

[STAFF WORKING DRAFT]

JANUARY 13, 2009

111TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

JANUARY _____, 2009

Mrs. HUTCHISON (for herself, Mr. _____, and Mr. _____) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. INTERFERENCE PERMITTED WITHIN PRISONS.**

2 Section 333 of the Communications Act of 1934 (47
3 U.S.C. 333) is amended—

4 (1) by inserting “(a) IN GENERAL.—” before
5 “No person”; and

6 (2) by adding at the end the following:

7 “(b) EXCEPTION FOR PRISONS.—

8 “(1) Waiver.—

9 “(A) IN GENERAL.—The Director of the
10 Federal Bureau of Prisons or the chief execu-
11 tive officer of a State (or his or her designee)
12 may, by petition, request that the Commission
13 grant a waiver of subsection (a) to permit the
14 installation of devices for the sole purpose of
15 preventing, jamming, or interfering with wire-
16 less communications within the geographic
17 boundaries of a specified prison, penitentiary,
18 or correctional facility under his or her jurisdic-
19 tion.

20 “(B) TERM.—A waiver granted under this
21 subsection shall be for a term not to exceed 10
22 years, but shall be renewable by petition.

23 “(C) FEE.—The Commission may not
24 charge a filing fee for a petition under this
25 paragraph.

26 “(2) NOTIFICATION; DATABASE.—

1 “(A) NOTIFICATION OF CARRIERS.—Upon
2 receipt of a petition under paragraph (1), the
3 Commission shall provide a copy of the petition
4 to each commercial mobile service provider serv-
5 ing the area that includes the prison, peniten-
6 tiary, or correctional facility to which the peti-
7 tion applies.

8 “(B) DATABASE.—The Commission shall
9 maintain an electronic database containing a
10 copy of each such petition received by it and the
11 disposition thereof. The Commission shall up-
12 date the database at least monthly and shall
13 make the database publicly available on the
14 Commission’s Internet website and publish a
15 copy of the database in the Federal Register at
16 least quarterly.

17 “(3) DISPOSITION OF PETITION.—In deter-
18 mining whether to grant a requested waiver, the
19 Commission shall consider, among other factors,
20 whether the grant of the waiver would interfere with
21 emergency or public safety communications. The
22 Commission shall act on a request under this sub-
23 section within 60 calendar days after the date on
24 which the Commission receives the petition.

1 “(4) TRANSFER PROHIBITED.—A prison, peni-
2 tentiary, or correctional facility that receives a waiv-
3 er pursuant to this subsection may not transfer the
4 ownership or right to use any device authorized pur-
5 suant to the waiver to any third party for use out-
6 side the area of the prison, penitentiary, or correc-
7 tional facility for which the waiver was granted.

8 “(5) LIMITATIONS ON USE.—Within 1 year
9 after the date of enactment of the Safe Prisons
10 Communications Act of 2009, the Commission shall
11 adopt final regulations governing the use of devices
12 authorized by a waiver under this subsection that, at
13 a minimum, require that the prison, penitentiary, or
14 correctional facility—

15 “(A) utilize a device—

16 “(i) authorized by the Commission;

17 and

18 “(ii) specifically approved by the Com-
19 mission for the purpose described in para-
20 graph (1);

21 “(B) operate the device at the lowest pos-
22 sible transmission power necessary to prevent,
23 jam, or interfere with wireless communications
24 by inmates; and

1 “(C) operate the device in a manner that
2 does not interfere with wireless communications
3 that originate and terminate outside the area of
4 the prison, penitentiary, or correctional facility,
5 by operating the device on a directionalized
6 basis, by utilizing all other interference-limiting
7 capabilities available to the device, or otherwise.

8 “(6) SUSPENSION; REVOCATION.—

9 “(A) TERMINATION OR SUSPENSION OF
10 WAIVER.—

11 “(i) NOTICE FROM PROVIDER.—The
12 Commission shall suspend a waiver grant-
13 ed under this subsection with respect to a
14 prison, penitentiary, or correctional facility
15 upon receiving written notice from a com-
16 mercial mobile service provider, supported
17 by affidavit and such documentation as the
18 Commission may require, stating that use
19 of a device by or at such prison, peniten-
20 tiary, or correctional facility is interfering
21 with commercial mobile service provided by
22 that provider or is otherwise preventing or
23 jamming such communications (other than
24 within the confines of such prison, peniten-
25 tiary, or correctional facility). Within 90

1 days after receiving such a notice and doc-
2 umentation, the Commission shall conclude
3 an investigation to determine whether the
4 device authorized for use at the prison,
5 penitentiary, or correctional facility is
6 causing such interference and shall issue
7 an order reinstating, modifying, or termi-
8 nating the waiver based on its findings and
9 conclusions.

10 “(ii) NONCOMPLIANT USAGE.—If the
11 Commission has reason to believe that a
12 prison, penitentiary, or correctional facility
13 for which a waiver has been granted under
14 this subsection is not in compliance with
15 the regulations under this subsection, the
16 Commission shall suspend the waiver until
17 it can make a determination with respect
18 to such compliance after notice and an op-
19 portunity for a hearing.

20 “(B) REVOCATION.—The Commission may
21 revoke a waiver under this section for willful or
22 repeated violations, or failure to observe the re-
23 quirements, of the waiver or the regulations
24 promulgated by the Commission under this sub-
25 section.

1 “(C) INTERIM USAGE.—If the Commission
2 initiates a suspension or a revocation pro-
3 ceeding under this paragraph, it may prohibit
4 use of the device to which the waiver relates at
5 the prison, penitentiary, or correctional facility
6 for which the waiver was granted during the
7 pendency of any such proceeding.”.

8 **SEC. 3. DEVICE CERTIFICATION CRITERIA RULEMAKING.**

9 (a) IN GENERAL.—Not later than 180 days after the
10 date of enactment of this Act, the Federal Communica-
11 tions Commission shall adopt a final rule establishing cri-
12 teria for certification for the manufacture, sale, importa-
13 tion, and interstate shipment of devices that may be used
14 pursuant to a waiver under section 333(b) of the Commu-
15 nications Act of 1934 (47 U.S.C. 333(b), notwithstanding
16 section 302 of such Act (47 U.S.C. 302a). The regulations
17 shall require, at a minimum, that any such device—

18 (1) operate at the lowest technically feasible
19 transmission power that will permit prison, peniten-
20 tiary, or correctional staff to prevent, jam, or inter-
21 fere with wireless communications within the geo-
22 graphic boundaries of a specified prison, peniten-
23 tiary, or correctional facility;

24 (2) be capable of directionalized operation; and

1 (3) comply with any other technical standards
2 deemed necessary or appropriate by the Commission
3 to ensure that the device does not create interference
4 to other than the targeted wireless communications.

5 (b) CERTIFICATION PROCESS.—After the date on
6 which the final rule promulgated under subsection (a) is
7 published in the Federal Register, the Commission shall
8 grant or deny an application for certification of a device
9 described in subsection (a) within 180 calendar days of
10 receiving an application therefor.

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