Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
CellAntenna Corp. Request for Special	)	
Temporary Authority for Demonstration of	)	WT Docket No. 09-30
Equipment to Block Wireless Calls By	)	
Inmates at Pine Prairie Correctional Center	)	
	)	

Comments of the South Carolina Department of Corrections

The South Carolina Department of Corrections (SCDC) is an agency of the State of South Carolina that protects the citizens by confining offenders in controlled facilities and by providing rehabilitative, self-improvement opportunities to prepare inmates for their re-integration into society. It operates 28 correctional facilities.[1] SCDC herein wishes to correct misleading and factually incorrect information that has been inserted into this proceeding by CTIA-The Wireless Association® ("CTIA")[2] and APCO International ("APCO")[3]. While we understand that CTIA and APCO's statements were well intended and that both organizations are genuinely concerned about public safety issues, we feel that they do not fully understand the practical issues in correctional facilities that lead to interest in jamming of CMRS signals to protect the public safety and have misstated both technical and legal aspects of the problem.

Practical Impact of Present Situation

Cell phones and wireless technology illegally possessed by inmates within the S.C. Department of Corrections are the most serious threat to safety within the state's correctional institutions and are increasingly being used to conduct criminal activity outside them.

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[1] These are listed in http://www.doc.sc.gov/institutions/institutions.jsp

[2] CTIA Petition to Deny, Docket 09-30, March 13, 2009 http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520201016

[3] Letter from APCO to Chmn. Copps, RE: Cell Phone Jamming Equipment, March 13, 2009 http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520200948

Metal detectors, X-ray machines and visitor searches used at prison entrances to stop the flow of drugs, weapons and other illegal contraband are being circumvented by inmates with wireless technology. Instead of sneaking disruptive and dangerous contraband into prisons through the front door, inmates use wireless technology to coordinate precise times and locations to have it thrown over barbwire fences when they know it is more difficult for security staff to intercept.

Inmates also have used wireless technology to coordinate escapes, run gangs, make threats, extort money, engage in credit card and tax fraud, and make drug deals.

Technical Issues

APCO states in its letter,

> "APCO is deeply concerned that the use of these devices will block 9-1-1 calls from wireless telephones, 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. There is also a potential that these "cell phone jamming" devices could also interfere with public safety radio communications in adjacent frequency bands."

As a public safety agency, SCDC is concerned about any possible blockage of 9-1-1 calls, however this is not an inevitable result of jamming in correctional institutions and APCO and CTIA do not present *any* argument or analysis that indicates that it would be. In all our facilities and in most other correctional institutions the mere possession, let alone use, of a cell phone by inmates, staff, or visitors is illegal. Thus any jamming solely within such an institution will not lead to disruptions of calls to 9-1-1 or any other call by law abiding users.

A poorly designed prison jamming system could indeed have large field strengths outside the restricted areas of the institution that could interfere with the general public. SCDC thinks that it is vital to protect the public from any disruption, but that this is not inconsistent with having a CMRS jamming field strength within parts of a correctional institution high enough to block calls. Reasonable technical rules could permit jamming within most correctional facilities while preventing interference outside of it. Such jamming would be practical in correctional facilities where there is little buffer between the controlled area and public areas. The Commission could address this issue by simply prescribing maximum permitted jamming signal strengths outside of controlled areas in correctional facilities. As we show below, this issue is similar to one the Commission has already addressed in the GPS area.

We note that an analogous issue came up recently in the policy area involving GPS amplifiers/reradiators. The National Telecommunications and Information Administration ("NTIA") in its roles as regulator of federal spectrum use was concerned that reradiation of GPS satellite signals within a building would cause interference and

false readings to outdoor units.[4] NTIA finally agreed to permit such signals provided they met certain strength limits at the edge of the users property. These limits have been codified by NTIA in Section 8.3.28 of the "NTIA Red Book".[5] By agreement with NTIA, the Commission now routinely authorizes Part 5 experimental licenses for GPS reradiators that meet this standard for emissions at the boundary. In a similar way, FCC could condition any jammer use in correctional institutions on noninterfering signal levels outside the institution. Since the frequencies used by GPS and CMRS are comparable, the same physics should apply to each. Thus interference to 9-1-1 or any other CMRS usage outside of corrections institutions or interference to any other spectrum user is not inevitable as APCO and CTIA state.

We note that in 2002 France amended its law to permit jamming in prisons in addition to theaters where it previously had been allowed.[6] We have no interest in any possibly use of CMRS jamming outside of correctional institutions and recognize various possible negative consequences for both the industry and the public if such jamming were permitted. But the fact that France authorized both types of jamming indicates that they are technically possible

The Limits of Section 333

CTIA has stated, "The Commission cannot ignore Section 333 of the Act or its extensive history of declaring wireless jamming technology illegal."[7] Yet in making this statement, CTIA ignores the legislative history of Section 333. The House and Senate reports that accompanied the legislation that became Section 333 in 1990 are attached to these comments. It is clear that the Congress in deliberating this matter did not intend to limit the jurisdiction of the Commission by forbidding it from ever authorizing any jamming. Indeed, it is clear that the Commission requested this legislation in response to a series of intentional jamming incidents in which the jammer was using a licensed transmitter and thus could not be prosecuted for criminal violation of section 301. The Senate report summarizes the impact of the new legislation by stating, "The reported bill remedies this situation by giving the FCC the explicit authority to halt willful or malicious interference…" This is a far cry from a Congressional mandate never to authorize any jamming.

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[4] Letter from Fred Wentland, Associate Administrator, NTIA to Edmond Thomas, Chief FCC/OET, January 31, 2005 http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517519733

[5] NTIA, *Manual of Regulations and Procedures for Federal Radio Frequency Management* http://www.ntia.doc.gov/osmhome/redbook/8.pdf

[6] France, Article L33-3, *Code des postes et des communications électroniques*, as amended by *Loi n°2002-1138 du 9 septembre 2002 - art. 47 JORF 10 septembre 2002,* http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=0499C13ADD7473A4BDB2F318C7E2B6C9.tpdjo15v_3?cidTexte=LEGITEXT000006070987&idArticle=LEGIARTI000006465759&dateTexte=20090315&categorieLien=id

[7] *CTIA Petition* at p. 4

With respect to the Commission's "extensive history of declaring wireless jamming technology illegal" it is clear that the Commission *per se* has never spoken on any interpretation of Section 333 and that all the statements have been staff interpretations taken under delegated authority. But even these statements have generally focused on the fact that SCDC fully agrees with: that under *present* FCC Rules the sale and use of jammers is not authorized and hence is illegal. None of the staff documents cited by CTIA explicitly agree with CTIA's interpretation that section 333 is a "statutory prohibition…on interference".

CTIA first presented this interpretation of Section 333 in its 2007 petition that the Commission never acted on.[8] We urge the Commission not to adopt this overly broad interpretation of language it requested for a different purpose. Rather we as that the Commission seek public comment if it contemplates such an interpretation.

We also observe that even if the language of Section 333 is broader than its original intent, the question of whether CMRS devices have a valid FCC license (and are hence subject to any interference protection under this section) within a correctional institution where their mere possession violates state or local criminal statutes probably gives the Commission the option of modifying its rules to permit such jamming.

But in view of various staff statements made in the past about Section 333 and the resulting public confusion about the Commission's position on its interpretation, any action on granting the CellAntenna STA request should probably be deferred while the Section 333 interpretation issue is resolved and until CellAntenna submits a clear technical description of how it will avoid harmful interference outside the test location.

/S/

Jon Ozmint
Director
South Carolina Department of Corrections

/S/

Michael J. Marcus
Technical Advisor to SCDC

March 16, 2009

Cc: Erika Olsen
Charles Mathias
William Lane

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[8] Petition for a Declatory Ruling of CTIA - The Wireless Association, November 2, 2007, http://files.ctia.org/pdf/filings/FINAL--CTIA--_Jammers_Petition_for_Declaratory_Ruling.pdf

Attachment – Legislative History of Section 333

House Report 101-316 p. 8-9

WILLFUL OR MALICIOUS INTERFERENCE

The Committee accepts the Commission's assertions and evidence that a substantial increase in willful and malicious interference to radio communications in various radio services, particularly the Amateur, Maritime, and Citizens Band Radio Services, has occurred during the past several years. Therefore, H.R. 3265 includes a provision which prohibits intentional jamming, deliberate transmission on top of the transmissions of authorized operators already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations. As a result of limited Commission field investigative resources, local groups or radio users have attempted, in some cases, to retaliate against the offenders by causing interference to their communications. While such intentional and malicious interference to radio operations has primarily occurred in the radio services mentioned above, more isolated instances of deliberate and malicious interference to radio operations and signals in other services, including public safety, private land mobile, and cable television, also appear to be increasing. Additionally, Federal agencies that are not Commission licensees, such as the FAA and the Department of Defense, also have encountered willful and malicious interference to their communications and have requested Commission assistance.

Lacking any general statutory prohibition in the Communications Act of 1934 against willful or malicious interference, the Commission is forced to rely upon the more limited licensed operator provision of the Act concerning interference. These provisions authorize the Commission to suspend and revoke licenses in serious

cases and to issue administrative monetary forfeitures in less serious instances. However, the length and complexity of these administrative proceedings and sanctions have not always provided an adequate and timely remedy for immediately ending specific instances of serious, malicious interference or stemming the overall increase of willful interference. Many times a perpetrator will continue to cause interference until actual suspension or revocation of his or her license or after the imposition of monetary forfeiture by the Commission. Moreover, since the stated maximum penalty is $500 per day, the Commission argues that it is difficult to convince the U.S. Attorney's Office to expend their limited resources in pursuing such a prosecution.

The Committee finds that the provision in Section 8 will assist the Commission in curtailing willful and malicious interference by clearly making such activity a criminal offense subject to fines of up to $10,000, or imprisonment for up to one year, or both, for a first offense, and the same fine limitation and up to two years imprisonment for repeated offenses. The Sentencing Reform Act of 1984 established alternative fine limits of up to $100,000 for the first such misdemeanor offense and $250,000 for a repeated or felony offense. The provision allows the Commission, in serious instances, to initially seek immediate criminal prosecution by the U.S. Attorney for such violations and to seize the offending radio equipment through execution by U.S. Marshals of a properly executed search warrant. The Commission could thereby dispense with the necessity of first completing lengthy, complex, and costly administrative proceedings.

The Committee finds that placement of the proposed general prohibition against intentional interference in the Act, in addition to elevating the gravity of such violations, will increase public awareness of the prohibition against this particularly disruptive type of violation. Moreover, this section will apply to willful or malicious interference with such government facilities. It would provide the Commission, when requested to do so by another Federal agency, with a stronger basis for investigating and seeking prosecution by the U.S. Attorney. The Committee believes this provision will not have a significant impact on present or projected FCC budgetary requirements.

WILLFUL OR MALICIOUS INTERFERENCE

During the past several years, there has been a substantial increase in willful or malicious interference to radio communications. The FCC has indicated that this is a particular problem for such services as amateur, maritime, and citizens band radio. The FCC also has received complaints about deliberate and malicious interference to public safety radio services, which has jeopardized the life-saving activities of police and fire departments. From evidence presented to the Committee, it is clear that certain individuals have interfered with radio communications by intentional jamming, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices.

The Communications Act does not now contain a general statutory prohibition against willful or malicious interference. The FCC instead relies upon the more limited prohibition in section 303(m)(1)(E) which gives the FCC the authority to suspend a license upon sufficient proof that the licensee has willfully or maliciously interfered with radio communications. The FCC is also able to rely upon specific rules and regulations prohibiting interference to certain services. In sum, the FCC today can revoke or suspend licenses in serious cases and can issue monetary forfeitures in less serious cases. There are, however, various problems with its authority: (1) revocation or suspension has no meaning for non-licensees engaging in interference; (2) the FCC must conclude a complete administrative proceeding prior to halting the interference; and (3) the monetary forfeitures are too small to be a sufficient deterrent. (It should also be noted that the resources of the U.S. Attorney's offices are limited, and it is difficult to convince a U.S. Attorney to prosecute someone under the current statute with its weak penalties.)

The reported bill remedies this situation by giving the FCC the explicit authority to halt willful or malicious interference and by making any violations of this law subject to more severe penalties (section 501 of the Communications Act). Individuals who willfully or maliciously interfere will now be subject to fines up to $10,000 or imprisonment up to one year, or both, for a first offense (a misdemeanor). For repeated offenses, imprisonment may be up to two years. These fines may be increased up to $100,000 for a first offense and $250,000 for repeated offenses pursuant to the Sentencing Reform Act of 1984. Finally, this provision permits the FCC, in serious instances, to seek immediate criminal prosecution by the U.S. Attorney and seizure of the offending radio equipment by U.S. Marshals.

The provision in the reported bill also applies to interference to Federal Government radio communications. Interference to these communications is now covered by 18 U.S.C. 1362. The inclusion of this new provision will provide the FCC with a stronger basis for investigating and seeking prosecution of interference complaints by Federal agencies.