

AMENDMENT NO.

CAL. NO.

[STAFF WORKING DRAFT]

July 31, 2009

Purpose: To amend the Communications Act of 1934 to permit targeted interference with commercial mobile services within prison facilities.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION —111TH Cong., 1ST Sess.**

S. 251, 111TH Congress, 1ST Session

JULY —, 2009

() Referred to the Committee on _____ and
ordered to be printed

() Ordered to lie on the table and to be printed

INTENDED to be proposed by Mrs. HUTCHISON

Viz: Strike out all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Safe Prisons Commu-
3 nications Act of 2009”.

4 **SEC. 2. INTERFERENCE PERMITTED WITHIN CORREC-
5 TIONAL FACILITIES.**

6 Title III of the Communications Act of 1934 (47
7 U.S.C. 301 et seq.) is amended by inserting after section
8 333 the following:

1 **“SEC. 333A. JAMMING UNAUTHORIZED WIRELESS DEVICES**
2 **IN CORRECTIONAL FACILITIES.**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of this Act, after the Commission has promulgated
5 final regulations under sections 3 and 4 of the Safe Pris-
6 ons Communications Act of 2009, the Commission may
7 authorize the supervisory authority of a correctional facil-
8 ity to operate a jamming system within the correctional
9 facility to prevent, jam, or otherwise interfere with unau-
10 thorized wireless communications within the facility by in-
11 dividuals held in the facility. In order to obtain such au-
12 thority, a supervisory authority shall file a notice of intent
13 under subsection (b), file a petition for such authority
14 under subsection (c), and comply with the requirements
15 of this section and the regulations under this section.

16 “(b) NOTICE OF INTENT PROCEDURE.—

17 “(1) FILING WITH THE COMMISSION.—Not less
18 than 30 days before filing a petition for authority to
19 operate a jamming system under subsection (c), a
20 correctional facility supervisory authority shall file
21 with the Commission a notice of intent to seek such
22 authority. The notice shall identify the correctional
23 facility to which the authority will relate and be in
24 such form, and contain such information, as the
25 Commission may require.

1 “(2) NOTIFICATION OF PUBLIC SAFETY AGEN-
2 CIES AND COMMERCIAL MOBILE SERVICE PRO-
3 VIDERS.—Within 10 days after receiving a notice
4 under paragraph (1), the Commission shall—

5 “(A) notify in writing each public safety
6 agency and each commercial mobile service pro-
7 vider serving the area in which the correctional
8 facility to which the notice of intent relates is
9 located; and

10 “(B) provide the name and address of each
11 such agency and provider so notified by the
12 Commission to the supervisory authority that
13 filed the notice of intent.

14 “(3) CONSULTATION AND ACCESS.—Before fil-
15 ing a petition for jamming authority under this sec-
16 tion, a supervisory authority—

17 “(A) shall consult with the public safety
18 agencies and commercial mobile service pro-
19 viders identified by the Commission under para-
20 graph (2)(B), if such consultation is requested,
21 to determine—

22 “(i) the types of equipment used by
23 those agencies and providers in the area in
24 which the correctional facility is located;

1 “(ii) the locations of towers and facili-
2 ties containing wireless transmission equip-
3 ment belonging to those agencies and pro-
4 viders in that area, to the extent those
5 agencies and providers voluntarily provide
6 such information; and

7 “(iii) the frequencies used by those
8 agencies and providers in that area;

9 “(B) shall provide access, upon request
10 and in the discretion of the supervisory author-
11 ity, by those agencies and providers to the outer
12 perimeter of the correctional facility for the
13 purpose of taking measurements and con-
14 ducting testing to determine signal strength
15 and the potential for interference with their
16 transmissions or service; and

17 “(C) may solicit recommendations from
18 those agencies and providers on the selection,
19 installation, and configuration of a jamming
20 system and jamming devices.

21 “(4) EXTENSION OF CONSULTATION PERIOD.—
22 Upon good cause shown, the Commission may re-
23 quire a supervisory authority that has filed a notice
24 of intent under this subsection to provide an addi-
25 tional period of up to 15 days for the activities de-

1 scribed in paragraph (3) before submitting a petition
2 for jamming authority to the Commission.

3 “(c) PETITION PROCEDURE.—

4 “(1) IN GENERAL.—After completing the con-
5 sultation process provided under subsection (b)(3)
6 (if such consultation was requested), a supervisory
7 authority may file a petition with the Commission
8 requesting authority to install and operate a jam-
9 ming system within a correctional facility under the
10 supervisory authority’s jurisdiction.

11 “(2) FEE.—The Commission may not charge a
12 filing fee for a petition under this section.

13 “(3) NOTIFICATION OF PUBLIC SAFETY AGEN-
14 CIES AND COMMERCIAL MOBILE SERVICE PRO-
15 VIDERS.—

16 “(A) PUBLIC SAFETY AGENCIES.—Upon
17 receipt of a petition under paragraph (1), the
18 Commission shall provide a copy of the petition
19 to each public safety agency serving the area
20 that includes the correctional facility to which
21 the petition applies.

22 “(B) CMS PROVIDERS.—Upon receipt of a
23 petition under paragraph (1), the Commission
24 shall provide a copy of the petition to each com-
25 mercial mobile service provider serving the area

1 that includes the correctional facility to which
2 the petition applies.

3 “(C) CONTENT OF NOTICE.—The notice
4 shall include a detailed description of the jam-
5 ming system and a list of all jamming devices,
6 including make and model, that the supervisory
7 authority proposes to use at the correctional fa-
8 cility.

9 “(4) DISPOSITION OF PETITION.—

10 “(A) In general.—After the Commission
11 has promulgated final regulations under sec-
12 tions 3 and 4 of the Safe Prisons Communica-
13 tions Act of 2009, the Commission shall act on
14 a petition under this subsection within 60 days
15 after the date on which the Commission receives
16 a complete petition.

17 “(B) DETERMINATION CONSIDER-
18 ATIONS.—In determining whether to grant re-
19 quested jamming authority, the Commission—

20 “(i) shall consider, among other fac-
21 tors it deems appropriate, whether the pro-
22 posed jamming system would interfere with
23 emergency or public safety agency commu-
24 nications and the extent to which the pro-
25 posed jamming system may cause harmful

1 interference to commercial mobile service
2 communications outside the boundaries of
3 the correctional facility;

4 “(ii) shall consider whether the facility
5 in question is located in an urban area (as
6 defined by the Commission for purposes of
7 this subsection); and

8 “(iii) shall address the potential inter-
9 ference with public safety agency commu-
10 nications and commercial mobile service
11 (as defined in section 332(d)(1)) in such
12 area.

13 “(C) PUBLIC COMMENT.—Before making a
14 determination under this paragraph, the Com-
15 mission shall allow interested parties to submit
16 evidence for the record regarding the inter-
17 ference potential of the jamming system a su-
18 pervisory authority proposes to use at the cor-
19 rectional facility.

20 “(5) POST-PETITION COORDINATION.—

21 “(A) FCC NOTIFICATION.—When the
22 Commission approves a petition under this sec-
23 tion, the Commission shall notify each public
24 safety agency or commercial mobile service pro-

1 vider serving the area in which the correctional
2 facility to which the petition relates is located.

3 “(B) COORDINATION REQUEST.—When
4 any such agency or provider is notified by the
5 Commission under subparagraph (A), it shall
6 immediately notify the supervisory authority of
7 the correctional facility if it intends to partici-
8 pate in the coordination under subparagraph
9 (C) or the examination under subparagraph (D)

10 “(C) INSTALLATION AND CONFIGURA-
11 TION.—During the 30-day period beginning on
12 the date on which the Commission approves a
13 petition, the correctional facility supervising au-
14 thority that filed the petition shall, upon re-
15 quest, coordinate the installation and configura-
16 tion of the jamming system authorized by the
17 Commission with any public safety agency or
18 commercial mobile service provider serving the
19 area in which the correctional facility is located.

20 “(D) INSPECTION.—Except as provided in
21 subparagraph (E), before commencing the oper-
22 ation of a jamming system authorized by the
23 Commission, the correctional facility super-
24 visory authority that filed the petition shall,
25 upon request, provide access to the correctional

1 facility to any such public safety agency or com-
2 mercial mobile service provider for the purpose
3 of examining the installation or configuration of
4 the jamming system and jamming devices.

5 “(E) COMMENCEMENT OF OPERATIONS.—

6 Unless otherwise directed by the Commission, a
7 correctional facility supervisory authority au-
8 thorized by the Commission to operate a jam-
9 ming system may commence operation of the
10 system 30 days after the date on which the
11 Commission approves the petition filed by that
12 authority.

13 “(d) TERMS OF AUTHORIZATION.—

14 “(1) TERM.—If the Commission grants a peti-
15 tion under this section, the authority granted pursu-
16 ant to that petition shall be in effect for a term
17 specified by the Commission of not more than 5
18 years, but shall be renewable by petition.

19 “(2) TERMINATION OR SUSPENSION OF AU-
20 THORITY.—

21 “(A) NOTICE FROM PROVIDER.—The Com-
22 mission shall immediately suspend authorization
23 granted under this section with respect to a cor-
24 rectional facility upon receiving written notice
25 from a commercial mobile service provider, sup-

1 ported by affidavit and such documentation as
2 the Commission may require, stating that use
3 of a jamming device by or at such correctional
4 facility is interfering with commercial mobile
5 service, or is otherwise preventing or jamming
6 such communications (other than within the
7 correctional facility).

8 “(B) BASIS FOR NOTICE.—In establishing
9 the requirements for the affidavit in subpara-
10 graph (A) and the necessary supporting docu-
11 mentation, the Commission shall require, at a
12 minimum, that the commercial mobile service
13 provider perform actual testing and measure-
14 ments in the area near the correctional facility
15 and submit the results to the Commission. No-
16 tice pursuant to subparagraph (A) may not be
17 predicated exclusively on customer complaints
18 or trouble reports unsupported by relevant tech-
19 nical analysis suggesting interference.

20 “(C) NOTICE FROM PUBLIC SAFETY LI-
21 CENSEE.—The Commission shall immediately
22 suspend an authorization granted under this
23 section with respect to a correctional facility
24 upon receiving written notice from a public
25 safety agency, supported by affidavit and such

1 documentation as the Commission may require,
2 stating that use of a device by or at such cor-
3 rectional facility is interfering with public safety
4 agency communications systems or otherwise
5 preventing or jamming communications on that
6 system, and describing the nature of the inter-
7 ference.

8 “(D) DEADLINE FOR ACTION ON NO-
9 TICE.—Within 90 days after receiving notice
10 under subparagraph (A) or subparagraph (C),
11 the Commission shall conclude an investigation
12 to determine whether the jamming device au-
13 thorized for use at the correctional facility is
14 causing such interference and, based on its
15 findings and conclusions, may issue an order re-
16 instating, modifying, or terminating the author-
17 ization.

18 “(E) NONCOMPLIANT USAGE.—If the
19 Commission has reason to believe that a correc-
20 tional facility for which an authorization has
21 been granted under this section is not in com-
22 pliance with the regulations under this section,
23 the Commission shall immediately suspend the
24 authorization until it can make a determination

1 with respect to such compliance after notice and
2 an opportunity for a hearing.

3 “(3) REVOCATION.—The Commission may re-
4 voke an authorization under this section for willful
5 or repeated violations, or failure to observe the re-
6 quirements, of the terms of the authorization or the
7 regulations promulgated by the Commission under
8 this section.

9 “(4) INTERIM USAGE.—If the Commission initi-
10 ates a suspension or a revocation proceeding under
11 this subsection, it shall prohibit use of an authorized
12 jamming system or device at the correctional facility
13 during the pendency of any such proceeding.

14 “(e) LIMITATIONS ON AUTHORIZATION.—

15 “(1) TRANSFER PROHIBITED.—A correctional
16 facility supervisory authority authorized by the Com-
17 mission to operate a jamming system may not trans-
18 fer the ownership or right to use the jamming sys-
19 tem or associated jamming devices to any third
20 party for use inside or outside the area of the cor-
21 rectional facility for which the authorization was
22 granted.

23 “(2) LOCATION; USE BY OTHER PARTIES.—The
24 Commission shall require any correctional facility su-
25 pervisory authority to prevent the use of an author-

1 ized jamming system (including any jamming device
2 used by the system)—

3 “(A) in any location other than the correc-
4 tional facility where use of the system is au-
5 thorized; or

6 “(B) by any entity other than the correc-
7 tional facility where use of the jamming system
8 is authorized.

9 “(3) LIMITATIONS ON USE.—The Commission
10 shall require that any correctional facility super-
11 visory authority granted authority under this section
12 to operate a jamming system—

13 “(A) utilize only a jamming device—

14 “(i) authorized by the Commission;
15 and

16 “(ii) specifically approved by the Com-
17 mission for the purposes of this section;

18 “(B) operate the jamming device at the
19 lowest possible transmission power necessary to
20 prevent, jam, or interfere with wireless commu-
21 nications by within the facility by individuals
22 held in the facility;

23 “(C) operate the device on a directionalized
24 basis, and utilizing all other reasonable inter-
25 ference-limiting capabilities, in a manner that

1 does not interfere with public safety agency
2 communications or lawful commercial wireless
3 communications that originate and terminate
4 inside or outside the area of the correctional fa-
5 cility;

6 “(D) operate the jamming device only in
7 the frequencies necessary to prevent, jam, or
8 interfere with wireless communications within
9 the correctional facility;

10 “(E) have a documented method of con-
11 trolling custody of such devices and ensure that
12 any jamming device operated pursuant to the
13 authority is destroyed upon expiration of the
14 authority, or at such time as a jamming device
15 is removed from service for any other reason,
16 including replacement by another device;

17 “(F) have a documented method of in-
18 specting the jamming system on a quarterly
19 basis to ensure proper functioning, and a docu-
20 mented method to limit access to the system to
21 personnel specifically designated by the correc-
22 tional facility;

23 “(G) install the jamming system in a se-
24 cure area that is inaccessible to individuals held
25 in the facility and connect the system to a per-

1 manent power supply with back-up power
2 sources; and

3 “(H) have a documented method of sealing
4 or locking the jamming system so as to prevent
5 tampering.

6 “(4) DESTRUCTION OF UNUSED OR EXPIRED
7 JAMMING DEVICES; NOTIFICATION OF ADDITIONAL
8 JAMMING DEVICE ACQUISITIONS.—Any correctional
9 facility supervisory authority authorized to operate a
10 jamming system shall—

11 “(A) destroy a jamming device within 60
12 days after the date on which such authorization
13 expires unless a petition is pending for renewal
14 of the authorization;

15 “(B) destroy any such jamming device that
16 is permanently removed from service;

17 “(C) certify such destruction to the Com-
18 mission; and

19 “(D) notify the Commission upon the ac-
20 quisition of any jamming device that replaces a
21 destroyed device.

22 “(f) DATABASE.—The Commission shall maintain an
23 electronic database containing a copy of each notice of in-
24 tent and each petition received by it under this section
25 and the disposition thereof. The Commission shall update

1 the database at least monthly and, to the extent consistent
2 with public safety and welfare, shall make the contents
3 of the database available upon request to a commercial
4 mobile service provider or public safety agency.

5 “(g) DEFINITIONS.—In this section:

6 “(1) COMMERCIAL MOBILE SERVICE PRO-
7 VIDER.—The term ‘commercial mobile service pro-
8 vider’ means a person providing commercial mobile
9 service (as defined in section 332(d)(1)).

10 “(2) CORRECTIONAL FACILITY.—In this sub-
11 section, the term ‘correctional facility’ means a jail,
12 prison, penitentiary, or other correctional facility.

13 “(3) JAMMING DEVICE.—The term ‘jamming
14 device’ means a radio signal generating device used
15 as part of a jamming system designed to disrupt,
16 prevent, interfere with, or jam wireless communica-
17 tions.

18 “(4) JAMMING SYSTEM.—The term ‘jamming
19 system’ means a system of radio signal generating
20 and processing equipment and antennas designed to
21 disrupt, prevent, interfere with, or jam wireless com-
22 munications within a correctional facility and in-
23 cludes the components and functionality of the sys-
24 tem, such as antennas, cabling, and cable elements,
25 the installation, interconnection, and operation of

1 system elements, power levels, and radio frequencies
2 carried on the cables or fed into antennas, the radi-
3 ation pattern of such antennas, and the location and
4 orientation of the antennas.

5 “(5) PUBLIC SAFETY AGENCY.—The term ‘pub-
6 lic safety agency’ has the meaning given that term
7 in section 3006(j)(1) of the Digital Television Tran-
8 sition and Public Safety Act of 2005 (47 U.S.C. 309
9 note).

10 “(6) SUPERVISORY AUTHORITY.—The term ‘su-
11 pervisory authority’ means the Director of the Fed-
12 eral Bureau of Prisons, the chief executive officer of
13 a State (or his or her designee), or the person in
14 charge of a county or local correctional facility not
15 under the authority of the chief executive officer of
16 a State.”.

17 **SEC. 3. FCC RULEMAKING REQUIRED.**

18 Within 180 days after the date of enactment of this
19 Act, the Federal Communications Commission shall ini-
20 tiate a rulemaking proceeding and shall promulgate final
21 regulations governing the use of jamming systems in cor-
22 rectional facilities under section 333A of the Communica-
23 tions Act of 1934 (47 U.S.C. 333A). In the proceeding,
24 the Commission shall—

1 (1) solicit and consider the recommendations of
2 the National Telecommunications and Information
3 Administration, as well as 1 or more entities with
4 relevant technical expertise in order to develop
5 standards and processes for such jamming systems
6 and jamming devices (as such terms are defined in
7 that section); and

8 (2) consider all available technologies capable of
9 preventing the operation of unauthorized wireless
10 communications devices in correctional facilities, in-
11 cluding those devices that may evade detection by
12 the supervisory authority of such a facility.

13 **SEC. 4. DEVICE CERTIFICATION CRITERIA RULEMAKING.**

14 (a) IN GENERAL.—Within 120 days after the date
15 of enactment of this Act, the Federal Communications
16 Commission shall adopt a final rule establishing criteria
17 for certification for the manufacture, sale, importation,
18 and interstate shipment of devices that may be used pur-
19 suant to authorization under section 333A of the Commu-
20 nications Act of 1934 (47 U.S.C. 333A), notwithstanding
21 section 302 of such Act (47 U.S.C. 302). In carrying out
22 the requirements of this subsection, the Commission shall
23 consider whether such devices can effectively prevent, jam,
24 or interfere with wireless communications within a correc-
25 tional facility (as defined in section 333A(g)(2) of that Act

1 (47 U.S.C. 333A(g)(2))) without causing harmful inter-
2 ference with commercial mobile services between points
3 outside facility boundaries, or public safety agency wire-
4 less communications services between points inside, pursu-
5 ant to a public safety agency responding to an incident
6 in a correctional facility, and outside facility boundaries.
7 The regulations shall require, at a minimum, that any
8 such device—

9 (1) operate at the lowest technically feasible
10 transmission power that will permit correctional fa-
11 cility staff to prevent, jam, or interfere with wireless
12 communications within the geographic boundaries of
13 a correctional facility by individuals held in the facil-
14 ity;

15 (2) be capable of directionalized operation and
16 limited to approved frequencies;

17 (3) comply with any other technical standards
18 deemed necessary or appropriate by the Commission
19 to ensure that the device does not create interference
20 to other than the targeted wireless communications;

21 (4) be marketed and sold only to correctional
22 facility supervisory authority (as defined in section
23 333A(g) of the Communications Act of 1934 (47
24 U.S.C. 333A(g)) authorized by the Commission

1 under section 333A) of that Act (47 U.S.C. 333A)
2 to possess and operate such a device; and

3 (5) is capable of being shut off from jamming
4 public safety agency communications within and
5 around a correctional facility when a public safety
6 agency is responding to an incident at the facility,
7 such as a fire, explosion, medical emergency, or oth-
8 erwise.

9 (b) **TECHNICIAN CREDENTIALING.**—As part of the
10 rulemaking proceeding required by subsection (a), the
11 Commission shall seek public comment on whether to es-
12 tablish minimum training, certification, and eligibility re-
13 quirements for technicians qualified to work on jamming
14 systems installed and operated by a supervisory authority.
15 The Commission may establish such training, certification,
16 and eligibility criteria as part of the final rule adopted
17 under subsection (a).

18 (c) **CERTIFICATION PROCESS.**—The Commission
19 shall conduct field testing of proposed devices to determine
20 whether they can operate without causing harmful inter-
21 ference with commercial mobile service communications
22 outside the boundaries of such a correctional facility or
23 public safety agency wireless communications inside, pur-
24 suant to a public safety entity responding to an incident
25 in a correctional facility, and outside the boundaries of

1 such a correctional facility. The Commission shall conduct
2 such testing through a public testing process and program.
3 After the date on which the final rule promulgated under
4 subsection (a) is published in the Federal Register, the
5 Commission shall grant or deny an application for certifi-
6 cation of a device described in subsection (a) within 120
7 calendar days of receiving an application therefor.

8 (d) LIST OF DEVICES.—The Commission shall main-
9 tain a list of all approved devices on its web site including
10 the make and model of each approved device and its tech-
11 nical specifications and operating parameters.

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