

111TH CONGRESS
1ST SESSION

S. 251

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 15, 2009

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

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”.

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

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

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

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

4 “(b) EXCEPTION FOR PRISONS.—

5 “(1) Waiver.—

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

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

20 “(C) FEE.—The Commission may not
21 charge a filing fee for a petition under this
22 paragraph.

23 “(2) NOTIFICATION; DATABASE.—

24 “(A) NOTIFICATION OF CARRIERS.—Upon
25 receipt of a petition under paragraph (1), the

1 Commission shall provide a copy of the petition
2 to each commercial mobile service provider serv-
3 ing the area that includes the prison, peniten-
4 tiary, or correctional facility to which the peti-
5 tion applies.

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

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

23 “(4) TRANSFER PROHIBITED.—A prison, peni-
24 tentiary, or correctional facility that receives a waiv-
25 er pursuant to this subsection may not transfer the

1 ownership or right to use any device authorized pur-
2 suant to the waiver to any third party for use out-
3 side the area of the prison, penitentiary, or correc-
4 tional facility for which the waiver was granted.

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

12 “(A) utilize a device—

13 “(i) authorized by the Commission;

14 and

15 “(ii) specifically approved by the Com-
16 mission for the purpose described in para-
17 graph (1);

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

22 “(C) operate the device in a manner that
23 does not interfere with wireless communications
24 that originate and terminate outside the area of
25 the prison, penitentiary, or correctional facility,

1 by operating the device on a directionalized
2 basis, by utilizing all other interference-limiting
3 capabilities available to the device, or otherwise.

4 “(6) SUSPENSION; REVOCATION.—

5 “(A) TERMINATION OR SUSPENSION OF
6 WAIVER.—

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

1 penitentiary, or correctional facility is
2 causing such interference and shall issue
3 an order reinstating, modifying, or termi-
4 nating the waiver based on its findings and
5 conclusions.

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

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

22 “(C) INTERIM USAGE.—If the Commission
23 initiates a suspension or a revocation pro-
24 ceeding under this paragraph, it may prohibit
25 use of the device to which the waiver relates at

1 the prison, penitentiary, or correctional facility
2 for which the waiver was granted during the
3 pendency of any such proceeding.”.

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

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

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

20 (2) be capable of directionalized operation; and

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

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

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