAND DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES**

Mr. MAYNARD. Thank you, Mr. Chairman, members of the Committee. I’m Gary Maynard, Secretary of the Department of Public Safety and Correctional Services in the State of Maryland. I’ve provided my testimony. I’ll try to make my remarks briefer today to allow more time for questions.

As a member of the Association of State Correctional Administrators representing the 50 state corrections directors around the country, and as past President of the American Correctional Association, I am here today to support Senate Bill 251, Safe Prisons Communications Act of 2009.

I’ve been involved in corrections for 39 years, working in the Federal Bureau of Prisons, and in five states, serving in four of those as head of the state corrections agency. For those of us in this field, one of the most important functions is the security of our prisons

and the overall safety, not only of the institution and the people inside, but the community at large.

One of the leading contributors to criminal behavior has been the increase in gang activity and the violence associated with it. Many gangs are using the prisons as a recruiting ground, building their numbers and jeopardizing the safety of our institutions and the communities to which they were returned. These groups seek out ways to continue their criminal activity from prison to the community, and most of those, through their use of cell phones. And the introduction of cell phones within our prisons are growing at an alarming rate.

Senator Hutchison had mentioned that in California, over 3,000 cell phones were found. That was twice as many as they found the previous year. Victims, witnesses, and public officials are being threatened, harassed, and even killed by prisoners with access to cell phones. And as was mentioned, even in our own state, a detainee, a witness who was housed in our pre-trial detention division, was convicted of ordering the death of a young man in Baltimore, a witness. He made the call from a cell phone within our facility.

We're not the only state, Maryland, that has these problems. Senator Whitmire mentioned the threats made from death row. Last year in Massachusetts, a maximum security inmate threatened a medical staff person to bring in a cell phone—bring in a gun into the prison.

In the—it was mentioned, the escape in Kansas. Even in the State of Arkansas this past couple of months ago, an escape of two dangerous inmates was facilitated with the use of a cell phone.

In response to this growing problem, many states, including Florida, New Jersey, and others, have made possession of a cell phone in prison a felony, and we intend to do that in the State of Maryland this next year, as it's currently a misdemeanor.

Corrections officials across the country are making every effort to prevent phones from entering the institutions through enhanced technology searches and other unconventional methods. The use of canines has been mentioned. We got the idea from Virginia and Maryland. We trained and raised our own dogs, trained them. Several states, West Virginia, South Dakota, Florida, and Arizona, are also following that example.

In addition, many other states like us have invested in technology and policies to enhance our ability to control the introduction of cell phones. Phones are smuggled into our prison a variety of ways: on or within an inmate's body, by visitors, by staff, tossed over fences or walls, concealed within deliveries or shipments of food, or through contractors.

While we're able to address each of these areas, inmates have a lot of time to think, and they are very innovative. We need to rely on all the technology we can get. We need to fight technology with technology. This bill would provide correctional administrators with the opportunity to petition the Federal Communications Commission and request the operation of a wireless jamming device. This would allow us to evaluate the technology and substantially improve our ability to control criminal behavior.

We don't think that signal jamming is a total solution, but it would just provide another option to correctional administrators to deal with this issue. The states and the Federal Government have an equal interest in prison security. We think state correctional administrators should not be denied the opportunity to use a tool already available to the Federal Government to further secure prisons.

In order to provide safer prisons and safer communities, we respectfully ask that you give favorable consideration to the Safe Prisons Act of 2009. In our view, illegal cell phone use by inmates in our Nation's prisons is an issue that directly impacts our country's public safety. Thank you.

[The prepared statement of Mr. Maynard follows:]

PREPARED STATEMENT OF GARY D. MAYNARD, SECRETARY,
MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Good afternoon Mr. Chairman and Members of the Committee. My name is Gary Maynard, and I serve as Secretary of the Maryland Department of Public Safety and Correctional Services.

As a member of the Association of State Correctional Administrators, I am here today to support S. 251, the Safe Prisons Communications Act of 2009.

I have been involved in corrections for 39 years, working at the Federal Bureau of Prisons and in five states, serving in four of those as head of the corrections system.

I have also served as President of the American Correctional Association.

Throughout my career I have had an opportunity to develop successful prison management practices. For those of us in this field, one of the most important functions is the security of our prisons and the overall safety, not only of the institution and the people inside, but of the community-at-large.

One of the leading contributors to criminal behavior has been the recent spike in gang activity and the violence associated with it.

Many gangs are using the prison system as a recruiting ground, building their numbers and jeopardizing the safety of our institutions and the communities to which they will return.

These groups seek out ways to continue to operate their criminal activity from prison—most often through the use of cell phones. The introduction of cell phones within our prisons is growing at an alarming rate.

For example, in California, prison officials reported that they collected over 2,800 cell phones last year, two times the amount found the previous year.

Victims and public officials are being threatened, harassed, and even killed by prisoners with access to cell phones.

Phones can be brought into prisons in a variety of ways. They are smuggled on or within an inmate's body, by staff, by visitors, tossed over the fences or walls, concealed within deliveries or shipments of food and supplies, or through contractors.

Recently, a detainee who was housed within our Division of Pretrial Detention and Services was convicted of ordering the death of a young man in Baltimore. He made the call from a smuggled cell phone within our facility.

Maryland is not the only state facing these types of problems. In Texas recently, a death row inmate used an illegal cell phone to call and threaten a State Senator.

In West Virginia, a correctional officer at the Federal Prison in Hazelton was indicted for smuggling a phone into the facility for an inmate.

This past year in Massachusetts, a maximum security inmate threatened a medical staff member with a cell phone in an attempt to coerce her into bringing a gun or other weapon into the prison—a plan that was prevented by quick action on the part of the Massachusetts Department of Correction.

In Nevada, an inmate escaped through the use of a cell phone which was introduced to the facility through a compromised staff member. During his escape he committed three armed home robberies, a kidnapping, and auto theft.

In Washington State, correctional officers have been terminated and are facing criminal prosecution for their role in introducing into the facilities cell phones that were used to support drug activity.

Cell phones were used to plan two escapes from prisons in Kansas. In one of the cases, a cell phone was used to deliver instructions to an accomplice outside of the

perimeter of the facility in order to avoid perimeter patrols—allowing the accomplice time to cut the fence and deliver weapons. One escape ended in a high speed chase and the second in a shoot out with local law enforcement. Although no one was killed, the presence of cell phones in the prison system allowed the threat and possibility to exist.

In South Carolina, inmates have used cell phones to coordinate escapes, smuggle contraband, and commit credit card fraud for thousands of dollars.

The Solutions

In response to this growing problem, many States, including Florida and New Jersey, have passed legislation making the possession of a cell phone within prison a felony—something we hope to do in Maryland this year, where it is currently a misdemeanor offense.

Moreover, the corrections community has continued to expand efforts to prevent the flow and use of cell phones within our institutions. Increased efforts have been made in cell phone interdiction.

Corrections officials across the country are making every effort to prevent phones from entering the institutions through enhanced technology, searches, and other unconventional methods.

For example, in Maryland, we have established a Corrections K-9 Unit—dogs trained to sniff out cell phones. Since June 2008 our K-9 unit has detected 85 phones across the system.

This strategy has been replicated in other states, including West Virginia, South Dakota, Florida, and Arizona.

In addition, like many other states, we have invested in technology and policies to enhance our ability to control the introduction of cell phones. All of these efforts will lead to increased confiscation of cell phones and other contraband, but no matter what security measures are put in place, we can not possibly eliminate this threat altogether.

As I mentioned earlier, phones are smuggled into our prisons in a variety of ways—on or within an inmate's body, by visitors, by staff, tossed over the fences or walls, concealed within deliveries or shipments of food or supplies, or through contractors.

While we are able to implement security measures to address each of these areas, our inmate population has time to think of ways to beat the system, and they are innovative and imaginative.

The continued use of cell phones by incarcerated individuals to continue their criminal behavior puts the public's safety in jeopardy.

We need to be able to rely on a better method to prevent the use of cell phones. We need to fight technology with technology.

This bill would provide correctional administrators with the opportunity to petition the Federal Communications Commission and request the operation of a wireless jamming device within a prison, penitentiary, or correctional facility.

This would allow us to evaluate the technology and substantially improve our ability to control criminal behavior in our prisons.

We do not believe that signal jamming will be the total solution, but it will put another option at the disposal of State correctional administrators.

The states and the Federal Government have an equal interest in prison security. There is no legitimate reason why State correctional administrators should be denied the opportunity to seek a tool, already available to the Federal Government, to further secure prisons.

Last year, the South Carolina Department of Corrections successfully demonstrated cell phone jamming within a prison without blocking cell phone service for people outside.

Texas, Washington, D.C., and Maryland have all asked for the ability to pilot the same type of system. We feel certain the technology works.

In order to provide safer prisons and safer communities, we respectfully ask that you give favorable consideration to the Safe Prisons Communications Act of 2009. In our view, illegal cell phone use by inmates in our Nation's prisons is an issue that goes to the heart of our country's public safety.

Thank you.

Senator PRYOR. Thank you. Mr. Largent?

**STATEMENT OF STEVE LARGENT, PRESIDENT AND CEO,
CTIA—THE WIRELESS ASSOCIATION®**

Mr. LARGENT. Thank you, Mr. Chairman, Ranking Member Hutchison, and Members of the Committee. Thanks for inviting me to address this issue. It's an issue that CTIA and this Committee can fight together, the problem of contraband cell phones in prisons. We fully support your concern with this important safety issue. As we approach this problem together, my plea is that we find both the right policy solution and a technological solution that won't harm the public's legitimate cell phone use outside correctional facilities.

Our members are committed to ensuring that only those who are legally entitled to possess and receive wireless service do so. This means increased cooperation among Federal and state law enforcement, corrections officials, and the industry, and we're committed to this effort.

That's the right policy solution. What's the right technological solution? Put simply, the right solution is one that effectively prohibits access by those who should not have it while ensuring that law-abiding citizens and public safety users enjoy the most reliable service possible.

Both from a policy perspective and from a technical standpoint, jamming is not the best option. For more than 80 years, the policy of the Federal Government and this committee has been clear: the prevention of willful interference with radio signals. Yet, that is what jamming would entail. Jamming not only deprives the public of legitimate service, even more important, it can interfere with the ability of public safety officers, including first responders, to access their wireless service in an emergency.

Instead, we ask you to consider other reasonable, effective, and affordable ideas that would better solve this problem. The first is cell detection. It identifies wireless devices in a given geographic area, like a prison, without causing problems for other wireless users operating in commercial or public safety bands. Cell detection will assist corrections officials with detection, location, and confiscation of unauthorized devices. In turn, this can provide law enforcement with call records and other types of information that can assist in disciplinary actions and criminal prosecutions.

Cell detection also is compatible with wire-tapping. A recent high-profile case in Baltimore that was mentioned earlier, which led to the indictments of both inmates and correction officers, shows the results this type of intelligence can bring. Managed access offers a second alternative to jamming. Managed access solutions allow commercial wireless network access only to specifically authorized users, while blocking others.

This solution also ensures that controls apply only within a prison and not outside of it. And because no jamming occurs, there is no interference to other users. So, from the industry's perspective, there are less intrusive, yet effective, options to consider other than jamming. And these superior technologies exist today and can be deployed quickly.

And to be clear, jamming is not a panacea. Even with over-jamming a facility, there's no promise of complete success inside the

facility, though harmful interference with legitimate users outside the facility is all but guaranteed, especially in urban areas.

The Congress should therefore take great care to consider the impact that any jamming proposal would have on both public and public safety users. Given this wide array of technical solutions, we believe states and industries should partner to conduct trials of these alternatives. And we're discussing this approach with the State of Maryland today.

CTIA strongly supports the underlying goal of S. 251. We are, however, concerned by procedural rules it would impose on the FCC. If Congress opts to allow the use of jammers, we believe the proper approach would be to test first, then write rules, and only then allow applications to jam to be considered.

We also believe the bill should favor alternative non-interfering technologies, such as those I discussed here earlier, alternatives that would avoid altogether the problems associated with jamming and preserve law enforcement's ability to gather intelligence by way of wire taps.

Finally, we suggest the policymakers should also address the supply and demand problem at the heart of the issue. Congress in many states should update their contraband statutes to impose tougher penalties for possession, provision, or support of handsets inside correctional facilities. We commend states such as West Virginia and Texas that have modernized their contraband statutes and encourage others to follow.

Increased airport-style security checks of all parties entering a correctional facility will also help this problem. Thank you for the opportunity to appear here today. We look forward to working with you to address this important safety and law enforcement issue in a way that ends the use of contraband phones in prisons while preserving reliable wireless service for the public and public safety. Thank you, Mr. Chairman.

[The prepared statement of Mr. Largent follows:]

PREPARED STATEMENT OF STEVE LARGENT, PRESIDENT AND CEO,
CTIA—THE WIRELESS ASSOCIATION®

Thank you for the opportunity to appear before you today on behalf of CTIA—The Wireless Association.®

On behalf of CTIA and its members, let me be absolutely clear from the outset on two points: First, we understand the reason for today's hearing and fully support policymakers' efforts to keep contraband wireless phones out of correctional institutions. Second, our carriers have no legitimate subscribers residing in these institutions and no interest in seeing inmates use wireless services to conduct unlawful activities or harass or intimidate the public. We want to work with the Congress to develop and implement measures that will solve this problem and preserve the ability for law-abiding members of the public to continue to reliably access the wireless services provided by CTIA's member companies.

Resolving this issue in a way that both protects and serves the public will require cooperation among Federal and state policymakers and administrators and industry, and I'm here to pledge the wireless industry's assistance in this effort. That said, it is the wireless industry's view that the jamming of wireless signals is not a panacea and raises potentially serious concerns that must be taken into account as Congress contemplates how to address this issue. While some parties have attempted to position jamming as "the solution" to controlling contraband phones in correctional institutions, we do not believe it should be a preferred solution given the availability of superior technological alternatives.

Foremost among the concerns we have with any jamming proposal is the impact it could have on the ability of wireless service providers to reliably and effectively

provide critical connectivity to public safety officers, including first responders who may have to enter a prison to fight a fire or deal with another emergency, and other legitimate customers. The public safety role of commercial wireless services is well known to the American public and members of this Committee. The industry provides access to 911 and E911 services, offers priority access service to government officials in times of natural or man-made emergencies, and is working to bring emergency alert services to market as soon as the Federal Emergency Management Agency (FEMA) releases the standards under which the EAS process will be implemented. Wireless consumers rely on their ability to use their wireless phones as lifelines in time of need and for their daily business and personal needs, and thus the possible authorization of jamming without due regard for the consequences of such a decision and the interference it may cause is of serious concern to CTIA's membership.

Since enactment of the Radio Act, this Committee has played a vital role in shaping wireless policy, and one of the long-standing cornerstones of that policy has been the prevention of willful interference with radio signals. This was reflected in the Communications Act of 1934, and reiterated in the 1990 amendments that added Section 333 to the Act. We believe these sound policies have worked well, and before departing from them we urge policymakers to consider whether there are reasonable, effective, and affordable technological solutions that would better solve the problem. We believe there are and want to highlight several alternative solutions that policymakers should consider.

The first of these alternative solutions is cell detection, a monitoring and tracking approach that allows for the identification of individual wireless devices within a correctional environment. Cell detection does not create interference and thus these systems can operate without causing problems for legitimate wireless users operating in commercial or public safety bands.

With cell detection systems, prison administrators and correctional officers can detect, locate, and confiscate unauthorized wireless devices found in a correctional environment. Confiscated wireless devices can provide correctional authorities and law enforcement with call records, address information, and even photographs that can assist in disciplinary actions and criminal prosecutions. Alternatively, once illicit devices have been detected, prison officials and law enforcement may decide to leave them in place and arrange to monitor them in accordance with the wiretap statutes. As demonstrated in the recent high-profile case in Baltimore in which a number of inmates and correctional officers were indicted on the basis of information gathered by wiretaps, intelligence gathered in this way can be a critical tool that assists law enforcement in investigations and the prevention of criminal activity.

Cell detection technology is available today, and the United States Department of Justice recently acknowledged the need to improve its ability "to detect, locate, and defeat the use of unauthorized wireless communications devices in all operating environments, including in, but not limited to, correctional environments," adding that it also requires "improved, unobtrusive means to accurately detect a broad spectrum of contraband to preclude its introduction into correctional . . . environments."¹ These functionalities are not possible with jamming, which may thwart the use of contraband phones in some cases but will not prevent smuggling, identify the location of unauthorized devices, or assist in their confiscation.

In addition to cell detection, another promising technological solution to this problem involves the use of managed access. This approach enables a corrections facility to manage wireless access in controlled area, such as a prison. Managed access would restrict communications on the commercial wireless networks to only a subset of allowed users (also known as a "white-list"). Other users are blocked from the commercial system access in the area. Managed access solutions also utilize location determination technologies to ensure that the controls apply only in the geographic area of the prison. And the best part is, because no jamming transmission occurs, there is no interference to other users.

Just last week, CTIA convened a day-long meeting involving North American vendors of cell detection and managed access solutions² and engineers from a number

¹U.S. Department of Justice, National Institute of Justice, "High-Priority Criminal Justice Technology Needs," March 2009, at 16. Document available at <http://www.ncjrs.gov/pdffiles1/nij/225375.pdf>.

²Vendors in attendance at the meeting included Airpatrol of Columbia, MD, BINJ Laboratories of Quincy, MA, Electronic Entities Group of Torrance, CA, ITT of Columbia, MD, Tecore Networks of Columbia, MD, CellAntenna of Coral Springs, FL, and Triple Dragon Communications of Vancouver, BC.

of CTIA's carrier members to discuss potential solutions to this issue. We hope our efforts will put the industry in a position to trial alternative solutions in partnership with various states, including the Maryland Department of Public Safety and Corrections, with which we have had an on-going dialogue about ways in which we can collaborate to resolve these issues in a way that meets the needs of the Department of Public Safety and Corrections and our customers. We believe these efforts will be successful and serve as a model that can be used in locations around the country.

Cell detection and managed-access technologies should be considered as superior and preferred alternatives to jamming for two critical reasons: because jamming will not guarantee that contraband wireless devices will be rendered inoperable or that convicts won't be able to communicate with the outside world and because jamming can cause harmful interference to legitimate users. Regarding the first of these points, jamming is not foolproof and, with either a direct line of sight to a cell tower or shielding from the jammer's signal, an inmate in possession of a phone may still be able to complete a call or send a text message.

Regarding the second, and more serious of our concerns, for jamming to be effective, correctional administrators will have to jam their entire facilities, fence to fence and everything in between. Absent a commitment to jam the entire facility, the same corrupt individuals who smuggle contraband phones to inmates simply can point out where they can be used outside the range of a jammer. To jam an entire facility and deal with the constantly changing radio-frequency environment, which is impacted by changes in network load, cell tower locations, weather, and even the time of year, and the helical way in which radio waves propagate (which contrasts with the linear nature of prison boundaries), will require "over-jamming" in which the harmful signal extends beyond the facility and into areas where legitimate users may be impacted. We know this because the problem of illicit wireless usage in prisons is not unique to the United States, and in other countries where jammers have been employed to thwart this problem, they have caused significant interference beyond their intended range. The laws of physics are universal, and these same problems will occur here if we proceed with the deployment of jamming equipment, especially in areas where correctional facilities are located in urban and suburban environments or adjacent to transportation corridors. This is often the case, as shown in the screen-shots accompanying testimony.

In addition to disrupting commercial wireless service used by persons outside a correctional facility, a system designed to jam wireless calls emanating from within a correctional facility could also jam important public safety communications. The 800 MHz public safety band is adjacent to the cellular band and the 700 MHz spectrum bands that will soon be brought into use by both commercial and public safety entities are interleaved with one another, thus making it quite conceivable that a system designed to jam commercial service might also jam communications used by fire departments or other public safety agencies that might be called upon to operate near or even at a prison. In contemplating the authorization of jammers, the Congress should consider these possibilities and exercise substantial care to protect both the public and public safety users.

In our view, that care should start with a bias in favor of non-interfering technologies. However, if jamming is to be considered, the proper approach would be to start with rigorous FCC lab and field testing, involving industry engineers, followed by the establishment of rules that would govern the use of certified, tested equipment. Once FCC rules are in place, the Commission could consider case-by-case requests for the use of jammers. In evaluating such requests, the Commission should consider what technical alternatives are available, what actions have been taken to prevent the smuggling of wireless devices into the applicant's facility or facilities, what procedures have been employed to locate and confiscate unauthorized devices, and why those procedures have proven inadequate, as well as the location of the facility for which authorization to jam is being sought. In areas where a facility is in close proximity to commercial or residential properties, or to major transportation corridors, jamming may not be appropriate even under tightly controlled circumstances and the Commission must weigh the public interest in evaluating requests for authorization to jam.

Strong post-deployment safeguards also would be necessary in the event that jamming is authorized. Devices must be subject to strict chain-of-custody requirements and include remote shut-down capabilities to prevent them from falling into the wrong hands and being used inappropriately. Additionally, aggressive post-deployment monitoring should be employed to identify interference.

Even with these safeguards in place, interference is likely, and public safety and wireless carriers will not know about instances of interference until *after* they occur. This forces the industry and public safety to react, and in an instance where a citi-

zen's or public safety official's safety or well-being is at stake, reacting after the fact may be too late.

While CTIA strongly supports the underlying goal of S. 251, and although the new draft of the legislation does contain several improvements over the introduced version of the bill, we remain troubled that the bill turns the process of testing, setting rules, and considering applications for authorization on its head. The bill would permit applications for authorization to deploy jammers upon enactment and require the FCC to act on any such application within 60 days, yet it does not require testing and the establishment of rules to be completed for 1 year. This process must be reversed.

Additionally, the bill lacks any reference to alternative, non-interfering technologies. The deployment of technology that includes the possibility, in fact likelihood, of interference will impose on the industry the burden and cost associated with regular field-testing and monitoring near thousands of correctional facilities; a better, less burdensome approach would be to require periodic, but unannounced testing by the FCC. The best approach, however, would be to give preference to non-interfering alternatives so that the problems associated with jamming are avoided altogether and law enforcement's ability to gather intelligence by way of wiretaps is preserved.

Finally, the bill is incomplete because it fails to address the supply and demand problem at the heart of this issue. We urge Congress not to lose sight of why we have this problem or, put differently, how wireless handsets are getting in to correctional facilities.

Fundamentally, as the title of the hearing suggests, this is a contraband issue and the Congress and many states need to update and enforce their contraband statutes to impose tougher penalties for the possession, provision, or support of contraband handsets. Unfortunately, even prison officials acknowledge that "the most common method used by the inmate population for obtaining cell phones is through the use of corrupted staff" at correctional institutions.³ This conclusion has been repeated by others, including the Texas inspector general, who recently told *Wired* magazine that "there is no question that corrupt officers are involved" in the smuggling of contraband wireless devices,⁴ and Antonio Gioia, a drug prosecutor with the Maryland State Attorney's Office in Baltimore, who told WJZ-TV that "It's not a big secret. They [phones] are chiefly smuggled in by correctional officers."⁵ The motive for this activity is financial, as a recent report of the California Office of the Inspector General found that over 1 year, one "correctional officer received approximately \$150,000 for smuggling approximately 150 phones to inmates."⁶ Remarkably, while the officer in question was terminated, he faced no legal repercussions for his actions.

This kind of corruption and other efforts to smuggle contraband to prisoners must be stopped by significantly enhancing the penalties associated with this behavior. These efforts also must extend to those who facilitate the use of contraband handsets by paying for service. While the threat of incarceration may not deter those who already are imprisoned, it may cause those who provide illicit wireless devices or enable their use by inmates to stop for fear of facing meaningful time behind bars.

We have seen the imposition of enhanced penalties work in other areas. Three years ago, this Committee was concerned—as we were—with the problem of pretexting. With our full support, congressional action imposing stiffer penalties, including criminal sanctions, helped to quickly and effectively dry up the market for pretexting. That approach should be tried here too, and while several states, including West Virginia, North Dakota, Arkansas, Texas, Florida, Nevada, and Indiana, have recently updated their contraband statutes to include specific penalties for the possession or provision of unauthorized handsets, many states have yet to do so. CTIA encourages other states and the Federal Government to enact legislation to make the possession, provision, or support of a contraband wireless device a felony.

³ Affidavit of John R. Campbell, Warden, Val Verde Correctional Facility, Del Rio, Texas, filed August 1, 2007 in Petition of the GEO Group, Inc. for Forbearance from Application of Sections 302, 303 and 333 of the Communications Act of 1934, as amended, and Sections 2.803 and 2.807 of the Commission's Rules to Allow State and Local Correctional Authorities to Prevent Use of Commercial Mobile Radio Services at Correctional Facilities.

⁴ Vince Beiser, "Prisoners Run Gangs, Plan Escapes and Even Order Hits With Smuggled Cellphones," *Wired*, May 22, 2009, available at http://www.wired.com/politics/law/magazine/17-06/ff_prisonphones?currentPage=all.

⁵ Mike Hellgren, "Calling the Shots: Cell Phones & Crime Behind Bars," available at <http://wjz.com/local/cell.phone.contraband.2.999932.html>.

⁶ Special Report: Inmate Cell Phone Use Endangers Prison Security and Public Safety, Office of the Inspector General, State of California, May 2009, at 6.

Many states also need to implement “airport style” security measures for staff and visitors who enter prison grounds. Remarkably, not all states require even the same level of security checks to enter a prison facility that citizens and staff routinely encounter when entering a congressional office building. In states that do require “airport style” security measures as a prerequisite to entry, officials “consider this interdiction method effective at curbing cell phone smuggling at the point of entry” and the Federal Bureau of Prisons believes the screening process “has been a good deterrent.”⁷

Finally, in considering whether action is necessary to allow some limited use of jamming technology, CTIA also urges the Committee to ensure that the FCC actively and aggressively enforces the existing prohibition on the unauthorized use of jammers. Carriers and others who depend on the ability to use spectrum on an interference-free basis are encountering too many cases where individuals have engaged in unlawful “self-help” to jam wireless signals, often with an impact that reaches far beyond their intended target.

Just this spring, CTIA identified the use of a jammer at Mt. Spokane High School in Mead, Washington, where school administrators had installed an illegal jammer to prevent students from using their phones during school hours. As it happened, the jammer also interfered not only with communications between commercial mobile radio service customers, but also with the county sheriff’s cross-band repeater, the key to enabling communications between the county’s sheriff, local police, and the local SWAT team. One of our carriers that serves western Kansas and eastern Colorado experienced a similar problem when illegal jamming equipment was deployed by the Agate School District in Colorado. We recognize that the FCC’s enforcement team is spread thin, but increased attention to, and action against, those who market or deploy unauthorized jammers and other devices that cause interference is both appropriate and necessary.

Thank you for the opportunity to appear on today’s panel. I appreciate the opportunity to share the wireless industry’s views on this matter and look forward to working with you to achieve a solution to this matter that works to put an end to the use of contraband phones in prisons and preserves reliable wireless service for law-abiding citizens.

Senator PRYOR. Thank you. Mr. Moriarty?

**STATEMENT OF JOHN M. MORIARTY, INSPECTOR GENERAL,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

Mr. MORIARTY. Mr. Chairman, Ranking Member Hutchison, and Members of the Committee, thank you for allowing me to be testify here today in support of Senator Hutchison’s S. 251 on the jamming of illegal wireless communications.

My office initially became aware of the severity of the problem in 2004, and has been conducting criminal investigations inside the Texas prison system since that time. In March of 2004, investigators from my office were working an organized crime case involving a violent prison gang. In the course of the investigation, information was developed that a Ranking Member of the gang had ordered a murder of another member from inside one of Texas’s maximum security prisons by using an illegal cell phone.

We intervened before the murder could take place. This case resulted in the arrest and conviction of a corrections officer for bribery and the termination of two others.

Texas was the first in the Nation to enact legislation to make it a felony crime to provide a cell phone to an inmate. Despite these and many more aggressive steps, the problem has continued to grow. Texas has 158,000 inmates incarcerated in 112 secure facilities. The larger the number of inmates incarcerated, the larger the illegal wireless commercial device problem.

⁷ *Ibid.*

There's a false belief that when a person is incarcerated, they probably when a person is incarcerated, they stop committing crime. Many state prison systems do not have state police criminal investigators embedded within the system as Texas does, and face an even bigger challenge to investigate the origins of these phones.

We have identified three primary sources of these devices: carried on the person of corrupt employees or contractors, dropped in a specific location and smuggled into the facility by inmates, or concealed in packages shipped in to the prison facilities.

On October 20, 2008, a systemwide lockdown was ordered in Texas and extensive search procedures were enacted, as mentioned earlier by Senator Whitmire. All persons entering the facilities, all items, were subject to searches by use of metal detectors, x-rays.

As the search procedures became more comprehensive, the smuggling methods also changed. The inmates—and corrupt employees, in some cases—have changed their operational techniques by resorting to secreting devices in their body cavities in order to defeat the search procedures. Conducting body cavity searches is permitted only under extreme circumstances due to the intrusiveness of the search. This search technique is not taken lightly, and persons involved in smuggling also know this.

Devices have been recovered in shipments of goods delivered to the prisons. In one case, an air compressor was intercepted and 75 devices recovered from the tank. This is an ongoing battle for corrections departments all across the country. Investigations have shown that quite often, one phone may be used by numerous inmates, as Senator Whitmire mentioned earlier, using different SIM cards. As most of us know, a SIM card is about the size of a postage stamp. Due to the small size, they are very difficult to detect. Quite often, we'll find that there's one phone, but nine SIM cards or eight SIM cards being used by that one device.

We have tried the use of some very sophisticated countermeasures, and it has not been successful in the prison environment. In Texas, investigations have revealed that the cost to have a cell phone smuggled inside of a prison ranged between \$400 and \$2,000 on death row.

Since 2004, my office has aggressively investigated 2,098 illegal wireless commercial device cases and obtained over 2,000 subpoenas for wireless records. These investigations have shown that these illegal devices have been used in organized criminal activity involving prison gangs, drug trafficking, homicide, and solicitation of capital murder.

As you can imagine, this is a massive drain on our investigative resources. The drug cartels operating across the border from Texas have a lot of assets to attempt to corrupt correctional staff. Investigations have revealed that inmates with Mexican drug cartel ties have been communicating through these illegal phones. The termination of the usefulness of these devices by permitting jamming within the confines of the prison is the most logical solution to ensure public safety.

As the oversight authority for the system, it is my opinion that the State of Texas has utilized all available resources to interdict cell phones from entering and operating within the prisons. Signal-jamming is a key component that is missing. The current situation

is a serious national threat to public safety and can only be properly rectified by passage of this legislation.

Mr. Chairman, I thank you again for this opportunity and would be happy to take any questions you might have.

[The prepared statement of Mr. Moriarty follows:]

PREPARED STATEMENT OF JOHN M. MORIARTY, INSPECTOR GENERAL,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Mr. Chairman and members of the Committee, thank you for allowing me to testify here today in support of Senator Hutchinson's Senate Bill 251 on the jamming of illegal wireless communication devices in prison facilities. My office initially became aware of the severity of the problem in 2004 and has been conducting criminal investigations on cell phones inside the Texas prison system since that time.

In March 2004, investigators from my office were working an organized crime case involving a violent prison gang. In the course of the investigation, information was developed that a ranking member of the gang ordered the murder of another member from inside of a maximum security prison by using an illegal cell phone. We intervened before the murder could take place. This case resulted in the arrest and conviction of a corrections officer for Bribery and the termination of two others.

Texas was the first in the Nation to enact legislation to make it a felony crime to provide a cell phone to an inmate. Despite these and many more aggressive steps, the problem has continued to grow. I believe that in order to fully appreciate the challenge that state systems face, you must understand how large several of the state penal systems are. Texas has 156,000 inmates incarcerated in 112 secure facilities. California, New York and Florida also have large numbers of inmates. The larger the number of inmates incarcerated the larger the illegal wireless communication device problem.

There is a false belief that when a person is incarcerated they stop committing crime. Criminal law enforcement investigators who operate inside of the state prisons have a very difficult job. Unlike free world criminal investigators, the prison criminal investigator is dealing daily with hard-core, street-smart convicted felons, in most of their investigations. Many state prison systems do not have state police criminal investigators embedded within the system as Texas does, and face an even bigger challenge to investigate the origins of these phones.

We have identified three primary sources of these devices:

1. Carried on the person of corrupt employees or contractors.
2. "Dropped" in a specific location then smuggled into the facility by inmates.
3. Concealed in packages shipped into the prison facilities.

In one undercover investigation, an investigator from my office posed as a member of the Texas Syndicate prison gang. He arranged a meeting with a corrupt corrections officer in a parking lot in Houston and provided her with a cell phone, \$400 and a small quantity of Heroin. During the meeting the officer detailed that she was working for all of the gangs smuggling cell phones. It is all about the money.

In the case involving an offender from death row contacting Senator John Whitmire, the investigation revealed that the cell phone had passed through a dozen inmates or their family members before it reached its destination on death row.

The extensive search procedures enacted on October 20, 2008, for all persons and items that enter their facilities included pat searches, metal detectors and x-rays. As the search procedures became more comprehensive the smuggling methods also changed. The inmates and corrupt employees in some cases have changed their operational techniques by resorting to secreting the devices in their body cavities in order to get past the search procedures. Conducting body cavity searches is permitted only under extreme circumstances due to the intrusiveness of the search. This search technique is not taken lightly and persons involved in smuggling also know this.

Devices have been recovered in shipments of goods delivered to the prisons. In one case an air compressor was intercepted and 75 devices recovered from the tank. This is an ongoing battle for all the corrections departments in the country. Investigations have shown that quite often one phone may be used by numerous inmates using several different SIM cards. A SIM card is about the size of a postage stamp. In a search of one inmate, he had 4 SIM cards placed vertically into the heel of his shoe. Due to their small size they are very difficult to detect. The use of some very sophisticated counter-measure devices has been attempted and has not been very successful in the prison environment.

The smuggling of cell phones has become a national issue in the corrections' public corruption arena. In Texas, investigations have revealed that the cost to have a cell phone smuggled inside a prison range between \$400 to as high as \$2,000 on Death Row. We have also developed evidence that money from foreign nationals involved in the anti-death penalty movement was utilized to facilitate some of these organized smuggling operations. Since 2004, my office has aggressively investigated 2,098 illegal wireless communication device cases and obtained 2,035 subpoenas for wireless records. On October 20, 2008, Governor Perry ordered a system wide lockdown. 949 cell phone investigations have been opened by my office since that time.

These investigations have shown that these illegal devices have been used in organized criminal activity involving, prison gangs, drug trafficking, homicide and solicitation of capital murder to name a few of the offenses. As you can imagine this is a massive drain on our investigative resources.

I have been dealing with this problem on a daily basis since 2004 and have conducted extensive research into the issue, and in my opinion the solution is the targeted jamming of correctional facilities. The drug cartels operating across the border from Texas have a lot of assets to attempt to corrupt correctional staff to violate the law. Texas is very aggressive in the protection of its border, and hence the prison system ends up with cartel and gang members in custody. Investigations have revealed that inmates with Mexican drug cartel ties have been communicating through these illegal phones. The termination of the usefulness of the device by permitting jamming within the confines of the prison is the most logical solution to ensure public safety.

As the oversight authority for the system, it is my opinion that the state of Texas has utilized all available resources to interdict cell phones from entering and operating within the prisons. Signal jamming is the key component missing. The current situation is a serious national threat to public safety that can only be properly rectified by passage of this legislation.

Mr. Chairman, I thank you again for this opportunity. I would be happy to take any questions you might have.

Senator PRYOR. Thank you. I do have a couple of questions, and then I'd like to turn it over to my colleagues.

First, for Mr. Largent, several states, including Arkansas, recently filed a petition for rulemaking at the FCC to permit wireless jamming in corrections facilities. I was wondering if CTIA is planning on taking a position on that? Have you all made a decision on whether to support or oppose that?

Mr. LARGENT. Well, I would say, Mr. Chairman, that I'm not aware of that particular petition to the FCC. But I would tell you that what CTIA supports is—you know, we're not here to defend the actions of prisoners or having cell phones in prisons. What we want to see is a way to stop the use of prisoners using cell phones, and at the same time, protect the ability of public safety and the public of being able to use their cell phones outside those prison walls.

And the problem with jamming as a technique, in my opinion, it's crude, it's unreliable, and there are better ways to do it so that it doesn't interfere with public safety's communications, doesn't interfere with the public's communication ability, and yet, it stops the ability of prisoners from using cell phones.

Senator PRYOR. Senator Whitmore, let me ask you a follow-up to your statement, and that is, you know, you support wireless jamming. Do you think there might be other, more effective, ways to do this and not use jamming? Do you feel like that's the most efficient, effective way to stop this?

Mr. WHITMIRE. It would certainly appear—we have certainly used every traditional, innovative measure in the State of Texas. After the incident involving my phone call, we went to a lockdown,

systemwide. It took about 2 weeks to do a cell-by-cell search. All employees were patted down, metal detectors, dogs.

It's not for lack of effort by the correction officers and their employees of trying to have zero tolerance. I can only tell you, if you can imagine, by meeting with correction officials and other state officials, I demanded action immediately. They told me they did the best they could, but we're still experiencing phones being intercepted and used in our prisons.

What you have to realize, and I'm sure you do, is the desire of these inmates and their parties to have these phones. The benefits are so great. Can you imagine going to death row, but still able to harass law enforcement, judges, prosecutors, victims, carry out a very profitable criminal enterprise?

I think we're all in agreement, it's irrefutable that the problem exists, it's what do you do about it? I'm going to tell you the State of Texas has 112 mostly remote, rural locations. Short of jamming and a complete shutting down of those phone signals, I don't think we can remedy the problem. It is a public safety problem. I wish I—if we had the time, but probably not necessary, to put a name and face with these people using the phones. It's the worst of the worst.

And if they can have cell phones on death row, which should be the most secure area of our prison system, it just shows the extent of the problem. And I'm just really appealing for a common-sense approach. Untie the hands of prison officials and let them use all available tools, and address the concerns of the industry. But I think they can be accommodated.

And I work close with the industry, and I'm sensitive that we not interfere with law-abiding citizens' use of these phones. But really, public safety, as we all know, is our first priority and our responsibility as public officials. I feel we have to have this tool.

Senator PRYOR. Thank you. Senator Hutchison?

Senator HUTCHISON. Well, thank you, Mr. Chairman. Let me just ask both Senator Whitmire and Mr. Moriarty, you've heard the concerns raised by Mr. Largent and Mr. Mirgon, and also, I'd like to ask Mr. Maynard to respond here. Why aren't the tools that we have now—dogs, the ability to try to listen has been mentioned. Why aren't those tools effective enough?

Mr. WHITMIRE. I would say, Senator, the size of the problem. We have 158,000 inmates. Waco, Texas, we're familiar with, is 100,000 people. We're literally locking up—unfortunately, but necessary—one and a half Waco, Texas and 112 locations. We have 40,000 of these TDCJ employees, 26,000 guards.

When humans are involved, unfortunately, and there's a profit motive, you're going to have corruption and the need to apprehend these phones. And so I don't think we quit using our available tools, but we've also—

Senator HUTCHISON. Tell me about the guard—

Mr. WHITMIRE.—got to use the next one.

Senator HUTCHISON. Tell me about the guard problem. I mean, how—

Mr. WHITMIRE. Well, Mr. Tabler, the inmate on death row, when I asked him how he got his phone, he said, "\$2,100 paid to a guard." Most of our guards, as you know, are law-abiding, hard-

working civil servants who put their lives on the line each and every day. They take home \$1,900, a starting correction officer. Just the sheer money alone is the unfortunate incentive.

Then they get compromised, and the whole facility is in danger, the community where it resides. And I'm sitting in Houston, Texas. My family was in danger, and all citizens of the State of Texas.

So it's just the size of the problem, and, like I said, it's common sense. You use—it's a war, is the way I would draw an analogy to it. You do not use available weapons if they're going to be useful in this battle of crime.

Senator HUTCHISON. OK. Mr. Maynard, what do you think about what you have available now, and why is it not enough?

Mr. MAYNARD. Senator, as you know, the State of Maryland is going to host a demonstration of all the technology that might be used in addition to jamming. And Governor O'Malley and Senator Mikulski's also petitioned the NTIA to conduct a 30-minute demonstration of jamming, just so we could see what effect it has.

I think none of the things that we do—the dogs, the—we use in Maryland x-ray machines for packages coming in. We use secure-view scanners for inmates to pass through like metal detectors at airports. We just—we have four of the BOSS chairs, the body orifice scanning system, that can detect cell phones within an inmate's body. We're getting 20 more of those, so we'll have one for every prison.

We are using all the technology, we think. We would like to be able to petition the FCC to try the jamming. It would still be reviewed. We would have to ensure that it applied only to one institution. But so far, I've never seen jamming, because it's not legal to observe jamming unless we get permission to do that.

Senator HUTCHISON. Mr. Moriarty, what about the expense of this? Is it realistic to use the technology that we have now for every prison throughout the United States?

Mr. MORIARTY. The Texas legislature this past session authorized me to use and possess detection equipment. Our plans on the table right now are to—we've got budgeted over a half a million dollars just for that one mobile set and four full-time employees to go around the 112 prisons. I mean, it's just—it's very difficult to utilize that detection equipment.

You know, there is no expectation of privacy in the penitentiaries, and the State of Texas recognized that and authorized those tracking of those cell phones without court order. But it is very cost prohibitive. We've looked at a lot of the methods that have been mentioned here today, and found that with as many facilities as we have, it's not a wise use of taxpayer dollars.

Senator HUTCHISON. Thank you. My time is up, and I'm going to let others—but I would like to have a second round. And, Mr. Chairman, I do have letters that I'd like to be submitted for the record from the state departments of correction, from South Carolina, Kansas, Massachusetts, Arkansas, and Tennessee. And Senator Thune has asked also to submit a letter from South Dakota in support of Senate Bill 251.

Senator PRYOR. Without objection. Senator Begich?

[The information referred to is contained in the Appendix.]

**STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Thank you, Mr. Chairman. And I have to say in all the issues we deal with in Commerce, I never anticipated we'd be talking about this issue, to be very frank with you. But it does drive some questions for me. And I appreciate the Ranking Member's effort in this area, and I actually support this idea.

It seems like—and I'll just make a comment, and that is for the technology we have today and the advancements we have with wireless and many other types of technology, it seems the concerns that I've heard from Congressman Largent, Mr. Largent, and others that we can accomplish this.

Because I have sat in this same hearing having telecom people here, telling me how advanced and the great telecommunications we have and the power of technology and the advancement in R&D, so I believe them. So I think solving the problems that you have are not going to be a problem, in my view.

But I want to go to the basic issue, and maybe—I'm not sure, Mr. Moriarty, if you could answer this question. But—and I'm also looking to Senator Whitmire. There's 20—I'm going to use Texas—26,000 correctional officers, if I heard that number correctly.

Mr. MORIARTY. Yes, sir.

Senator BEGICH. We are solving a problem which is a symptom of another problem, which is we have correctional officers—and I agree with you, Senator Whitmire. We have an incredible—all across this country, correctional officers are doing fantastic work. They're usually paid less than police officers, which is a problem, I think. That's just my own personal belief as a former mayor. I think they should be equal for the work they do.

But putting that all in perspective, it seems like we're treating the symptom of a bigger problem, and that is we have a certain amount of officers that are taking monetary or other gain in order to supplement their own lifestyle and whatever. How many of the 26,000 officers, or the folks that have been dealt with with dealing with this contraband, have been prosecuted and are serving jail time?

Mr. WHITMIRE. Out of—my office conducts more bribery investigations than any law enforcement office in the State of Texas.

Senator BEGICH. OK. Give me a number.

Mr. WHITMIRE. We aggressively—we're in the ballpark of 100 maybe a year that we lock up. And we have our own special prison prosecution unit. We are very aggressive on dealing with the public corruption issues, whether it be drugs, cell phones, unlawful contact with an inmate, whatever it may be. But just because they resign or they walk out the door doesn't mean we're not coming after them with a warrant. We have a very aggressive program in Texas.

Senator BEGICH. Let me, if I can, ask another question. I'm not sure I totally heard what you said. In regards to this type of investment, was it 500,000 per one prison that this is being sampled on?

Mr. WHITMIRE. This is—the system that we're looking at is a mobile system that we can go from prison to prison on, looking, searching at different hours of the day and night for active cell phones.

Senator BEGICH. And the four employees that would be part of that?

Mr. WHITMIRE. They're investigators from my office that'll be specially trained on the operation of the equipment.

Senator BEGICH. And reasonable pay? Good pay?

Mr. WHITMIRE. Well, they're state police officer's pay.

Senator BEGICH. OK. That's one point. I was trying to do a little contrast there. So they're paid more than a correctional officer?

Mr. WHITMIRE. That's correct.

Senator BEGICH. OK. That just makes my point from what I said earlier, that we need to move those pay levels up, to be very frank with you. And then in regards to—if you wanted to implement this throughout the whole system—again, I'm using Texas as an example. You had 112—if I heard that right, 112 correctional institutions?

Mr. WHITMIRE. Yes.

Senator BEGICH. You're talking at a minimum—if they were mobile, but stationary, 50 million or more for equipment purposes and then operational?

Mr. WHITMIRE. If you were to install—there are hard-wire detection systems also.

Senator BEGICH. Sure.

Mr. WHITMIRE. But it would be quite a bit more than what we're talking about for that one mobile system.

Senator BEGICH. OK. Do you think—and, again, honestly, I support this legislation, because I do believe that the wireless technology of today has advanced in the last 2 years even better than it was 4 years ago, 6 years ago, and it will advance even more in the future. And I think when challenged, the wireless industry, situations like this, they will overcome the obstacles that may or may not be in the way, or perceived obstacles. So I think there's great opportunity here. So I support the idea. I support the concept.

But I am concerned because of the other issue, and that's that this is a symptom of the core issue. You know, I have a hard enough time bringing a bottle of water through TSA, and it seems that if we focus our energy in that area, figuring out what we can do more with our correctional officers to ensure that they have the resources they need, that the institutions have the resources they need to ensure the highest level—when those doors are opened, nothing passes through.

And I know it's hard, because we run a prison system also in Alaska. But it's a difficult challenge. And so I would just put that as more of a comment without—I'm not sure there is an answer. But that's a great challenge. And I think you made my point, that the people you're hiring, the four, are going to be paid more than correctional officers, because that's part of the equation that you get to, and that is fair and good compensation for people who are working very hard under very difficult situations now.

So I'll just leave it at that. But thank you very much.

Senator PRYOR. Senator Thune?

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman. And I want to thank you for holding today's hearing and thank Senator Hutchison for her leadership on this issue. I'm glad to be a co-sponsor of her bill. I do believe that the illicit use of wireless devices by prisoners needs to be addressed. And, as we speak, there are countless inmates who are using smuggled cell phones to coordinate illegal activity and plan escapes or intimidate witnesses.

And I think this legislation allows our correctional facilities in this country to operate cell phone jamming technologies upon the approval of the FCC and also set some limits on those devices to ensure that they don't interfere with communications outside of the prison. So I think the bill is a step in the right direction, and it will improve the safety of our prisons by preventing prisoners from using wireless devices and communicating with those outside of the prison.

And, as Senator Hutchison said, I do want to submit a letter for the record that I received from the South Dakota Department of Corrections, which endorses the Safe Prisons Communications Act of 2009 and supports its timely enactment.

[The information referred to follows:]

STATE OF SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
Pierre, SD, January 26, 2009

Hon. JOHN THUNE,
U.S. Senate,
Washington, DC.

Dear Senator Thune:

I write to urge your support of the Safe Prisons Communications Act of 2009, S. 251 and H.R. 560.

The bill would allow the FCC to grant waivers permitting correctional institutions to jam or interfere with wireless communications by inmates. Under the legislation, the FCC would enact rules and require applications before authorizing the use of such a device. The signal employed would be at the lowest, technically feasible transmission power to avoid jamming beyond the correctional facility perimeter.

Jamming cell phones would be a significant aid to correctional officials in supervising inmate communications. As the Secretary of the South Dakota Department of Corrections, I fully support this legislation and hope you will support correctional institutions in South Dakota and across the Nation with your vote.

Respectfully submitted,

TIM REISCH,
Secretary of Corrections.

Senator THUNE. And I appreciate the panel this morning and the insights that you're providing with respect to this issue.

And I guess I would like to maybe just ask a couple of questions, if I might. One, to Mr. Moriarty, in your testimony, it's—you made it clear that Texas has made it a felony to provide cell phones to inmates. And I guess I'm interested in knowing the results of that law. If that question's already been asked, I apologize for repeating it. And then are inmates still obtaining and using some of these devices? And then I guess follow-up would be do you think that jamming is the most effective approach to stop further use of those devices?

Mr. MORIARTY. The law—we've prosecuted numerous inmates for possession of the phone inside the facilities, as well as some family

members that have supplied the phones, as well as some correctional staff that have smuggled the phones in.

The problem continues to grow. We think it's a useful tool and a deterrent in some circumstances. However, they're—when you're talking taking—receiving money between \$400 to \$2,000, you know, that's quite a bit of money to these employees. And, again, it's a small percentage, but just one of those individuals can put lot of phones inside one of those facilities.

Again, there has been a lot of innovation. It has been very—in the smuggling methods, both with the inmates—and it's morphing as we get—step up and ramp up the searches, we're finding that they were using false bottoms in containers. Like I said, body cavities, we're—there's no end to how important these phones are.

We did an undercover deal in Texas where the phone was \$400, and there was also an introduction to some heroin. And if somebody had told me 5 years ago that a phone would be \$400 and heroin \$50, I'd told them they were crazy. But that's exactly what transpired on that undercover.

So, I mean, it's—I'm not saying this is—jamming is the total, 100 percent solution to this. Texas, 22 of the 112 facilities account for the majority of the phones, and they are in rural, remote areas. We've also been dealing with Federal law enforcement that jam on occasion, and have spoken with them and consulted with them, and they said that they could narrow that signal and jam the specified area without causing any type of problem.

I think we need—the testing and moving forward on the testing is critical to—I won't want to interfere with any public safety communications also, but I think it's a very valuable tool that we need to put in our tool kit.

Senator THUNE. Mr. Largent, have any of these—I know that the state correction facilities are looking for the opportunities to test some of these devices. And I guess I'm curious of knowing what your thoughts are about how the wireless carriers—what role they ought to play in testing some of these things. And have any of your members participated in tests so far, of jamming technologies in some of the prisons?

Mr. LARGENT. No, not in jamming technologies. We are—I think we're scheduled to do something with the State of Maryland to test some of the other technologies that are available, and, actually, higher-tech. And so we're in the process right now.

Senator THUNE. Good. And do your—I assume you believe that the—the carriers ought to be involved in testing, as the correctional facilities try to determine whether or not this is the most effective way?

Mr. LARGENT. Actually, I appreciate you asking that question, because that's one of our real concerns with S. 251 as it's currently written, and that is that the—it's structured in such a way that the equipment is installed in the prisons, and then you test, as opposed to testing before it's approved. And it's sort of backward, in our opinion. I think you need to test, make sure it works and works appropriately, that there's no spillover effect, which is our fear, that the spillover effect affects legitimate cell phone use in the areas. And then you can authorize it to be used in a prison setting once you've tested it and make sure that it works properly.

That would be one change that I would make to S. 251 that I think would alleviate a lot of the fears that our companies have. And I'm really here, not to defend our companies, but to defend our customers, because they're the ones that are going to have the disruption of service.

And there have been cases already where the cell jamming technology is being used in prisons in South America and India and other places, and there are stories of up to 200,000 cellular customers, legitimate customers, whose service was disrupted. And that's the kind of thing that we don't want to see take place in this country. And I know nobody on this panel wants to see that happen, or nobody in the Senate wants to see it take place.

But that's the fear that we have in just talking about cell jamming. We think there are other technologies that are available today—you can buy them today and implement them—that would be proven technologies that would be as effective without jamming signals.

Senator THUNE. Let me just ask one final question. If jamming devices are deployed in prisons, are there—what are the realistic chances that those devices would fall into the wrong hands, either inside or outside of the prison, and be used, for example, against law enforcement? Is that a concern that any of you might have?

Mr. LARGENT. Well, I can tell you that—let me just speak for just a second. There's cell jamming equipment that is out there today that has been sold illegitimately, and some schools, for example, I think in Colorado, were actually deploying them. And they didn't know it was illegal. And then they—you know, it was discovered they were using this jamming equipment, and it was disrupting public safety's ability to use this same spectrum. And so they quickly took it down. But it's available illegally now. But, again, it's not a legal piece of equipment in this country.

Mr. MORGON. Yes, sir. And what it does is in a couple instances where it has occurred, it shuts down what is known as the control channel, which makes the radio system fail. So you're not just impacting the people right in that area, you're impacting a whole system.

But I will qualify those were illegally brought in, used for mischievous purposes, and did not have any of the benefits of proper engineering.

Mr. WHITMIRE. I was just going to follow up. If we can't do it now—I mean, I don't know how you're giving live examples of how it's creating problems because it's prohibited, the measures that we're asking for. And we can speculate and certainly work with the authorities to safeguard against the instruments in the wrong hands, but we know for a fact today that the cell phones are in the wrong hands of convicted, violent offenders. And like so many things I know, unless they—I try to do what's for the greater good.

And while we share the concerns of the industry and need to work with them hand-in-hand to make certain that our law-abiding citizens' reception is not interfered with, we certainly need to address the illicit use of it. Because it is growing, as Mr. Moriarty pointed out.

And, you know, talking about additional penalties, we've done that. But you're already serving a life sentence or a death sentence.

It's not much of a deterrent to go ahead and make that a felony. It has hopefully impacted the employees, but then there, the profit motive takes over. So we've got to address that.

But I'm just urging for a common-sense approach to untie the hands of—you know, it's amazing. Mr. Largent mentioned that we ought to test it before it's installed. Well, I would suggest to Mr. Largent, he ought to talk to the Federal officials that are already using it. That would be an appropriate test that I think would be used.

And I would just say, as a state official, it's nuts for me to hear that our Federal prison officers and law enforcement can use an instrument that we're now requesting permission to use. So it gets back to common sense, I guess.

Mr. LARGENT. I would like to address that. If I were the Senator, I would be as motivated and irate as he is about not addressing this issue. And I am totally sympathetic with what took place in his situation. I would say, first of all, that the jamming equipment that I referenced in my statement just a minute ago is in place in India and South America and other countries, but not in this country. So I would clarify that.

Mr. WHITMIRE. Would it be identical? Excuse me, if I could—I mean, are you talking about the exact—

Mr. LARGENT. You know, jamming is a technology that's ages old. So I don't know that it would be the same technology or not. But—so anyway, I would like to just clarify that point.

Senator THUNE. Thank you, Madam Chair.

Senator HUTCHISON. Thank you. The Chairman will be back in just a few minutes. But let me ask—well, let me first state that we have another draft. Having worked with all of the interested parties who are willing to come to the table, we do have a new draft of the bill that will be coming out next week. And one addresses one of your concerns, Mr. Mirgon, that there would be a documented process for shutting down a jamming device completely if there is any emergency—a fire or anything where first responders would be affected. And we would clearly want to make that for the whole area that that particular band would be serving. So that is a part of our next draft of the bill.

And we also have one that addresses your concerns, Mr. Largent, and that is that there would be inventory controls—well, first of all, there would be tested applications required before FCC approval. You wouldn't have the rules going forward without the testing of the devices, which I think certainly was a legitimate concern.

And then we also have required inventory controls for the jammers once they're deployed so that you would know if the jammer went into another person's hands and was then being used for illicit purposes. And there would be a requirement that the jamming, which does have the waiver, would be destroyed and certified as destroyed to the FCC when the waiver expires.

So we want to work with all of you to assure that we put every safeguard in place in the bill. And I would just ask Mr. Mirgon and Mr. Largent if there are other areas that you would like to see addressed, will you work with us to try to do that? Because we don't want to in any way harm our first responders, of course, or our public safety capabilities. But also, considering the testimony we've

heard and the experiences that are being generated all over our country right now, we do want to address this issue.

So, Mr. Mirgon, Mr. Largent, what other areas would you like to see us sit down and address?

Mr. MIRGON. One of the things I—and, first off, I appreciate your comments, and thank you for your willingness to work with us. And clearly, our position is, we do want to work with people to help solve this problem. As a public safety professional, I hear these stories. I've experienced many of them firsthand. Been there, done that. And I feel for these people, as managers, having to try to deal with this.

But one of the things that we might want to consider is that ensuring that these systems can only be worked on by the manufacturer or trained technicians, and they somehow be sealed and documented.

Because, unfortunately, I have had RF engineers work for me who go in and work on a piece of equipment they don't know about. They make modifications to—you know, it's like the Tim the Tool Man type mentality. I can make this better. And they turn up the power, and all of the sudden, you've shut down somebody else's system. So I think that would help alleviate a lot of concerns.

Senator HUTCHISON. Very good point. We'll do that. We'll make that happen. Mr. Largent?

Mr. LARGENT. Well, I would just say that RF signals in general—and I'm not an electrical engineer—but I'm told they're erratic and they're subject to change based upon the seasons of a year, whether trees have leaves on them or not, and they can be erratic and unpredictable. And, you know, I think as long as the testing could incorporate those different scenarios, that it would probably be OK.

But our concern is that you could test in the summer when trees have leaves and the signals may not be a problem outside the walls of the prison. And then in the wintertime, when the trees lose their leaves, the signals are a problem. And that's just the nature of RF signals, from my understanding. Again, I'm not an expert in radio signals or RF signals. But that would be one concern that I would have, just that testing period that you're referring to would test under all scenarios so that we can be confident that, you know, public safety's not going to lose a signal or the public's not going to lose the ability to make calls in and around a prison.

Mr. MIRGON. And if may tag onto that, I think that's a great idea. I believe there's a simple solution for that, that the state radio shops have the ability to measure signals, and if there was a quarterly requirement to do just a drive-by—

Senator HUTCHISON. To test.

Mr. MIRGON.—and test them, you could probably do that testing in under an hour to help certify that the signals are maintaining within those parameters.

Senator HUTCHISON. I think these are both very doable and very important. And we will work with you to really put the bill in shape so that we can pursue both purposes. Let me just ask in the last minutes if there's anything from the three representing the criminal justice system, anything that hasn't been put in the record that you would like to see added as we wrap this up?

Mr. WHITMIRE. No, ma'am.

Senator HUTCHISON. All right. Let me just say that Senator Begich has now joined as a co-sponsor of the bill. And I want to read the list of co-sponsors. Senator Mikulski, as we mentioned earlier, is the lead Democrat. Also, Senator Cochran, Senator Lieberman, Senator Thune, Senator Wicker, Senator DeMint, and Senator Vitter are co-sponsors of the bill.

So I hope that we can work together. Oh, and, by the way, the bill has been introduced in the House, as well, and has upwards of 40 bipartisan co-sponsors. So it's an issue that is very important for law enforcement in the states. And if we can work with the FCC to give the states another tool, and our Federal prison system, as well, I think people ought to have the right to know that when someone goes to prison, they are safe from that person, and particularly victims. I cannot imagine a victim who breathes a sigh of relief that a rapist or an attempted murderer is in prison, and all of the sudden, the person is not safe, even though the person is behind bars. That's unacceptable in our country, and I want to do everything we can to stop this problem.

So, Mr. Chairman, thank you for holding the hearing. And I look forward to working with everyone at the table to pursue our legislation this year. Thank you.

Senator PRYOR. Well, thank you. And thank you for your leadership and your attention on this issue, because you're making a great difference all over the country.

Let me just say that I appreciate the panel for being here. I appreciate your input, your thoughts, your ideas. As Senator Hutchison said, she's really wanting to work with all sides to try to get this bill done as quickly as possible and get it moved to the floor whenever it's appropriate. So I'd just encourage you all to reach out to her with your ideas as suggestions, because I know her and she's very focused on this and wants to get this done. The last thing I was going to say is that there were a few Senators, because of conflicts in scheduling, that couldn't be here today. Some may want to submit questions in writing. And we're going to leave the record open for 2 weeks, and in the event that they do ask questions, we would appreciate the panelists to get those back to us as quickly as possible.

With that, we're going to adjourn the hearing. And, again, thank you very much for being here.

[Whereupon, at 11:12 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. BARBARA MIKULSKI, U.S. SENATOR FROM MARYLAND

Good morning. I want to thank Chairman Rockefeller and Senator Hutchison, for holding this important hearing today. Thank you for inviting me to testify on the Safe Prisons Communications Act of 2009 (S. 251). This is a critical piece of legislation of which I am a proud to be a co-sponsor. I want to talk about why we need to consider and pass this bill now.

All Marylanders were shocked and dismayed to hear about this new organized crime practice of using cell phones in prisons to conduct criminal activities in communities on the outside while criminals enjoy a lavish lifestyle on the inside. As one reporter described it, from their prison cells and with the help of corrections staff, members of a violent gangs feast on salmon and shrimp, sip Grey Goose vodka and puff on fine cigars, all while directing drug deals, extorting protection money from other inmates, and arranging attacks on witnesses and rival gang members. And ordering a hit on a Maryland father of two.

On July 10, 2007, Carl Lackl, a 38-year-old father of two, was executed in front of his home in Baltimore County, Maryland. Lackl was an eye-witness to multiple murders who was supposed to testify at the murder trial set to begin on July 18, 2007. The murder hit was ordered on Lackl by Patrick Byers, Jr., who was incarcerated in a Baltimore jail. The ordering of the hit was made via a text message sent to the killers from his cell phone, which had been smuggled into prison.

Maryland's talented Governor Martin O'Malley wanted to spring into action to jam cell phone transmissions from prison. To his dismay, he found he needed a waiver from the Federal Communications Commission (FCC) to protect the people of Maryland. He is right to be dismayed.

In 2008, Maryland correction officers confiscated 847 illegal phones. This is not just a Maryland problem. This is a national problem: California correction officers confiscated 2,809 phones; Mississippi correction officers confiscated 1,861 phones; and Federal prison officials have found 1,623 phones. Not all phones are being found and the crime spree continues.

For these reasons, I have joined this bipartisan effort and am speaking for Maryland's can-do Governor, for the citizens of Maryland, and for the law enforcement officers who work so hard to catch and prosecute criminals to keep communities safe. They think they've imprisoned the criminals, but the criminals continue to operate out of jail with their smuggled cell phones.

That's why I'm a cosponsor of the Hutchinson bill. The Safe Prisons Communications Act allows a state to petition the FCC to block the use of cell phones from prison. It protects citizens. Current FCC law leaves citizens unprotected because it forbids the use of cell phone jammers in State and Federal prisons. The Hutchinson bill simply creates a mechanism to waive this ban when cells phones are being used illegally by prisoners. It is not a blanket waiver for all prisons. Each prison must individually make its case to the FCC as to why the jammer is necessary. Our bill double protects in case of any unintended consequences so neighboring communities are not impacted by the cell jammer. A prison can only jam if it does NOT interfere with emergency communications or any services outside the prison.

Prison officials are trying their best to detect and locate all illegal cell phones using canines and conducting random top to bottom searches of jails. Their efforts have been somewhat successful and many illegal cell phones have been found. However, enterprising criminals have been able to disassemble cell phones by hiding the parts, thus evading detection. Prisoners are continuing to find ways to use cell phones illegally and continuing to commit violent crimes. Prison wardens need more options to combat illegal cell phone use. This bill does exactly that. It provides another means to stop use of illegal cell phones by allowing prisons on a case by case basis to use cell jammers. I am proud co-sponsor of this legislation because it will help make our neighborhoods safer and give prison necessary tools they need.

Speaking later today is Gary D. Maynard, the Secretary of Corrections for my home state of Maryland. He has only been with the State of Maryland for 2 years,

but he brings 30 years of experience in state corrections systems. He began his career as a corrections counselor and worked his way up to serve as the warden of several prisons. More recently, he served as the Director in the Departments of Correction in Iowa and South Carolina. Secretary Maynard knows the problems facing jails and what solutions work. I thank him for being here.

Thank you, Chairman Rockefeller and Senator Hutchison, for this opportunity to share why I think this legislation is necessary in combating use of illegal cell phones by prisoners. I urge my colleagues to support this legislation and move this bill swiftly through Committee and to the floor for a vote by the full Senate. We can't afford another tragedy like that the Lackl family had to endure.

PREPARED STATEMENT OF CITIZENS UNITED FOR THE REHABILITATION OF ERRANTS
(CURE)

Citizens United for the Rehabilitation of Errants ("CURE"), a nationwide grassroots prison reform organization with chapters in most states, submits this testimony in connection with the July 15, 2009 hearing held by the Senate Committee on Commerce, Science and Transportation on S. 251, the Safe Prisons Communications Act of 2009, introduced by Sen. Kay Bailey Hutchison (R. Tex.). CURE recommends that the Commerce Committee incorporate H.R. 1133, the Family Telephone Connection Protection Act of 2009, into its consideration of S. 251. The long distance telephone rates charged to prison inmates and their families are exorbitant and make it harder for inmates to maintain critical family and community connections that are so crucial to rehabilitation. H.R. 1133 will ensure that the FCC addresses this issue effectively. Lower long distance inmate telephone rates would reduce the incentive for inmates to bring concealed cell phones into prisons and thus would help to address the security problem that S. 251 is designed to ameliorate.

Background: Inmate Telephone Rates Keep Rising While Other Telecommunications Rates Have Declined

Prison inmates generally pay some of the highest long distance rates in the country. These rates result from the exclusive service agreements that prison administrators typically enter into with telecommunications carriers for inmate calling services. As part of the bidding process, competing service providers generally are expected to offer generous commissions to the prison administrator or state correctional agency or treasury for the right to provide exclusive service to the facilities. The winning bidder is typically the service provider that offers the highest commission rates, rather than the lowest service rates, and those commission rates often exceed 45 percent and sometimes reach as much as 65 percent of gross revenues. The winning bidder then charges excessive rates for inmate calls in order to cover the huge commissions that it has agreed to pay.

Thus, as the FCC has recognized, this approach "perversely" has the distorting effect of allowing competitive pressures to drive prices up, rather than down, "because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions."¹ This upward trend in commission payments and rates has continued for years. Typical long distance inmate collect calling rates now include a per-call charge as high as 53.95 and a per-minute charge of as much as \$0.89, and CURE has seen inmate collect rates of \$4.28 plus \$0.98 per-minute, when the typical long distance rates available to residential subscribers or calling card users are a few pennies per minute. Inmate telephone service now stands alone as the last remaining telecommunications monopoly niche. At many prison facilities, inmates also are limited to collect calling services and are not offered the cheaper alternative of debit card or debit account calling services, in which the prisoner establishes an account with the prison commissary to pay for telephone calls.

The inflated rates resulting from these exclusive service agreements, excessive commissions and "collect call-only" requirements make long distance telephone calls from prison inmates unaffordable. At current rates, one hour of conversation per week can result in a monthly telephone bill of \$300, a huge financial burden for the innocent low income families and loved ones receiving and paying for inmate collect calls. Prisoners are forced to restrict their calling, and their families are forced to restrict their acceptance of collect calls, effectively depriving inmates and family

¹Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Red 3248, 3253 (2002).

members of their most reasonable means of communication and further straining the family and community ties necessary for released inmates' rehabilitation.

For years, prison inmate advocates have pressed for regulatory mechanisms that would provide relief from the exorbitant rates and limited service options for inmate long distance calling services. CURE and The Coalition of Families and Friends of Prisoners of the American Friends Service Committee ("AFSC") have stressed the need to reduce the burden of oppressively high inmate calling rates, which is borne largely by economically disadvantaged relatives and friends of inmates, often located far from the facilities where the inmates are incarcerated. Not only do these excessive rates directly injure the non-inmates paying them, but, as studies cited by CURE and AFSC explain, they also work to the detriment of society by weakening rehabilitative ties that reduce recidivism, preserve families, ease prison tensions and promote societal efforts to rehabilitate ex-offenders. Moreover, these exorbitant rates are imposed on a captive market that is unable to afford them, while all other consumers enjoy the benefits of increased competition, reduced rates, and choices in telecommunications services.

In 2000, CURE organized a nationwide campaign, the Equitable Telephone Charges ("eTc") Campaign, to mobilize prisoners' family members and other concerned citizens to advocate for more reasonable rates. The eTc Campaign has had significant success in persuading state authorities to reduce inmate service rates, especially intrastate and local rates, and making debit and prepaid calling options more available to prisoners. Excessive interstate long distance inmate rates, however, remain a substantial burden in all but a handful of states.

The need to act on this issue is now widely recognized. In 2005, the American Bar Association adopted a recommendation urging all levels of government to "afford prison and jail inmates reasonable opportunity to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates."² The recommendation was accompanied by a report citing studies demonstrating the importance of regular telephone communication between prisoners and family and friends for prisoners' rehabilitation and eventual return to the community as law-abiding citizens.

On February 1, 2006, the American Correctional Association approved an amended formal policy statement recognizing that "offenders should have access to a range of reasonably priced telecommunications services."³ A report released in June 2006 by a diverse national prison reform commission, including correctional and other public officials, stresses the negative effects that high inmate telephone rates have on the family and community ties necessary to prevent violence and the need to "smooth the process of reentry and make it more likely that prisoners will succeed after release."⁴ It urges policymakers to "support family and community bonds . . . by minimizing the cost of prisoners' telephone calls"⁵ and to "end practices such as" extracting huge commissions from inmate telephone service providers and limiting inmate telephone service to collect calling "that interfere with the maintenance of critically important family and community ties."⁶

H.R. 1133 Would Further Rehabilitative Goals

H.R. 1133 contains findings that prisoners' families and loved ones ultimately pay for most calls from prisoners, whether collect calls or otherwise. The bill finds that the excessive rates imposed on "[i]nnocent citizens . . . simply due to having a family member or loved one who is incarcerated" are "a burden on interstate commerce."⁷ The bill also finds that the lack of competition and the high commissions paid by service providers to administrators are responsible for the high rates. Excessive inmate service rates "weaken the family and community ties that are necessary for successful reentry into society" by released prisoners and burden the rehabilita-

²American Bar Association, Recommendation Adopted by the House of Delegates (Aug. 8-9, 2005). See also Catherine Anderson, Chair, Criminal Justice Section, American Bar Association, Report (Aug. 2005).

³American Correctional Ass'n., Public Correctional Policy on Adult/Juvenile Offender Access to Telephones (Jan. 24, 2001; Feb. 1, 2006), <http://www.aca.org/government/policvresolution/> (select "Policy," type in "Access to Telephones" and click on "Search") (last visited February 14, 2007).

⁴Commission on Safety and Abuse in America's Prisons, *Confronting Confinement*, 35-36 (John J. Gibbons & Nicholas de B. Katzenbach, Comm'n Co-Chairs) (June 2006).

⁵*Id.* at 36.

⁶*Id.* at 36-37.

⁷See Family Telephone Connection Protection Act of 2009, H.R. 1133, 111th Cong., 1st Sess. § 2(5), (10) (2009).

tion that “reduces crime and the future costs of imprisonment.”⁸ In effect, excessive inmate service rates generate more social and economic costs for all of society, far beyond the excessive calling costs.

H.R. 1133 reaffirms the FCC’s authority to regulate inmate telephone service and to implement the types of relief described in the bill. It would require that the FCC consider imposing, among other measures: maximum interstate calling rates; a requirement that inmate telephone service providers offer debit calling as well as collect calling services; a prohibition of call blocking by an inmate service provider solely on the ground that the service provider has no contract with the local telephone company serving the intended call recipient; and a prohibition of commission payments by inmate calling service providers to prison administrators and state correctional agencies.

The ABA has endorsed the proposed legislation, pointing out “the human costs” of excessive inmate rates,⁹ as have leading newspapers.¹⁰ The ABA pointed out that “the family and friends of incarcerated people,” rather than the prisoners themselves, “regularly shoulder the high cost of prison telephone services,” which makes it more difficult to achieve “the penological and societal benefits that occur when incarcerated people are able to maintain contact with the outside world.”¹¹ The ABA also noted that entering into exclusive service arrangements that provide commission payments of as much as 65 percent of all telephone revenue “creates an ethical quagmire” for prison administrators.¹²

H.R. 1133 Would Help To Achieve The Same Goal As S. 251

S. 251 would authorize states to petition the FCC to permit the installation of jamming equipment to block cell phone use in correctional facilities. The purpose of the bill is to eliminate prisoners’ use of cell phones, which has reportedly become a problem because of some prisoners’ use of cell phones for illegal purposes. It is certainly true that some cell phones apparently have been smuggled into prisons for illegal purposes, but CURE is not aware of any studies or investigations demonstrating the typical intended uses of cell phones in prisons overall.

CURE believes, based on its awareness of prisoners’ and their families’ struggles to reduce their telephone bills, that most of the smuggled cell phones are being used by incarcerated individuals to stay in touch, at a more reasonable cost, with families and friends—the very people they will need in order to make a successful transition to the free world. In other words, current prison telephone policies, particularly those that support the egregiously high rates charged for long distance calls, may be responsible for much of the contraband cell phone usage in prisons. While the Nation spends millions of dollars on projects to smooth the transition to the free world, we should be fostering the contacts that will help with those transitions. More intelligent and humane inmate calling service rates and policies would not only reduce recidivism by fostering prisoners’ ties to the community, but would also reduce the incentive to smuggle cell phones into prisons.

Like the Second Chance Act passed last year, H.R. 1133 would enable prisoners to maintain the strong family and community ties necessary for rehabilitation. Because more reasonable long distance inmate calling rates would reduce the incentive to bring cell phones into prisons, CURE urges the Commerce Committee to incorporate H.R. 1133 into its consideration of S. 251. CURE would be happy to work with the Committee to explore any and all possible solutions to making all interstate inmate phone calls affordable for families of prisoners and to reduce illegal cell phone use in correctional facilities.

PREPARED STATEMENT OF JAY SALKINI, PRESIDENT AND CHIEF EXECUTIVE OFFICER,
TECORE NETWORKS

I would like to thank Chairman Rockefeller, Ranking Member Hutchison and the distinguished members of the Senate Committee on Commerce, Science, and Transportation for giving me the opportunity to submit testimony on the Safe Prisons Communications Act pursuant to the Committee hearing on July 15, 2009. I would also like to express my appreciation for the work you are doing to address a serious public safety issue that is truly national in its scope.

⁸*Id.* § 2(13), (14).

⁹Letter from Robert D. Evans, Director, Governmental Affairs Office, ABA, to Rep. Bobby Rush, at 2 (Jan. 31, 2006) (“ABA Letter”).

¹⁰*See, e.g.*, Editorial, Keeping in Touch With a Parent in Prison, *New York Times*, Jan. 14, 2006, at A14.

¹¹ABA Letter at 2.

¹²*Id.*

Tecore Networks is a global supplier of wireless technologies with a proud history of doing business in the great states of Maryland, Texas and Florida. We have served commercial mobile service providers and government agencies since 1991. Cellular technology is proliferating around the globe, and its growth can create unintended consequences. However, solutions should be considered carefully and with appropriate technical information in order to maintain the benefits that this technology provides.

Based on our successful deployment of a proprietary and legal technology to address contraband cell phone use in a correctional system, we have become more aware of the scope and size of the problem throughout the United States. In fact, our analysis shows that as many as 27,000 cell phones might have been smuggled and used behind bars nationwide in 2008, with each phone typically being shared among multiple inmates.

While I am in complete agreement with the intent of S. 251, I am concerned about the emphasis on jamming as a solution. Jamming is a specific technology which would prevent unwanted cell phone calls by blocking any and all cellular communications in the covered geography. Unfortunately, due to the difficulty in effectively modulating jamming devices, such communications would likely include some combination of calls:

- by legitimate customers of the commercial operators who happen to be in an area covered by the jamming signal;
- to 911;
- from corrections personnel or other authorized individuals inside the correctional facility; and
- intended for lawful intercept, a critical tool for public safety.

In short, jamming poses significant risks to the public which may outweigh potential benefits. By emphasizing jamming in the legislation, it could well become the focus of corrections officials seeking a solution despite the availability of more effective, less invasive technologies. I respectfully urge the Committee to expand the scope of applicable solutions to include those which control or manage unauthorized communications rather than simply jam them.

At the same time, I fully support the corrections officers of this Nation in their quest for effective tools to address this problem. It is clear that these men and women have gone to considerable lengths to try alternative solutions, including body orifice scanners, cell-phone sniffing dogs and cell-phone detection technologies. Evidence shared during the hearing revealed that simply confiscating a cell phone is not enough; the critical component allowing communication on many phones is the subscriber identity module (SIM) card, which is the size of a postage stamp, can easily be removed from the phone, and can be used by an inmate on any compatible device.

An effective solution should:

- prevent unauthorized communications without the need to locate the device;
- permit legitimate communications including calls from authorized devices, to 911 or by consumers not subject to the restrictions of the correctional facility; and
- to the extent possible, provide forensic information to assist law enforcement, such as device and SIM serial numbers, originating and terminating telephone numbers, and—with the appropriate warrants—capture and monitoring of communication traffic including voice, text messaging and data.

The trials of alternative technologies have also revealed that there are multiple stakeholders in an effective solution to the problem of contraband cell phones in prisons. The requirements of the correctional institution are central to any remedy. However, based on Tecore's experience in providing communications systems, I also recognize and support the needs of the following parties:

- commercial mobile service providers must be afforded their rights and allowed to discharge their responsibilities to serve valid subscribers; this includes avoiding the liability of failing to complete an emergency call for such a subscriber
- public safety agencies must also be assured that frequency bands assigned to them will be unimpeded; and
- regulators must be provided clear direction and mandates in line with the resources they have to fulfill them.

In summary, I respectfully request that you strengthen the Safe Prisons Communications Act by broadening the scope of solutions beyond jamming to include those

which control or manage unauthorized communications, and by addressing the needs of all stake holders including commercial mobile service providers, public safety agencies and regulators.

Thank you.

STATE OF WEST VIRGINIA
DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY—DIVISION OF CORRECTIONS
Charleston, WV, July 13, 2009

Hon. JAY ROCKEFELLER,
Chairman,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
Ranking Member,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchison,

I am writing to express my support for the “Safe Prisons Communications Act of 2009” that has been introduced in the U.S. Senate. I also want to thank you for holding a hearing this week on this important legislation. Prisons are being overwhelmed by hundreds of cell phones at this time, and this legislation will provide correction officials across the country with the best tool to impede the illegal use of contraband cellular phones by prison and jail inmates.

In recent years, the number of contraband cell phones smuggled into correctional facilities has skyrocketed. These phones represent a threat to the security of the facility, staff, public officials, and the victims of crime. Once in possession of a cell phone, inmates have been able to conduct any number of crimes, ranging from intimidating witnesses, harassing victims, threatening elected victims, and engaging in gang activity.

Since 2006, there have been 13 incidents due to the presence of cell phones in West Virginia correctional facilities, although fortunately none of them resulted in high profile crimes. However, cell phones are now one of the most sought after items of contraband by inmates in custody. To address the serious threat that these devices represent, the West Virginia Canine Unit is in the process of training two dogs to detect cell phones.

Although correctional agencies make every effort to prevent the introduction of cell phones into our prison systems, only cell phone jamming technologies stop these dangerous phone calls. State correction agencies should be able to go through the same process that Federal agencies do and petition for a waiver. For these reasons, the West Virginia Department of Correction is requesting your support for passage of the “Safe Prisons Communications Act of 2009.” I look forward to working with you to further the safety of West Virginia correctional officials and the public.

Sincerely,

JIM RUBENSTEIN,
Commissioner.

JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS
August 4, 2009

Hon. JAY ROCKEFELLER,
Chairman,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
Ranking Member,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchison,

The Council of State Governments Justice Center is writing to express its support for S. 251, the Safe Prisons Communications Act of 2009, which is scheduled for mark up by the Committee on Wednesday, August 5, 2009. Prisons are being overwhelmed by hundreds of cell phones at this time, and this legislation will provide correction officials across the country with the best tool to impede the illegal use of contraband cellular phones by prison and jail inmates.

In recent years, the number of contraband cell phones smuggled into correctional facilities has skyrocketed. These phones represent a threat to the security of the facility, staff, public officials, and the victims of crime. In Maryland an inmate on trial

for murder orchestrated the assassination of a witness against him using a smuggled cell phone. The witness was gunned down outside his home, and in front of his children. In Tennessee, an inmate used a cell phone to plot an escape that resulted in the death of a corrections officer. And in June of last year, inmates in three Oklahoma facilities coordinated an outbreak of violence across the system, resulting in three deaths and multiple injuries.

It has recently been brought to our attention that many of the cell phones confiscated have been found in the possession of sex offenders. In the past 6 months, 81 sex offenders in Texas were found with contraband cell phones. And last year, 111 sex offenders in South Carolina were disciplined for the possession of contraband cell phones. Unrestricted and unmonitored communication and access to the Internet by convicted sex offenders is high public safety risk.

The Justice Center hopes that you will support the Safe Prisons Communications Act of 2009 and give our correctional officials the ability to protect the public and themselves.

Sincerely,

Rep. JERRY MADDEN,
Texas State House of Representatives.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Columbia, SC, July 13, 2009

Hon. JAY ROCKEFELLER,
Chairman,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
Ranking Member,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchison,

I am writing to express my support for the "Safe Prisons Communications Act of 2009" that has been introduced in the U.S. Senate. I also want to thank you for holding a hearing this week on this important legislation. Prisons are being overwhelmed by hundreds of cell phones at this time, and this legislation will provide correction officials across the country with the best tool to impede the illegal use of contraband cellular phones by prison and jail inmates.

In recent years, the number of contraband cell phones smuggled into correctional facilities has skyrocketed. These phones represent a threat to the security of the facility, staff, public officials, and the victims of crime. Once in possession of a cell phone, inmates have been able to conduct any number of crimes, ranging from intimidating witnesses, harassing victims, threatening elected victims, and engaging in gang activity.

The availability and use of cell phones in South Carolina correctional facilities has had serious consequences. Inmates in South Carolina have used cell phones to conduct tens of thousands of dollars of credit card fraud, coordinate escapes, and to more precisely smuggle contraband like drugs and escape tools into the state's prisons. We have worked to raise awareness of the problems associated with cell phone contraband by installing metal detectors, X-ray machines and mandatory searches of all personnel entering South Carolina's medium- and maximum-security prisons. As the techniques for smuggling cell phones into prisons have become more creative, so too has the Department.

Although correctional agencies make every effort to prevent the introduction of cell phones into our prison systems, only cell phone jamming technologies stop these dangerous phone calls. For these reasons, the South Carolina Department of Correction is requesting your support for passage of the "Safe Prisons Communications Act of 2009." I look forward to working with you to further the safety of South Carolina correctional officials and the public.

Sincerely,

JON OZMINT,
Director.

KANSAS DEPARTMENT OF CORRECTIONS
Topeka, KS, January 14, 2009

SAM BROWNBACK,
 U.S Senator,
 Washington, DC.

Dear Senator Brownback:

The possession and use of cell phones by inmates is becoming an increasingly serious and significant security risk in Kansas correctional facilities and in correctional facilities across the country. An escape from a medium security facility at Lansing in February 2006, and an escape from an administrative segregation unit at El Dorado in October 2007, were both facilitated by use of cell phones by inmates. During the period from July 1, 2007 through June 30, 2008, a total of 86 cell phones were found within Kansas correctional facilities, either in the possession of inmates or in areas accessible to inmates. From July 1, 2008 through December 31, 2008, 42 cell phones were found.

In addition to arranging and coordinating escape plans, cell phones can be used by inmates to arrange for the introduction of contraband, to harass and intimidate crime victims and others in the community, and to carry out criminal activities in the community. Possession and use of cell phones by Kansas inmates is prohibited and is a violation of department rules and state statute. However, cell phones have been introduced into Kansas correctional facilities and are being used by inmates.

To prevent inmates from being able to successfully communicate with others through the use of contraband cell phones, the Kansas Department of Corrections is supportive of legislation that will allow cell phones signals in correctional facilities to be jammed. Currently the Communications Act of 1934 and FCC rules ban the technology that can jam cell phones signals within a targeted area. We seek amendments to the law to allow cell phone jamming of calls made from correctional facilities. This capability is necessary for public safety reasons. The technology for such jamming is available and has been demonstrated at facilities operated by the South Carolina Department of Corrections.

Your assistance regarding this issue is requested. Please let me know if you have any questions.

Sincerely,

ROGER WERHOLTZ,
Secretary.

Cc: Governor Sebelius
 Association of State Correctional Administrators
 Attorney General Six

THE COMMONWEALTH OF MASSACHUSETTS
 EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY
 DEPARTMENT OF CORRECTION
Milford, MA, January 21, 2009

Hon. JOHN F. KERRY,
 United States Senator,
 Boston, MA.

Dear Senator Kerry:

I am writing to relay to you my support for S. 251 the "The Safe Prisons Communications Act of 2009". The passage of this legislation would allow corrections' facilities to operate a wireless jamming device to jam cell phones being used by individuals incarcerated in a correctional institution and will severely curtail the use of cell phones by inmates for criminal and/or fraudulent reasons.

I have witnessed a sharp increase in the number of cell phones smuggled into our prisons over the past several years. In addition to being used by incarcerated criminal enterprises to conduct criminal and fraudulent activities, these cell phones are used by inmates to harass and threaten past victims, past witnesses and public officials. This uncontrolled access to a cell phone by inmates poses a serious threat to the safe operation of a correctional facility as well as to the overall public safety of our citizens.

It is my opinion that this legislation, as written, provides correctional agencies with a viable mechanism to make cell phones useless on prison grounds and still provides safeguards that the integrity of wireless networks outside of a prison's walk will be maintained.

In closing, I ask your support of the passage of this legislation. If this legislation were to become law, it would provide correctional administrators, like me, with a valuable tool to be used to combat the current use of contraband cell phones for criminal activity.

I thank you for your consideration in this matter.

Sincerely,

HAROLD W. CLARKE,
Commissioner.

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY
DEPARTMENT OF CORRECTION
Milford, MA, January 21, 2009

Hon. EDWARD M. KENNEDY,
United States Senator,
Boston, MA.

Dear Senator Kennedy:

I am writing to relay to you my support for S. 251 the "The Safe Prisons Communications Act of 2009". The passage of this legislation would allow correctional facilities to operate a wireless jamming device to jam cell phones being used by individuals incarcerated in a correctional institution and will severely curtail the use of cell phones by inmates for criminal and/or fraudulent reasons.

I have witnessed a sharp increase in the number of cell phones smuggled into our prisons over the past several years. In addition to being used by incarcerated criminal enterprises to conduct criminal and fraudulent activities, these cell phones are used by inmates to harass and threaten past victims, past witnesses and public officials. This uncontrolled access to a cell phone by inmates poses a serious threat to the safe operation of a correctional facility as well as to the overall public safety of our citizens.

It is my opinion that this legislation, as written, provides correctional agencies with a viable mechanism to make cell phones useless on prison grounds and still provides safeguards that the integrity of wireless networks outside of a prison's walls will be maintained.

In closing, I ask your support of the passage of this legislation. If this legislation were to become law, it would provide correctional administrators, like me, with a valuable tool to be used to combat the current use of contraband cell phones for criminal activity.

I thank you for your consideration in this matter.

Sincerely,

HAROLD W. CLARKE,
Commissioner.

ARKANSAS DEPARTMENT OF CORRECTION
Pine Bluff, AR, January 20, 2009

Hon. BLANCHE LINCOLN,
U.S. Senate,
Washington, DC.

Dear Senator Lincoln:

I recently sent you a letter requesting your assistance in amending a 1934 Federal law that makes it illegal to jam radio signals, including cellular telephone signals.

Senate Bill #S. 251 and House Bill #H.R. 560 have been entered regarding the above matter. We would appreciate very much your support of these bills, as cell phones are an ongoing problem and a major security threat to correctional facilities in Arkansas. The use of a cell phone aided an Arkansas inmate in his escape in October of 2008. Cell phones are confiscated almost every day at our units.

Your assistance in this matter is greatly appreciated.

Sincerely,

LARRY NORRIS,
Director.

ARKANSAS DEPARTMENT OF CORRECTION
Pine Bluff, AR, January 20, 2009

Hon. MARK PRYOR,
 U.S. Senate,
 Washington, DC.

Dear Senator Pryor:

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Your assistance in this matter is greatly appreciated.

Sincerely,

LARRY NORRIS,
Director.

ARKANSAS DEPARTMENT OF CORRECTION
Pine Bluff, AR, December 17, 2008

Hon. MARK PRYOR,
 U.S. Senate,
 Washington, DC.

Dear Senator Pryor:

The Arkansas Department of Correction requests your assistance in amending a 1934 Federal law that makes it illegal to jam radio signals, including cellular telephone signals. As you know, cell phones are a major security threat to correctional facilities in Arkansas and across the country.

Recently, use of cell phone aided the escape of an Arkansas inmate and thwarted his capture for 11 days. Cell phones are seized almost every day at our units, and their numbers are increasing. The phones not only further escapes, they can also lead to violence and other crimes both inside and outside of our facilities.

At the state level, we are proposing legislation that would make it a crime for an inmate to have and use a cell phone. It is already a crime for someone to provide a cell phone to an inmate. While this legislation should certainly help deter cell phone possession, it is hardly a complete solution to the problem.

Capabilities do exist that effectively jam cell phone signals, which in turn, renders them useless within a prison. These capabilities do not interfere with cell phone use outside prisons walls nor do they interfere with 911 emergency calls or law enforcement communications.

But under the Communications Act of 1934, willfully or maliciously interfering with a radio communication is a crime. The law does not carve out exceptions for state governments; thus, the state of Arkansas cannot utilize a device that willfully interferes with cellular telephone signals, even for security reasons.

This is consistent with Federal Communications Commission rulings involving the operation of cell phone jammers. For example, the FCC ruled in a recent decision that the Federal law does indeed prohibit operation of devices that interfere with cellular telephone signals. *Cf. DPL Surveillance Equip.*, FCC Citation, No. DA 08-21202 (May 27, 2008) concluded that U.S. Code Title 47, sections 302a and 333 bar the operation of jammers, except those operated by the Federal Government.

It is likely the FCC has not authorized licensing procedures because section 333 criminalizes willful interference with a radio signal and a Federal agency cannot issue rules that purport to authorize conduct that Federal law explicitly prohibits. (See *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 86 (1997), which declares that a Federal regulation cannot stand if it is manifestly contrary to a Federal statute.)

FCC spokesman Robert Kenny was quoted in the October 30, 2008, edition of the *Austin American Statesman* as saying, "We have no authority to even grant it (a license permitting the operation of a cell phone jamming device) if we thought it was worthwhile or something that was warranted. It's likely going to take some level of action by Congress."

Based on the FCC's own acknowledgement, it will take Congressional action to enable Arkansas and other states to render cell phones nothing more than worthless

contraband in state prisons. Without such action, Arkansas is left with less effective options to protect law-abiding citizens from the threatening, harassing or retaliatory actions of murderers, rapists, drug dealers, thieves and other felons in its state prisons.

I look forward to working with you on this matter. If you have any questions about steps my office has taken on this issue, please do not hesitate to contact me.

Sincerely,

LARRY B. NORRIS,
Director.

ARKANSAS DEPARTMENT OF CORRECTION
Pine Bluff, AR, December 17, 2008

Hon. BLANCHE LINCOLN,
U.S. Senate,
Washington, DC.

Dear Senator Lincoln:

The Arkansas Department of Correction requests your assistance in amending a 1934 Federal law that makes it illegal to jam radio signals, including cellular telephone signals. As you know, cell phones are a major security threat to correctional facilities in Arkansas and across the country.

Recently, use of cell phone aided the escape of an Arkansas inmate and thwarted his capture for 11 days. Cell phones are seized almost every day at our units, and their numbers are increasing. The phones not only further escapes, they can also lead to violence and other crimes both inside and outside of our facilities.

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Based on the FCC's own acknowledgement, it will take Congressional action to enable Arkansas and other states to render cell phones nothing more than worthless contraband in state prisons. Without such action, Arkansas is left with less effective options to protect law-abiding citizens from the threatening, harassing or retaliatory actions of murderers, rapists, drug dealers, thieves and other felons in its state prisons.

I look forward to working with you on this matter. If you have any questions about steps my office has taken on this issue, please do not hesitate to contact me.

LARRY B. NORRIS,
Director.

STATE OF TENNESSEE—DEPARTMENT OF CORRECTION
Nashville, TN, March 3, 2009

Hon. BOB CORKER,
 U.S. Senate,
 Washington, DC.

Dear Senator Corker:

Subject: Cell Phones in Prisons

I am writing you to request your support for the “Safe Prisons Communications Act of 2009” that has been recently filed by Senators Kay Bailey Hutchinson and Jim DeMint in the Senate and by Representative Kevin Brady in House of Representatives. The number of cell phones in state and Federal facilities across the country is continuing to rise at an alarming rate. These phones represent a threat to the security of the facility, staff, and victims of crime. The act will provide wardens and superintendents with the authority to operate wireless jamming devices in our correctional facilities that will greatly reduce the criminal activities that are currently being conduct inside and outside our facilities.

During the last year, the Tennessee Department of Correction recovered approximately 650 cellular (prepaid and contract) telephones and that number is increasing. In addition to safety concerns, the presence of cellular telephones generates financial obligation issues with inmates in prison.

We believe that these phones are routinely and primarily being utilized to engage in criminal activity, including but not limited to, drug trafficking, Strategic Threat Group (STG) organization violence, and credit card fraud. Inmates are also using the camera feature of the cell phone to take pictures of security features such the location of security cameras. We do not believe that inmates are using cellular telephones to primarily circumvent the inmate telephone system.

There have been proven cases of STG affiliated ordered “hits” on the streets from the inmates who possessed these phones inside of a prison. There have been two (2) correctional staff homicides during which cellular phones were used in the commission of an escape.

With the increased technology that is being attached to these phones, inmates have Internet access capability which permits them unlimited access and contact to continue their illegal activities. We have received numerous complaints from crime victims that inmates are maintaining websites such as MySpace, Facebook, etc. through their Internet capabilities provided by these cellular phones.

Prisons are being overwhelmed by hundreds of cell phones at a time, and simply locating and removing cell phones one by one is a difficult and constant challenge.

For these reasons, the Tennessee Department of Correction is requesting your support for passage of the “Safe Prisons Communications Act of 2009.”

Sincerely,

GEORGE M. LITTLE,
Commissioner.

pc: George and Camille Camp—ASCA
 John Morgan, Deputy to the Governor
 Pat Miller, Senior Advisor and Director of Legislative Affairs
 Steve Elkins, Legal Counsel to the Governor

STATE OF TENNESSEE—DEPARTMENT OF CORRECTION
Nashville, TN, March 3, 2009

Hon. LAMAR ALEXANDER,
 U.S. Senate,
 Washington, DC.

Dear Senator Alexander:

Subject: Cell Phones in Prisons

I am writing you to request your support for the “Safe Prisons Communications Act of 2009” that has been recently filed by Senators Kay Bailey Hutchinson and Jim DeMint in the Senate and by Representative Kevin Brady in House of Representatives. The number of cell phones in state and Federal facilities across the country is continuing to rise at an alarming rate. These phones represent a threat to the security of the facility, staff, and victims of crime. The act will provide wardens and superintendents with the authority to operate wireless jamming devices in our correctional facilities that will greatly reduce the criminal activities that are currently being conduct inside and outside our facilities.

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For these reasons, the Tennessee Department of Correction is requesting your support for passage of the "Safe Prisons Communications Act of 2009."

Sincerely,

GEORGE M. LITTLE,
Commissioner.

pc: George and Camille Camp—ASCA
John Morgan, Deputy to the Governor
Pat Miller, Senior Advisor and Director of Legislative Affairs
Steve Elkins, Legal Counsel to the Governor

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
Trenton, NJ, July 27, 2009

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
Committee on Commerce, Science, and
Transportation,
U.S. Senate,
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
Ranking Member,
Committee on Commerce, Science, and
Transportation,
U.S. Senate,
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchison:

We are writing in support of S. 251, a bill that would allow States to jam cell phones that inmates illegally use within State correctional facilities. Specifically, the bill would allow States, with permission from the Federal Communications Commission, to install devices that prevent, jam, or interfere with wireless communications within the boundaries of a specific prison, penitentiary, or correctional facility within that State. This is a critical tool that law enforcement currently lacks. We, the Attorney General and the Commissioner of the Department of Corrections of the State of New Jersey, strongly urge the Senate to approve this bill and provide states with the ability to end cell phone transmissions within our prisons.

In New Jersey, our efforts to remove violent gang offenders from our state's communities are undermined, as they are in many states, by the ability of those same individuals to communicate with fellow gang members and operate their criminal enterprises from within the prison walls by using cell phones. Using contraband cell phones, incarcerated individuals have the ability to intimidate witnesses through threats and violence, to conduct business as usual, and to coordinate escapes with persons on the outside. In one instance in our State, law enforcement was able to monitor a phone call placed by a gang inmate on a cell phone and subsequently joined by an inmate at a different prison and a third inmate at a county jail. This conference call is notable not only for the breadth of participation by incarcerated gang members at different correctional institutions, but for the topic of conversation, namely, to plot retaliation against an attack on a fellow gang member. Although this call was monitored, countless other conversations are not. To the contrary,

much too often, the fact of the conversation, much less its content, remains unknown and undetected by law enforcement and corrections officials.

Communication is critical to any criminal organization's ability to maintain its command and control of criminal activity on the streets. Cell phones in prisons, and the communications that they facilitate, therefore, are a prime engine of the growth and expansion of criminal gangs both in prisons and on the streets. At the same time, public safety is compromised because incarceration no longer thwarts the ability of a gang member or violent offender to terrorize a community.

Given this reality, the authority to block cell phone transmissions from within a prison is the most effective manner for law enforcement and corrections officials to prevent an unknown quantity of calls. New Jersey law enforcement agencies, including the Department of Corrections, are collaboratively conducting investigations and operations inside and outside the prison walls to identify and sever connections between street gangs and prison gangs. Nonetheless, inmates with cell phones are able to operate in the gaps between those efforts, to communicate with persons outside the prison.

While detection and location technologies are legal and available, they are expensive and often cost-prohibitive to install on a facility-wide basis, much less in numerous facilities across the state. More important, they will never be as effective in addressing the problem as the ability to simply prevent the communication from taking place. Instead, legislative action is required to enable State law enforcement and corrections officials to have the most effective technologies available to tackle the problem.

We urge the Senate to give States the authority to block cell phone transmissions from prisons. Absent tools to combat the problem of cell phones in prisons, states will be limited in their ability to address this problem and to effectively stop communications between criminal organizations inside and outside of our correctional facilities.

Sincerely yours,

ANNE MILGRAM,
Attorney General.

GEORGE HAYMAN,
Commissioner,

Department of Corrections.

cc: The Honorable Frank R. Lautenberg, United States Senator
The Honorable Robert Menendez, United States Senator

July 14, 2009

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
Commerce, Science, and Transportation
Committee,
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
Ranking Member,
Commerce, Science, and Transportation
Committee,
Washington, DC.

Re: S. 251, The Safe Prisons Communication Act (SPCA)

Dear Senators Rockefeller and Hutchison:

The undersigned organizations write to voice our strong opposition to S. 251, The Safe Prisons Communication Act (SPCA). The proposal to end the more than 75-year ban on deliberately interfering with authorized radio communications in the United States would place commercial and public safety communications in this country at needless risk. Not only do alternative means exist to address the problem of contraband cell phone use in prison, but the proposal to block cell phone use in prison by jamming will not achieve its objective of eliminating contraband cell phone use. As noted in a recent article in *Wired* Magazine: "A few layers of tinfoil can shield a phone from the jamming signal."¹

Rather than rely on the self-serving promotions of a single company seeking to profit from this unfortunate security issue, prisons should work with cell phone providers to implement proven technological means to block and/or monitor contraband cell phone use within prisons. In addition, Congress should use this opportunity to address the real problem of overcharges for telephone calls from prisoners to their families and loved ones. The vast majority of contraband calls are made by prisoners

¹Vince Beiser, "Prisoners Run Gangs, Plan Escapes and Even Order Hits With Smuggled Cellphones," *Wired*, May 22, 2009 ("Beiser *Wired*").

to their families because prisoner families—often among society’s poorest—must pay outrageous collect call charges.² An approach that combined existing technology used in cooperation with cell phone companies, additional funds for prison security to fight the problem of contraband entering prisons in the first place, and reducing costs for authorized prisoner phone calls to reduce the need for contraband, will prove far more successful in the long run and will avoid putting our public safety and commercial wireless networks at risk.

The Importance of An Absolute Ban On Jammers

Since its passage, the Communications Act of 1934 absolutely prohibited in no certain terms any deliberate interference with a signal “licensed or authorized . . . by the United States.”³ This provision has made it possible for licensees to design our current complex system of radio communication, cellular service, and other wireless networks secure in the knowledge that no one will deliberately interfere with their signals. Consumers, in exchange, have enjoyed the use of cell phones and other wireless devices without fear that anyone will seek to deliberately interfere with the transmission. For example, many travelers now chose to use their own cell phones or wireless Internet connections, rather than pay traditionally higher rates charged by hotels. Public safety users likewise rely on the ability to use lifesaving wireless technologies without concern for jamming, a reliance that will continue to grow as new spectrum and new technologies become available to public safety and commercial users following the digital television transition and the clearing of the 700 MHz band for new public safety and commercial uses.

The introduction of legal cell phone jamming places this entire system at risk. History has shown that permitting the legal manufacture and sale of devices—even for limited purposes—will inevitably result in their becoming available on a mass consumer basis. For example, the use of wireless microphones in the broadcast bands is limited by FCC rule to a small number of licensed users and—in theory—strictly controlled to avoid possible interference with television viewing and other uses of the band. Despite these limitations, anyone can buy these microphones through retail stores and websites, and the number of unauthorized wireless microphones in the broadcast bands may well exceed 1 million.⁴

Congress should not create the risk of a similar proliferation of unauthorized cell phone jammers. Only a complete prohibition on cell phone jammers has successfully limited the sale and deployment of them in this country. Despite their availability in other countries, use of cell phone jammers in this country is forced underground and does little to interfere with commercial or public safety wireless use.⁵ For this reason, both commercial and public safety licensees have consistently opposed the efforts of CellAntenna to receive a Special Temporary Authorization (STA) to test cell phone jammers in the United States.⁶ Only a uniform ban with no exceptions will prevent the widespread use of jammers over time.

CellAntenna’s Claims That It Can Safely Block Contraband Calls Are Highly Suspect

CellAntenna, the private company driving the campaign to legalize cell phone jamming in the United States, insists that it can block commercial cell phone signals in prisons, without interfering either with lawful cell phone use outside of prison or with public safety use in or outside of prison. CellAntenna has provided no proof of its claims. Rather, CellAntenna has sought to leverage a genuine public safety concern for its own profit by conducting unscientific and unauthorized demonstrations in various prisons. While these “demonstrations” allow CellAntenna to attract a fair amount of publicity,⁷ they do nothing to demonstrate the validity of

²See Beiser *Wired*. See also Media Justice Fund and Funding Exchange Report, “Criminal Charges: Excessive Criminal Phone Rates Take A Toll on Innocent Families (2009).

³47 U.S.C. § 333.

⁴See *Informal Complaint and Petition for Rulemaking of the Public Interest Spectrum Coalition*, WT Docket No. 08–167, at vi.

⁵Even countries that prohibit civilian use but permit law enforcement and military use domestically have problems with cell phone jammers disrupting cell phone use. See, e.g., <http://www.methodshop.com/gadgets/reviews/celljammers/index.shtml>.

⁶See, e.g., Letter of Chris Fisher, President, Association of Public Safety Officials—International, Inc., to Michael Copps, Acting Chairman, Federal Communications Commission (March 13, 2009).

⁷Given that the FCC has unambiguously stated that the manufacture, importation, transportation, marketing and use of cell phone jammers violates Federal law, it would appear that CellAntenna’s numerous and highly publicized demonstrations are a felony which should result in fines and arrests rather than appearances at a Congressional hearing. See Public Notice, “Sale or Use of Transmitters Designed to Prevent, Jam or Interfere With Cell Phone Commu-

CellAntenna's claims that it can affordably block contraband cell phone transmissions without interfering with public safety or legal wireless use.

As spectrum experts have explained, jamming contraband cell phone signals without jamming authorized communications presents an extremely difficult engineering challenge.⁸ Cell phone signals use many bands, often proximate to or shared with public safety operations. To achieve its claims, CellAntenna's equipment must isolate the cell phone bands used by contraband phones, operating at sufficient power and with sufficient coverage to ensure that no transmissions will escape, while simultaneously avoiding any leakage into neighboring public safety bands, operating at sufficient power to ensure total coverage of the prison, but limiting power so that no energy escapes to create "dead zones" outside prisons or in areas used by guards.

Existing cell phone jammers do not engage in such delicate and precise spectrum blocking. Cell phone jammers are relatively cheap devices that engage in continuous transmission on the selected frequencies, creating "dead zones" by overwhelming a cell phone's receiver. These devices rely on brute force, without regard to operations taking place on neighboring bands. CellAntenna's claims far exceed the capabilities of existing cell phone jammers (where legal), raising considerable doubts that they can perform under circumstances other than the controlled demonstrations it has very publicly conducted.

CellAntenna will no doubt excuse itself by observing that the FCC has not granted it an authorization to conduct legal experiments—a fact which has not prevented CellAntenna from performing its demonstrations. But CellAntenna has neither applied for a genuine experimental license under which it could conduct real experiments, nor has CellAntenna conducted experiments in countries where cell phone jamming is legal.⁹ Rather CellAntenna has preferred to engage in a strategy of holding public demonstrations of questionable legality and no engineering value as a means of promoting its legislative aims.

Congress should not force the FCC to create rules to authorize this jamming technology based on the unsubstantiated claims of a single company. At the least, Congress should not require the FCC to respond to petitions within 60 days, and create final rules within one year, as required by S. 251.

Finally, even if CellAntenna can jam signals with precision, prisoners have too many ways to evade jamming. Using commonly available materials such as aluminum foil or a roll of paper towel, a prisoner can block jamming signals and augment a contraband cell phone's transmission to a nearby cell tower. Furthermore, the widespread availability of contraband cell phones indicates the possibility of corrupt prison personnel, who could circumvent jammer technology in the same way they have circumvented existing security measures designed to prevent prisoner access to contraband phones.

Better Means Of Blocking Contraband Cell Phones Exist That Do Not Put Public Safety or Commercial Services At Risk

Given the importance of maintaining security in prisons, it might seem worth the risk to public safety and commercial services to authorize cell phone jamming in prisons if no other way existed. But existing cell phone technologies offer a better and safer alternative to CellAntenna's unproven precision jamming. In addition, Congress should address the underlying issues that make cell phone smuggling both possible and lucrative: inadequate funding of prison security, and the high cost to the families of prisoners when prisoners make legally authorized collect calls.

Cell phone providers can already adjust cell phone networks so that only authorized handsets can connect to the network. This practice, known as "white listing," will prevent any contraband phone from functioning without causing any interference to wireless systems. Alternatively, cell phone providers can log phone numbers of calls originating in prisons and submit these lists daily to appropriate prison officials to verify that no contraband hand sets are operating in the prison. This later approach has the added advantage that prison officials can secure warrants to monitor any calls originating from unauthorized handsets, assisting law enforce-

communications Is Prohibited In The United States," DA-05-1776 (June 27, 2005), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-1776A1.pdf

⁸See Letter of The American Association of State Highway and Transportation Officials (AASHTO) to Marlene Dortch, Secretary, Federal Communications Commission, filed in WT Docket No. 09-30 (March 18, 2009).

⁹It is useful to contrast CellAntenna's behavior with that of advocates of unlicensed use of the broadcast white spaces. White spaces advocates scrupulously obeyed all FCC rules and regulations, and applied for (and received) limited experimental licenses to conduct genuine experiments which produced meaningful engineering data. Only after years of building on developed technologies, and supported by a broad set of industry stakeholders, did the Commission feel confident enough to authorize tests of prototypes in the field.

ment in any investigation and helping to ferret out the underlying source of the contraband.

At the same time, Congress should take this opportunity to address the underlying issues that create the problem of contraband handsets in the first place. First, Congress should provide adequate funds for prison security, so that contraband does not penetrate prisons in the first place. In addition, Congress can also address the demand for contraband phones by requiring companies that service prisons to charge reasonable long-distance prices to the innocent families of prisoners. As documented in a recent report by the Media Justice Fund and Funding Exchange, it can cost the family of a prison inmate \$300 a month in collect charges to maintain minimal contact with an imprisoned father, mother, son or daughter. As further documented in *Wired Magazine*, the high cost of authorized telephone calls makes renting contraband cell phones in prison a lucrative business for prisoners and guards alike. While lowering the cost of legal phone calls between prisoners and families will not entirely eliminate the incentive to smuggle in contraband cell phones, it will help reduce the incentive and make the existing problem far more manageable.

Conclusion

For all these reasons, the undersigned wish to make their opposition to CellAntenna's campaign to legalize cell phone jamming in this country a part of the public record in this hearing. For more than 75 years, the total ban on deliberate interference with authorized wireless transmissions has allowed wireless technology to develop in the United States in a robust and economical fashion. Allowing the legal manufacture, importation and sale of jamming equipment will create a loophole that history shows the FCC will find impossible to close. Because existing means of addressing the problem offer a far greater hope of success without the risk, Congress should refrain from amending the "jammer ban" in 47 U.S.C. § 333.

Sincerely,

Harold Feld
Legal Director
Public Knowledge
Michael Calabrese
Vice President and Director Wireless
Futures Program
New America Foundation
Sascha Meinrath
Director
Open Technology Institute
Jonathan Lawson
Executive Director
Reclaim the Media
Joshua Breitbart
Policy Director
People's Production House

Stephen Renderos
Organizer
Main Street Project
Amanda Deloney
Network Coordinator
Media Action Grassroots Network
(MAG-NET)
Tracy Rosenberg
Acting Director
Media Alliance
Malkia Cyril
Executive Director
Center for Media Justice

CTIA—THE WIRELESS ASSOCIATION
Washington, DC, July 13, 2009

JULIUS KNAPP,
Chief, Office of Engineering and Technology,
Federal Communications Commission,
Washington, DC.

RE: Experimental License Application of Tecore, Inc.
FCC File Number 0202-EX-PL-2009

Dear Mr. Knapp:

CTIA—The Wireless Association® ("CTIA") respectfully submits this letter in support of the above-referenced experimental license application of Tecore Networks, Inc. ("Tecore"). CTIA supports the grant of this experimental license—on a fully coordinated basis with CTIA's affected members—to better develop a record on the capabilities of alternative technological solutions to the unlawful use of mobile devices within prisons. The possession and use of wireless devices by inmates in correctional facilities is a genuine and important issue, and CTIA supports the development and real-world testing of lawful solutions to stop the unauthorized use of these devices

by inmates. CTIA submits that the testing of Tecore's proposed solution will enable interested stakeholders, including state and Federal corrections agencies, other interested administrative agencies, the Public Safety community, and wireless carriers, to gather important data on the ability of non-jamming technologies to mitigate and resolve the illicit use of wireless phones within prisons.

CTIA recently hosted a day-long discussion among its members and several companies that have developed potential technologies for lawfully addressing the use of mobile devices within correctional facilities. Tecore was one of the presenters and indicated that its proposed solution would allow for the denial of access to the wireless network within a prison without the use of any jamming technology. To enable this capability, Tecore would deploy base station technology that would transmit a "preferred" signal covering the grounds of the prison and thereby locking any unauthorized communications traffic to its network's control. Tecore's demonstration of this capability, however, requires operating authority to transmit in the cellular (824–849/869–894 MHz) and Personal Communications Service ("PCS") (1850–1910/1930–1990 MHz) bands, which Tecore seeks in its experimental license request.

CTIA believes there is merit to Tecore's technological proposal and supports the grant of Tecore's experimental license request. Because Tecore must transmit in the cellular and PCS frequency bands, CTIA asks that the Federal Communications Commission ("Commission") condition the experimental grant with a requirement to coordinate all operations with CTIA's affected members that hold cellular and PCS licenses in the market area of the test. CTIA has discussed this effort with its members and there is agreement that such coordination is feasible and that the underlying experimental testing would be desirable.

CTIA expects that the proposed tests can gather significant data to help determine whether Tecore's technology could effectively manage cell phone usage in the prison environment. This exercise will help the Commission, the Maryland Department of Public Safety and Corrections, and other affected parties gauge the effectiveness of this solution. CTIA believes that these cooperative efforts will assist in the development of well-considered solutions and aid in the creation of a full record of the capabilities of lawful technologies that can aid corrections officials' efforts in combating cell phone usage within prisons.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me or Brian Josef with any questions.

Sincerely,

CHRISTOPHER GUTTMAN-MCCABE,
Vice President, Regulatory Affairs.

cc: Jim Schlichting
Ira Keltz
James Burtle
David Hu
Charles Mathias

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