

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**Commission Seeks Comment on Certain  
Wireless Service Interruptions**

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) GN Docket No. 12-52  
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**REPLY COMMENTS OF GLOBAL TEL\*LINK CORPORATION**

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**REPLY COMMENTS OF GLOBAL TEL\*LINK CORPORATION**

Global Tel\*Link Corporation (“GTL”) respectfully submits these Reply Comments in response to initial comments addressing the Federal Communications Commission’s (“Commission” or “FCC”) request for comments “regarding whether -- and if so, specifically what -- legal or policy guidance may be appropriate to provide” in “situations where one or more wireless carriers, or their authorized agents, interrupt their own services in an area for a limited time period at the request of a government actor, or have their services interrupted by a government actor that exercises lawful control over network facilities.”<sup>1</sup>

The initial comments in this proceeding reflect a concern over the scope and impact of future government-initiated wireless interruptions. Nearly all participants, however, recognized the special circumstances surrounding illicit wireless use in correctional facilities, and concomitantly acknowledged it as one of the few situations in which wireless interruption is of vital importance. To this end, GTL urges the Commission, as the regulatory agency charged with administering this nation’s wireless spectrum, to proactively enable the introduction of safe and targeted managed access service in prisons. The FCC is uniquely qualified to do this by removing regulatory impediments under the Communications Act of 1934, as amended

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<sup>1</sup> GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Public Notice, 2-3 (rel. Mar. 1, 2012).

("Communications Act") and facilitating cooperation amongst correctional facility administrations, Commercial Mobile Radio Service ("CMRS") carriers, and managed access service providers. With the safety and security of this nation's correctional facilities in the balance, it is incumbent upon the Commission to act in an expeditious and forthright manner.

**I. COMMENTERS, LAW ENFORCEMENT OFFICERS, AND LAWMAKERS AGREE THAT THIS IS A VITAL PROCEEDING FOR ENSURING THE SECURITY AND INTEGRITY OF CORRECTIONAL FACILITIES**

In promulgating the Request for Comments that gave rise to this docket, the Commission noted the possibility that no legal or policy action might be taken in regard to wireless interruption. A few commenters seized on this, arguing that this proceeding is unnecessary or superfluous.<sup>2</sup>

In the context of correctional facilities, however, this docket is not merely appropriate and timely, but vital. As GTL explained in its Initial Comments, wireless devices in prison are proliferating at a staggering rate. The Federal Bureau of Prisons ("BOP"), in concert with eight state correctional agencies, has identified cellular phones as "a major security concern," given their ability to facilitate criminal activity.<sup>3</sup> California located some 10,000 wireless devices in 2010 in the hands of prisoners or abandoned in cells, common areas, or prison yards,<sup>4</sup> while

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<sup>2</sup> See, e.g., GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Joint Comments of International Association of Chiefs of Police National Sheriffs' Association, 4 (Apr. 30, 2012) ("The Commission's normal comment processes that seek to compile a record to form a basis of a decision will not effectively structure the debate or serve as a predicate to formulating a viable resolution. . . . A process where there are rounds of notice and comment cycles will not readily reveal potential areas of consensus or even define clearly areas of disagreement"); GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of Triple Dragon Communications, 7-8 (Apr. 30, 2012) ("Triple Dragon Comments") ("The National Communications System ('NCS') and the National Security Telecommunications Advisory Committee are the best organizations to consider the most appropriate method for determining whether a wireless service interruption is warranted, and how it should be effectuated.").

<sup>3</sup> States Government Accountability Office, Bureau of Prisons: Improve Evaluations and Increased Coordination Could Improve Cell Phone Detection, 19 (Sept. 2011) ("BOP Report"), available at <http://asca.net/system/assets/attachments/3456/GAO%20Cell%20Phone%20Report.pdf?1315421670>

<sup>4</sup> BOP Report at 19.

Georgia seized 8,500 illegal cell phones from 2011.<sup>5</sup> In its Initial Comments, Tecore Networks (“Tecore”) provided a comprehensive overview of recent state legislation and studies testifying to “an increasingly uncontrollable epidemic of contraband wireless devices in prisons.”<sup>6</sup>

Consequently, federal and state legislators and correctional facility officials are requesting rapid action from the FCC. As GTL noted in its Initial Comments, widespread concern in Congress about cellular phones in prison prompted the passage of the Cell Phone Contraband Act of 2010.<sup>7</sup> The unenacted Safe Prisons Communications Act of 2009,<sup>8</sup> which would have established a framework to permit FCC-approved signal in prison, also received vociferous support amongst legislators and correctional officials.<sup>9</sup> The Connecticut Department of Correction has opined (in the wake of failed “tried and tr[ue] shake-downs, searches and intelligence”) that “[t]here perhaps has not been a more concerted threat, on a world wide scale, to the safety and security of correctional institutions than that which is now presented by the omnipresence of cellular telephones and technology.”<sup>10</sup> The Texas Department of Criminal Justice has labeled wireless device use in prisons “a significant and immediate threat to the

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<sup>5</sup> H.R. 1325, 2012 Reg. Sess. (Ga. 2012).

<sup>6</sup> See GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of Tecore Networks, 5-8 (Apr. 30, 2012) (“Tecore Comments”).

<sup>7</sup> S. 1749, 111th Cong. (2010).

<sup>8</sup> S. 251, 111th Cong. (2009).

<sup>9</sup> See, e.g., 155 Cong. Rec. S10112-01 (daily ed. Oct. 5, 2009) (statement of Sen. Feinstein) (noting that Safe Prisons Communications Act of 2009 was intended to “provide another necessary tool in the effort to ensure that the growing problem of cell phones in prison does not turn into an epidemic”); 156 Cong. Rec. H5791 (daily ed. July 20, 2010) (statement of Rep. Brady) (criticizing Cell Phone Contraband Act of 2010 as “a baby step - but little more” in comparison with Safe Prisons Communications Act of 2009).

<sup>10</sup> Memorandum from Director Brian A. Garnett, Connecticut Department of Correction, to Commissioner Leo C. Arnone, Connecticut Department of Correction, Cell Phones, 1 (Apr. 30, 2012), *attached to* GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of Association of State Correctional Administrators (Apr. 30, 2012); compare, e.g., Federal Communications Commission, *Contraband Cell Phone Use in Prisons Workshop/Webinar*, Transcript, 31 (Sept. 30, 2010) (“Webinar Transcript”) (“We also search staff. We search inmates. We have dogs trained to find cell phones. In addition to that we prosecute staff and terminate them and we prosecute civilians. But after all of that we were still having problems with cell phones getting in through various means . . .”) (statement of Christopher Epps, Commissioner, Mississippi Department of Corrections), *available at* <http://www.fcc.gov/pshs/docs/summits/contraband-cell-use-transcript.pdf>.

safety of both the correctional staff and the general public,”<sup>11</sup> while the Nevada Department of Corrections has highlighted the detrimental impact of such devices on the safety of staff members and the general public.<sup>12</sup>

GTL is mindful of the fact that wireless interruption for purposes of national security or crowd control is a highly contentious issue. Comments submitted in this docket have spent considerable time reflecting on potentially troublesome consequences, ranging from a diminishment in civil liberties<sup>13</sup> to violations of U.S. international treaty obligations.<sup>14</sup> Strikingly, nearly all commenters made an exception for prisons, opining that targeted wireless interruption is justified on the grounds of safety and security.<sup>15</sup> As Triple Dragon Communications remarked, “[t]he illicit use of cell phones by inmates absolutely rises to the level of activity that would justify wireless service interruption . . . .”<sup>16</sup>

Foreign authorities agree. As GTL noted in its Initial Comments, nations as diverse as New Zealand, Germany, and Sweden have implemented wireless interruption technology,

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<sup>11</sup> TDCJ Response to FCC Public Notice, *attached to* GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of Association of State Correctional Administrators (Apr. 30, 2012).

<sup>12</sup> E-mail from Pam Del Porto, Nevada Department of Corrections, to George Camp, Association of State Correctional Administrators (Apr. 17, 2012), *attached to* GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of Association of State Correctional Administrators (Apr. 30, 2012).

<sup>13</sup> *See, e.g.*, GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of the American Civil Liberties Union, 2 (Apr. 30, 2012) (“Such interruptions are direct and severe violations of the freedoms of speech, petition, assembly and press under the Constitution.”).

<sup>14</sup> *See, e.g.*, GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of Access (Apr. 30, 2012) (“Access Comments”) (noting ramifications of wireless shutdowns in context of the International Covenant on Civil and Political Rights).

<sup>15</sup> *See, e.g.*, GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comment of New Media Rights on the Intentional Interruption of Wireless Services, 16 (Apr. 30, 2012) (“New Media Rights Comments”) (noting that managed access “system design allows facility representatives to effectively control contraband cell phones without impacting legitimate wireless communications in the area of the prison”); GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of the Alarm Industry Communications Committee, 14 (Apr. 30, 2012) (noting, in light of projected secondary effects of jamming on public safety and government overbreadth, the permissibility of “alternatives . . . being deployed for use in prisons”).

<sup>16</sup> Triple Dragon Comments at 5.

adjudging it crucial to the security of correctional facilities.<sup>17</sup> Other comments noted similar “controlled interruptions” in Brazil, France, Iran, Ireland, Italy, Mexico, and the United Kingdom,<sup>18</sup> obviating claims that no “official could be ‘appropriately’ authorized under international and domestic law to shut down wireless service networks.”<sup>19</sup>

Much of the consensus on wireless interruption in prisons proceeds from the technology that will effectuate it. Managed access is a “selective, low-impact solution” that responds to the torrent of wireless devices in correctional facilities, whilst avoiding deleterious side effects on peace officers and the general public.<sup>20</sup> By targeting specific unauthorized wireless devices, a managed access system permits the unfettered operation of all 911 and emergency communication systems, and limits its operation to a correctional facility’s immediate physical boundaries.<sup>21</sup> Former South Carolina Department of Corrections (“SCDOC”) Director Jon Ozmint has deemed managed access “the most cost-efficient and readily available technology to stop inmates from using illegal cell phones to commit more crime from behind bars.”<sup>22</sup> Ozmint is not alone - as Tecore noted, a recent Association of State Corrections Administrators survey found overwhelming support for managed access, terming it “perfect for correctional facilities,” and “the best thing on the market” and “the most viable option” to halt illicit wireless use in prison.<sup>23</sup> Managed access meets perhaps the most stringent standard expressed in this docket thus far - it is “necessary and proportionate to achieve a clearly defined and legitimate public

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<sup>17</sup> GTL Comments at 16-20.

<sup>18</sup> See, e.g., Tecore Comments at 11-12.

<sup>19</sup> Access Comments at 14.

<sup>20</sup> GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of The Boeing Company, 2 (Apr. 30, 2012) (“Boeing Comments”).

<sup>21</sup> See, e.g., Boeing Comments at 3-4; Tecore Comments at 23-24, 42-43

<sup>22</sup> SC Prisons try alternative cell phone intercept system, WIS-TV, Oct. 5, 2010, <http://www.wistv.com/story/13244837/fcc-discussing-cell-phone-jamming-in-prisons?clienttype=printable>.

<sup>23</sup> Tecore Comments at 28 (citing Association of State Corrections Administrators, Cell Phone Managed Access Survey Comments (Jun. 2010), at 3, 5, [http://www.asca.net/system/assets/attachments/3364/B2.\\_Cell\\_Phone\\_Managed\\_Access\\_Survey\\_Comments-2.pdf?1312550012](http://www.asca.net/system/assets/attachments/3364/B2._Cell_Phone_Managed_Access_Survey_Comments-2.pdf?1312550012)).

purpose” (the safety and security of this nation’s correctional facilities) and “intentionally time-limited and geographically-specific in direct relation to the achievement” of that end.<sup>24</sup>

BOP officials have concluded that inmates with cellular phones can “circumvent the approved prison telephone system and thus are able to hold unmonitored conversations,” enabling them to “arrange the delivery of contraband drugs or other goods, transmit information on prison staff to or from non-inmates, harass witnesses or other individuals, or potentially coordinate an escape.”<sup>25</sup> Further delay in implementing managed access will exacerbate this disorder and permit the means for commission of additional crimes.<sup>26</sup> As former Director Ozmint has explained, shutting cell phone transmission capability “eliminate[s] the threat” posed by cell phones in correctional facilities. “And everybody—the public, law enforcement officers, judges, witnesses—everybody will be safer.”<sup>27</sup>

## **II. COOPERATION AMONG ALL STAKEHOLDERS IS NEEDED TO ENSURE THE SECURITY AND INTEGRITY OF CORRECTIONAL FACILITIES,**

Commissioner Clyburn noted the need for “continued cooperation of all stakeholders” in developing and deploying the underlying technology.<sup>28</sup> Chairman Genachowski has likewise emphasized the importance of “targeted, accountable public-private partnerships” in extending

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<sup>24</sup> Access Comments at 2, 11.

<sup>25</sup> BOP Report at 23.

<sup>26</sup> Unauthorized wireless use also takes an economic toll on correctional facilities, decreasing the quality of life for inmates and diminishing rehabilitative efforts. As Mississippi Department of Corrections Commissioner Christopher Epps noted in a FCC-sponsored webinar, “And I also have another factor that I’m concerned with and that is the cost -- the money that we’re losing as it relates to our revenues that goes to our inmate welfare fund for our inmates program. . . . we know that we are losing about \$2 million of revenue with these cell phones because the average call in Mississippi is about \$3.15 per call. . . . And so what happens is by them not using the landlines that we have done the best math we can and we feel like it’s a couple million dollars. And those funds in my state, if I don’t capture those, then I have to use taxpayer dollars to provide the teachers, the counselors, et cetera.” Webinar Transcript at 30, 32-33 (statement of Christopher Epps, Commissioner, Mississippi Department of Corrections); *compare, e.g.*, Webinar Transcript at 73 (“[W]e who grew up in the system saw inmate welfare funds from telephone calls being used for a lot of things”) (statement of Gary D. Maynard, Secretary, Maryland Department of Public Safety and Correctional Services, Director, Southern Region, ASCA).

<sup>27</sup> Ozmint speaks out on prison contraband cell phone use, South Carolina Radio Network, Oct. 1, 2010, <http://www.southcarolinaradionetwork.com/2010/10/01/ozmint-speaks-out-on-prison-contraband-cell-phone-use/>.

<sup>28</sup> Woman in Public Safety Communications Leadership Conference, Prepared Remarks of FCC Commissioner Mignon L. Clyburn (Apr. 14, 2011).

broadband to rural areas.<sup>29</sup> Cooperative efforts on behalf of all stakeholders, as spearheaded by the Commission, are also vital to the timely and economical rollout of managed access service in correctional facilities.

The FCC has several models on which to base a productive managed access partnership. As GTL has previously explained, the PROTECT Initiative provides for cooperation between CMRS providers, managed access providers,<sup>30</sup> and law enforcement to deter crime. Through interception of the International Mobile Equipment Identity (“IMEI”) number by correctional facility administrators, and communication of the IMEI to the PROTECT database administrators, CMRS providers can effectuate an immediate shutdown of illicit wireless devices in prisons. Correctional facilities or their telecommunications service providers also could submit a list of unauthorized wireless devices directly to CMRS providers for immediate deactivation.<sup>31</sup>

New Zealand’s solution to improper wireless use in prison is also instructive. As detailed at length in GTL’s Initial Comments, that country’s Department of Corrections and mobile phone providers entered into a memorandum of understanding (“MOU”) concerning the

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<sup>29</sup> Remarks of FCC Chairman Julius Genachowski Georgetown Center For Business And Public Policy Georgetown University (Nov. 7, 2011).

<sup>30</sup> The ability of the PROTECT Initiative to accommodate new technology is demonstrated by companies like Mavenir Systems, which has already announced an Equipment Identity Register (“EIR”) for use with the PROTECT system. The EIR “prevents stolen devices from being used in existing 2G/3G networks, as well as 4G, protecting the expensive, new smartphone devices that have become pervasive.” “Mavenir Provides Innovative EIR Solution for FCC’s ‘Protect Initiative’” (May 3, 2012), *available at* <http://www.prnewswire.com/news-releases/mavenir-provides-innovative-eir-solution-for-fccs-protect-initiative-149984835.html>.

<sup>31</sup> The September 2010 “Operation Cellblock” test of managed access technology, performed by GTL, Tecore, and the Mississippi Department of Corrections, provides a further model for implementation. CMRS providers supported the test through short-term spectrum leases. In an actual implementation, correctional facility administrators could provide lists of specific wireless devices for deactivation pursuant to a contractual lease arrangement. *See, e.g.*, GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of MetroPCS Communications, Inc., 2 (Apr. 30, 2012) (“Boeing Comments”) (“And, in these circumstance, the government must provide liability protection to any wireless carrier that abides by a request to suspend, restrict or interrupt wireless service which the carrier reasonably believed under the circumstances to have been made in accordance with the approved governmental procedure or a court order.”)

deployment of wireless interruption technology.<sup>32</sup> Pursuant to the MOU, the 2009 Code for the Control of Unauthorised Use of Mobile Phones in Prisons was formed, which requires wireless carriers to grant spectrum licenses to correctional facilities in exchange for detailed technical specifications of transmitting equipment and prison facilities.<sup>33</sup> This public-private partnership enabled blocking technology to be employed expeditiously (from initial testing to complete solution in four years) and economically (a national implementation at a cost of \$5 million), and preventing the full weight of implementation from being placed on any one party alone.<sup>34</sup> It should serve as a template for cooperation between private enterprise and government in the U.S. as well, ensuring that the prison concerns and commercial strengths are paired in an efficient and financially sound manner.

### **III. ONLY THE FCC CAN FACILITATE THIS COOPERATION AND PROVIDE FOR THE INTRODUCTION OF SAFE AND TARGETED MANAGED ACCESS TECHNOLOGY IN PRISONS**

As the Commission observed over sixty years ago, its “duty to give priority to services concerned with the safety of life and property is not open to question.”<sup>35</sup> This duty, promulgated in the very first iteration of the Communications Act,<sup>36</sup> is “fundamental” to the FCC’s regulatory mission.<sup>37</sup> Wireless interruption in prisons directly invokes the Commission’s mission to protect

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<sup>32</sup> See Elena Balan, *Prisons Will Jam All Mobile Phone Use*, Softpedia, Aug. 22, 2007, <http://news.softpedia.com/news/Prisons-Will-Jam-All-Mobile-Phone-Use-63389.shtml>

<sup>33</sup> See Telecommunications Carriers’ Forum, Code for the Control of Unauthorised Use of Mobile Phones in Prisons, 5 (Nov. 7, 2008), available at <http://www.tcf.org.nz/library/e7b0100d-e056-4ef7-9d12-c18e5b4fb103.cmr..>

<sup>34</sup> ACMA, Australian Corrective Services Administrators’ Council Emerging Technology Working Group, Issues with Mobile Phones in Australian Correctional Centers, 13 (2009) (“ACMA Report”), available at [http://www.acma.gov.au/webwr/\\_assets/main/lib311281/csac\\_submission.pdf](http://www.acma.gov.au/webwr/_assets/main/lib311281/csac_submission.pdf).

<sup>35</sup> *Protests to Commission Order No. 19; Frequency Allocations to Services in the Frequency Bands from 30000 To 300000 KC*, 7 F.C.C. 25, 1939 WL 78172, \*12 (Mar. 13, 1939).

<sup>36</sup> See 47 U.S.C. § 151.

<sup>37</sup> See, e.g., *Application of Repeater Communications Corporation of California for Partial Assignment of Licenses for Stations WPOM425 And WRW245 to the County of Monterey, California*, 25 FCC Rcd 14485, n. 30 (2010).

life and property by ensuring public safety.<sup>38</sup> Accordingly, it is incumbent upon the Commission to carry out this duty by facilitating the rapid, orderly, and cost-efficient deployment of managed access technology.

The protection of life and property is effectuated through actions taken in the public interest, convenience and necessity.<sup>39</sup> Radio licenses are issued according to this standard,<sup>40</sup> which has been deemed the “essential test for the privilege of operating a radio station,”<sup>41</sup> as well as a means by which federal authorities retain “a grip on the dynamic aspects of radio transmission.”<sup>42</sup> On this basis, and in recognition of the urgent threat posed by increasingly sophisticated wireless devices in the hands of inmates, the Commission should ensure that *all* wireless carriers fully cooperate with the efforts of managed access providers,<sup>43</sup> by instructing them to open portions of their licensed wireless spectrum on fair and economical terms.<sup>44</sup> A mobile radio license is a public trust,<sup>45</sup> and spectrum a “public resource,”<sup>46</sup> such that CMRS

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<sup>38</sup> See, e.g., *E911 Accuracy Standards on Tier III Carriers*, 18 FCC Rcd 24648, ¶ 15 (2003); see also *Framework for Broadband Internet Service*, 25 FCC Rcd 7866 (2010) (noting “Commission’s mission with respect to promoting safety of life and property, and consumer protection generally”); *Keller Communications, Inc. v. F.C.C.*, 130 F.3d 1073, 1076-77 (D.C. Cir. 1997) (affirming Congressional direction to consider public safety needs).

<sup>39</sup> See, e.g., *W.U. Division, Commercial Telegraphers’ Union, A.F. of L. v. U.S.*, 87 F. Supp. 324, 335 (D.D.C. 1949) (“The standard of ‘public convenience and necessity’ is to be so construed as to secure for the public the broad aims of the Communications Act.”).

<sup>40</sup> *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; et al.*, 26 FCC Rcd 13615, ¶ 117 (2011) (noting that the promotion of safety of life and property fulfills the public interest, convenience, and necessity); see also, e.g., Federal Communications Commission, *The Information Needs of Communities*, 2011 WL 2286864, \*347 (June 2011).

<sup>41</sup> *Black River Valley Broadcasts v. McNinch*, 101 F.2d 235, 238 (D.C. Cir. 1938).

<sup>42</sup> *Fed. Comm’ns Comm’n v. Pottsville Broad. Co.*, 309 U.S. 134, 138 (1940).

<sup>43</sup> See, e.g., Tecore Comments at 3 (“Any carrier that elects not to provide spectrum rights will leave a ‘hole’ in the interdiction umbrella which can and will be quickly be exploited by inmates.”).

<sup>44</sup> See, e.g., Tecore Comments at 3 (“No regulation currently prevents any wireless carrier from opting *not* to permit interdiction within its spectrum. Similarly, nothing prevents a carrier from making spectrum available only under terms and conditions that are unreasonable or unworkable, or which undermine the economic feasibility of managed access.”) (emphasis in original).

<sup>45</sup> See, e.g., *Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop Preferred Communication Systems, Inc; Preferred Acquisitions, Inc.*, 22 FCC Rcd 13363, ¶ 34 (2007); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; et al.*, 22 FCC Rcd 8064, 8225 (2007) (noting that “spectrum warehousing” is disfavored) (statement of Commissioner Michael J. Copps); *Amendments to Parts 1, 2, 27, and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands*, 17 FCC Rcd 9980, 10095 (2002) (“The spectrum is a

providers are compelled to act as public fiduciaries<sup>47</sup> and support the implementation of managed access services.<sup>48</sup> As the National Telecommunications and Information Administration has noted, “structured coordination and cooperation” between managed access providers and wireless carriers is vital “to ensuring the long-term efficacy of the solution as new products and different frequencies are utilized in the wireless landscape. *Coordination of spectrum issues between the FCC, the wireless carriers, and the managed access provider is critical for successful implementation.*”<sup>49</sup>

As the FCC has observed on numerous occasions, clarifying and applying rules to a nascent industry “promote[s] regulatory certainty, foster[s] innovation and competition, and avoid[s] market disruption during the pendency of . . . rulemaking proceedings.”<sup>50</sup> Parties in this

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public asset. The Commission's stewardship of the spectrum is a public trust. Congress gave the Commission the responsibility to allocate spectrum for a reason. While there are often downsides to government management when it comes to speed and innovation, there are sometimes very important advantages.”) (statement of Commissioner Michael J. Copps).

<sup>46</sup> See, e.g., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers Of Mobile Data Services*, 26 FCC Rcd 5411, ¶ 62 (2011); *Report and Plan for Meeting State and Local Government Public Safety Agency Spectrum Needs through the Year 2010*, 10 FCC Rcd 5207, 5236 (1995) (“*Public Safety Agency Report*”).

<sup>47</sup> See, e.g., *Quincy Cable TV, Inc. v. F.C.C.*, 768 F.2d 1434, 1449 (D.C. Cir. 1985) (“Moreover, quite independent of the objective of bringing communicative order to the otherwise chaotic airwaves, the First Amendment tolerates a modest degree of government oversight of broadcast radio and television because such regulation assures that broadcasters, privileged occupants of a physically scarce resource, act in a manner consistent with their status as fiduciaries of the public's interest in responsible use of the spectrum.”); *Policies and Rules Concerning Children's Television Programming*, 10 FCC Rcd 6308, ¶ 62 (1995); *Amendment of Part 1 of the Commission's Rules to Allow the Selection from Among Mutually exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings*, 88 F.C.C.2d 476 (concurring statement of Commissioner Henry M. Rivera).

<sup>48</sup> Cf. *Public Safety Agency Report*, 26 FCC Rcd at 5234 (“The Commission does not question the need of public safety agencies to have ready access to wireless communications, particularly in situations involving imminent danger to life or property. . . . In addition to technologies readily available to the public safety community, commercial services can accommodate the special needs of public safety services through various software applications”).

<sup>49</sup> U.S. Department of Commerce, *Contraband Cell Phones in Prison: Possible Wireless Technology Solutions*, 25 (Dec. 2010) (“NTIA Report”) (emphasis added), available at [http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport\\_december2010.pdf](http://www.ntia.doc.gov/files/ntia/publications/contrabandcellphonereport_december2010.pdf).

<sup>50</sup> *Regulation of Prepaid Calling Card Services*, 21 FCC Rcd 7290, ¶ 68 (2006) (subsequent history omitted); see also, e.g., Federal Communications Commission, *FCC Unleashes 25 MHz of Spectrum for Mobile Broadband Use* (May 20, 2010) (noting that rulemaking action in regard to mobile broadband service “establishes regulatory certainty that should open the door to investment and innovation . . .”) (Statement of Commissioner Meredith A. Baker).

docket seek clarification on the scope of Section 333<sup>51</sup> of the Communications Act,<sup>52</sup> with one commenter remarking that the statute as presently interpreted (alongside Sections 301 and 302(b))<sup>53</sup> has forestalled effective responses to the proliferation of illicit wireless devices in prison.<sup>54</sup> It is GTL's contention that with due consideration of the legislative history, Sections 301, 302(b), and 333 do not foreclose systems that facilitate wireless interruption in correctional facilities.<sup>55</sup> In addition, both GTL and CellAntenna have noted the powerful case for mandatory Section 160(a)<sup>56</sup> forbearance in support of targeted wireless interruption.<sup>57</sup>

Last year, the Commission promulgated a series of new rules pursuant to the Twenty First Century Communications and Video Accessibility Act of 2010. As Chairman Genachowski explained, such rules were predicated on "giv[ing] manufacturers and service providers flexibility to implement innovative solutions at the development stage and use third party applications so that they can make technology accessible in the most cost-effective, efficient manner and so that disabled individuals won't have to wait years or decades to use new technologies."<sup>58</sup> The same philosophy should be applied in the case of managed access technology. Cooperation among all stakeholders necessary to effectuate wireless interruptions of illegal cell phone use in prisons will reduce transactional costs and consequently lower the

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<sup>51</sup> 47 U.S.C. § 333.

<sup>52</sup> *See, e.g.*, New Media Rights Comments at 9-10; Tecore Comments at 18-21.

<sup>53</sup> 47 U.S.C. §§ 301, 302(b).

<sup>54</sup> *See* GN Docket No. 12-52, *Commission Seeks Comment on Certain Wireless Service Disruptions*, Comments of CellAntenna Corporation, 2, 6 (Apr. 30, 2012) ("CellAntenna Comments").

<sup>55</sup> *See* GTL Comments at 26 -28.

<sup>56</sup> 47 U.S.C. § 160(a).

<sup>57</sup> *See* CellAntenna Comments at 10. As GTL explained in its Initial Comments, the statute's three-part test is met by the fact that (1) curtailment of wireless access for inmates does not affect the economic or legal framework for CMRS service; (2) consumers are harmed, not helped, by withholding wireless interruption systems from prisons; and (3) public safety is enhanced through the integrity of correctional facilities. *See* GTL Comments at 28 - 31.

<sup>58</sup> Federal Communications Commission, *FCC Proposes to Update Rules Allowing Accessibility to Advanced Communications to 54 Million Consumers with Disabilities* (Mar. 3, 2011) (Statement of Chairman Julius Genachowski).

expense of implementing effective prison solutions.<sup>59</sup> Regulatory certainty will encourage a variety of managed access providers to proceed with system installation. In its absence, the formation of a vibrant market is forestalled by the risk of expensive and time-consuming litigation,<sup>60</sup> and the crisis of wireless use in prison worsens.

## CONCLUSION

The FCC has before it exhaustive proof of a security crisis in this country's prisons, as well as a scalable and targeted solution in the form of managed access. Drawing upon models of stakeholder collaboration both domestic and foreign, and informed by the need for a cooperative and regulatorily stable market framework, the Commission must expeditiously act in the

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<sup>59</sup> Cost for implementing managed access technology, in light of architecture variations, security differentials, and prison populations, is a repeated concern of correctional facility administrators. *See, e.g.*, Webinar Transcript at 6, 23, 62-72

<sup>60</sup> Telecommunications service providers like GTL are in a unique position, by virtue of correctional facilities that want to incorporate managed access as part of a comprehensive prison telecommunications system. *See, e.g.*, Webinar Transcript at 32 ("We were able to get this system through negotiations with -- on an added value on our contract.") (statement of Christopher Epps, Commissioner, Mississippi Department of Corrections). Pursuant to a contract for a prison telecommunications system, California's July 7, 2011 Invitation for Bids requires GTL to deploy managed access technology in an environment of regulatory uncertainty and high deployment costs. *See* California Technology Agency IFB 11-127805, Inmate Ward Telephone System and Managed Access System Services, Invitation for Bids (July 7, 2011) ("California IFB"), *available at* <http://www.bidsync.com/DPX?ac=view&auc=1810550>; *see also, e.g.*, Jeff Webster, California CDCR seeks proposals for contraband cell phone managed access, GovWin, July 13, 2011 ("Earlier this month, the California Department of Corrections and Rehabilitation (CDCR) began the process of replacing its current contract for inmate telephone services through competitive procurement . . . The state concluded that a managed access system was the only currently-available technology to allow signal access to certain devices while prohibiting access to other devices. Given current federal law, the jamming of communications is illegal, and the cost of using signal triangulation would be too high. The decision to use a managed access system is estimated to cost between \$18 million and \$35 million. The system will draw unauthorized cell phone signals to an onsite, mock, high-signal commercial-grade cellular tower that thwarts communications. Authorized cell phone signals are not allowed to connect to this tower and will find a real commercial signal to complete the call. This system will be used throughout 33 adult institutions"), *available at* <http://www.input.com/index.cfm?fractal=blogTool.dsp.blog&blogname=public&alias=California-CDCR-seeks-proposals-for-contraband-cell-phone-managed-access>.

furtherance of its public safety mission, and enable the immediate and economical deployment of managed access systems.

Respectfully submitted,

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