

***REDACTED FOR PUBLIC INSPECTION***

April 26, 2019

***Via ECFS***

The Honorable Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

***Re: Promoting Technological Solutions to Combat Contraband Wireless Device Use  
in Correctional Facilities, GN Docket No. 13-111: Contraband Phone  
Task Force Status Report***

Dear Ms. Dortch:

As members of the Contraband Phone Task Force, CTIA and the Association of State Correctional Administrators (“ASCA”) hereby submit the enclosed Status Report and associated materials. The Contraband Phone Task Force convened in April 2018 to examine potential technological, legal, and administrative challenges and solutions to combat contraband devices in correctional facilities while accounting for the interests of legitimate wireless users. The Status Report provides a summary of activities to date related to the Task Force’s charge. The Status Report includes, among several attachments, the “Contraband Interdiction System Testbed Report and Best Practice Recommendations” (the “Testbed Report”). The Testbed Report is a detailed analysis of several technical approaches and solutions to reduce or prevent the unlawful use of contraband devices in correctional facilities.

CTIA and ASCA request that certain information in the Testbed Report be withheld from public disclosure pursuant to Sections 0.457 and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457, 0.459. The Testbed Report contains wireless carriers’ proprietary and commercially sensitive information, including individual cell site locations, that is not in the normal course of business publicly available. Further, the Testbed Report includes information from specific correctional institutions that relate to their official security and crime prevention duties, including steps designed to prevent criminal activity and to maintain security. As such, this information may be treated as confidential and withheld from public disclosure under Exemptions 4 and 7 of the Freedom of Information Act (“FOIA”). 5 U.S.C. §§ 552(b)(4), (b)(7).

Consistent with this request, CTIA and ASCA have labeled the Testbed Report “BUSINESS CONFIDENTIAL/PROPRIETARY – NOT FOR PUBLIC INSPECTION.” CTIA and ASCA are simultaneously filing a copy of the Status Report with the Testbed Report redacted for public inspection.

In support of this request, CTIA and ASCA provide the following information, as required by Sections 0.457(d)(2) and 0.459(b) of the Commission’s Rules.

## ***REDACTED FOR PUBLIC INSPECTION***

April 26, 2019

Page 2

1. Information for Which Confidentiality Is Requested. CTIA and ASCA are requesting that certain information in the Testbed Report be withheld from public inspection. The Testbed Report contains commercial propriety and confidential information provided by certain wireless carriers including specific cell site locations. It also contains information from specific correctional institutions, including photographs and detailed descriptions of their facilities and security practices that relate to their official security and crime prevention duties, including steps designed to prevent criminal activity and to maintain security.

2. Proceeding/Reason for Submission. CTIA and ASCA are voluntarily submitting the Status Report to summarize the Contraband Phone Task Force's activities in connection with the FCC's efforts to combat contraband devices in correctional facilities.<sup>1</sup>

3. Nature of Confidential Information. The information (described in 1. above) is confidential information that may be withheld from public disclosure under FOIA Exemption 4. The Commission has long recognized that, for purposes of Exemption 4, "records are 'commercial' as long as the submitter has a commercial interest in them." *Robert J. Butler*, 6 FCC Rcd 5414, 5415 (1991), citing *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *American Airlines v. National Mediation Board*, 588 F.2d 863, 868 (2d Cir. 1978). CTIA's member companies have a commercial interest in the information contained in the Testbed Report. Further, information submitted to the FCC voluntarily is categorically protected under Exemption 4, provided that such information is not customarily released to the public. *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (en banc).

Further, the Testbed Report contains information, including photographs and detailed descriptions, about specific correctional institutions and their facilities. Such information should be withheld from public disclosure under FOIA Exemption 7 covering records or information relating to law enforcement purposes. 5 U.S.C. § 552(b)(7).

4. Competitiveness of Market. The commercial information in question derives from and relates to the nationwide wireless provider member companies' provision of wireless communications and data services and thus "concerns a service subject to competition." 47 C.F.R. § 0.459(b)(4).

5. Harm from Disclosure. The D.C. Circuit has found that parties do not have to show competitive harm to justify confidential treatment where the information is being submitted voluntarily. *Critical Mass*, 975 F.2d at 879; *see also Center for Auto Safety v. National Highway Traffic Safety Administration*, 244 F.3d 144, 149 (D.C. Cir. 2001). Further, disclosure of the Testbed Report could reveal "information used to fulfill official security and crime prevention duties," including "steps designed to prevent criminal activity and to maintain security." *Milner v. Dept. of Navy*, 562 U.S. 562, 582 (2011).

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<sup>1</sup> FCC News, Chairman Pai Convenes Meeting to Discuss Combatting Contraband Wireless Devices in Correctional Facilities (Feb. 7, 2018), <https://docs.fcc.gov/public/attachments/DOC-349082A1.pdf>.

***REDACTED FOR PUBLIC INSPECTION***

April 26, 2019

Page 3

6. Measures Taken To Prevent Unauthorized Disclosure. CTIA, ASCA, the relevant wireless carriers, and correctional institutions, treat the information contained in the Testbed Report as confidential and proprietary information and do not publicly disclose this information.

7. Previous Disclosure. CTIA, ASCA, the relevant wireless carriers, and correctional institutions have not publicly disclosed the information for which CTIA and ASCA are seeking protection.

8. Requested Duration of Nondisclosure. The enclosed information should never be released for public inspection, as it contains commercially sensitive, confidential information.

For the foregoing reasons, CTIA and ASCA respectfully request that the Commission withhold from public inspection the specified information in the enclosed Testbed Report. Should you need additional information with regard to this request, please contact the undersigned.

Respectfully submitted,

/s/ Scott Bergmann

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