

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

In the Matter of)
)
Promoting Technological Solutions to Combat) GN Docket No. 13-111
Contraband Wireless Device Use in Correctional)
Facilities)

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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I. INTRODUCTION AND SUMMARY

CTIA – The Wireless Association® (“CTIA”) respectfully submits these reply comments in response to the Federal Communications Commission (“FCC” or “Commission”) Notice of Proposed Rulemaking seeking to “remove barriers to the deployment and viability of existing and future technologies used to combat contraband wireless devices.”¹ CTIA supports the Commission’s proposed steps to streamline the managed access deployment process. The procedural rule changes proposed by the Commission are an important step in the right direction. However, CellAntenna’s proposal regarding cell detection systems does not provide sufficient certainty to carriers. In particular, the record supports the adoption of a requirement that any notice to terminate an identified contraband device should come via an order from a court of relevant jurisdiction.

One way in which wireless carriers have assisted correctional departments is through the lease of certain spectrum rights to managed access system providers. While wireless providers actively support these efforts, some of the proposals unnecessarily would intrude on licensees’ rights. Similarly, the Commission should not adopt rules that would interfere with the business relationships between wireless carriers and managed access providers.

¹ *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, Notice of Proposed Rulemaking, 28 FCC Rcd 6603 (2013) (“NPRM”).

Finally, despite the Commission's definitive statements opposing the use of jamming technologies, several parties in this proceeding continue to press for the authorization of jammers in prisons. As the Commission indicated in the NPRM, jamming by non-Federal entities is illegal. This proceeding raises several important questions about the operation of managed access and detection systems, and the Commission should focus its efforts on these lawful measures and avoid illegal jamming.

As opening comments in this proceeding demonstrate, the wireless industry has played a valuable leadership role in combating the use of contraband wireless devices in correctional facilities. CTIA strongly opposes the use of contraband cell phones in prisons, and applauds the efforts of its members to help deploy managed access and detection solutions.

II. THE WIRELESS INDUSTRY HAS PLAYED AN ESSENTIAL ROLE IN THE DEPLOYMENT OF HIGHLY SUCCESSFUL MANAGED ACCESS SYSTEMS.

As the NPRM and opening comments demonstrate, a variety of managed access and detection solutions have proven highly effective in combating the use of contraband wireless devices in prisons, without the negative effects associated with unlawful jammers. In Texas, a trial of a managed access system at the McConnell Unit resulted in hundreds of unauthorized calls and texts being intercepted.² Meanwhile, in just its first month of operation, the managed access system at the Mississippi State Penitentiary blocked 325,000 call and message attempts.³ It is clear that managed access is proving to be a highly successful means of fighting back against contraband wireless device use in prisons. For each trial and deployment of managed

² Anita Hassan, *High-tech system stumps inmates with cellphones*, HOUSTON CHRONICLE (Mar. 25, 2013), available at <http://www.houstonchronicle.com/news/houston-texas/houston/article/High-tech-system-stumps-inmates-with-cells-4380816.php>.

³ NPRM at ¶ 15.

access systems, wireless carriers have engaged and contributed significant technical, personnel, and financial resources to assist the launch of managed access.⁴

Some participants in this proceeding have suggested that wireless providers have been or could be uncooperative in the course of deploying a managed access system, and have used these accusations as a basis for seeking unnecessary regulations.⁵ However, these parties have provided no evidence of such behavior. Indeed, despite being a proponent of such unnecessary regulations, Boeing acknowledges that “Boeing has not seen evidence that carriers have sought to limit or deny managed access providers access to the spectrum necessary to operate, and there is no reason to believe that carriers would refuse consent to operate such an important service. Nor have managed access providers complained of lease terms or conditions that impair significantly their ability to serve the needs of prison officials.”⁶ As discussed in further detail below, wireless providers actively facilitate and support managed access deployments, and the Commission’s proposed streamlining measures will make these arrangements even more productive. There is, then, no basis for the Commission to adopt prescriptive regulations in the

⁴ Notably, the wireless and managed access industries are undertaking these important efforts in the face of behavior by corrections officers that help contribute to the problem. *See, e.g.*, News Release, U.S. Immigration and Customs Enforcement, “7 Texas correctional officers plead guilty to racketeering for smuggling drugs and cell phones to prison inmates” (Apr. 3, 2013), *available at* <https://www.ice.gov/news/releases/1304/130403corpuschristi.htm>; Annys Shin and Aaron C. Davis, *Maryland’s Prison System Struggles to Police Thousands of Guards and Inmates*, THE WASHINGTON POST (May 27, 2013), *available at* http://www.washingtonpost.com/local/marylands-prison-system-struggles-to-police-guards-and-inmates/2013/05/27/dfacdeb0-bbda-11e2-97d4-a479289a31f9_story.html (“The guards are accused of helping a violent prison gang operate a drug-trafficking and money-laundering operation that involved smuggled pills and cellphones, sexual liaisons and thousands of dollars in cash payments.”).

⁵ *See, e.g.*, Comments of Tecore Networks, GN Docket No. 13-111, at 10 (July 18, 2013) (“Tecore Comments”).

⁶ Comments of The Boeing Company, GN Docket No. 13-111, at 3-4 (July 18, 2013) (“Boeing Comments”).

name of forcing wireless carriers to cooperate with managed access providers and correctional authorities.

III. THE COMMISSION SHOULD ADOPT ONLY THOSE REGULATIONS THAT SIMPLIFY EFFORTS TO COMBAT CONTRABAND DEVICE USE IN PRISONS.

A. The Commission’s Proposed Streamlining Procedures Will Encourage Deployment of Managed Access Systems.

CTIA applauds the Commission for its recognition that streamlining the managed access leasing process will greatly facilitate more widespread deployment of these systems. The Commission has correctly concluded that the existing regulatory regime for deploying managed access systems can be time-consuming and complex, and could delay the deployment of managed access systems, therefore unnecessarily discouraging their use.

The Commission has proposed several reforms to facilitate a streamlined application process for spectrum leases entered into “exclusively to combat the use of unauthorized wireless devices in correctional facilities.”⁷ These changes include: (1) immediately processing managed access lease applications even where the lease would create a geographic overlap, (2) eliminating certifications related to the Commission’s designated entity rules, and (3) modifying Form 608 such that applicants may easily identify that the lease application is exclusively for a managed access system in a correctional facility.⁸ These procedural rule changes received widespread support in opening comments. Tecore agreed that these procedural revisions “will make a significant difference in the time needed for the deployment of managed access solutions.”⁹ AT&T, meanwhile, believes that these changes “will help to reduce the time required and the

⁷ *Id.* at ¶ 36.

⁸ *Id.* at ¶¶ 39-42.

⁹ Tecore Comments at 17.

resources expended by carriers to complete a spectrum lease with managed access and detection system providers.”¹⁰

In its opening comments, CTIA noted two additional refinements that the Commission should make in connection with its streamlining efforts. The record supports adoption of both of CTIA’s proposals. First, CTIA stressed that, whatever action the Commission takes with respect to 911/E911, wireless carriers should not be liable in the event that a call to 911 is blocked or E911 data is degraded by a managed access system. CTIA agrees with other commenters that it is critical that the Commission not expose wireless carriers to liability for the choices of managed access system providers.¹¹

Second, CTIA stresses that in streamlining the process for a managed access provider to obtain special temporary authority (“STA”), the Commission must not eliminate its practice of asking the underlying CMRS licensee to review and approve the proposed STA prior to grant. As Verizon Wireless observed, “[g]iven that Solution Providers typically engage with the underlying licensees well in advance of the STA request being filed and that licensee consent letters are already part of the current process in practice, making this requirement explicit in the rules should not impose any burdens or delays on the approval process.”¹² CTIA therefore asks

¹⁰ Comments of AT&T Inc., GN Docket No. 13-111, at 3 (July 18, 2013) (“AT&T Comments”).

¹¹ Comments of Verizon Wireless, GN Docket No. 13-111, at 4 (July 18, 2013) (“Verizon Wireless Comments”) (“Regardless of whether managed access provider spectrum lessees are required to complete 911 calls from contraband devices or block such calls, or otherwise required to comply with the Commission’s basic and enhanced 911 rules, the Commission should modify its rules so it is expressly clear that the lessor CMRS providers will not be liable for violations of those rules in circumstances where the lessee managed access provider blocks or degrades the 911 call or the ANI and ALI associated with the call.”).

¹² Verizon Wireless Comments at 3.

the Commission to make the consent requirement explicit in the STA rules ultimately adopted by the Commission.

B. The Commission’s Proposal Regarding Detection Systems Does Not Provide Sufficient Certainty to Carriers.

In response to a request from CellAntenna, the Commission in the NPRM proposed to require CMRS licensees to terminate service to contraband wireless devices within correctional facilities pursuant to a “qualifying request from an authorized party.”¹³ Presumably, these requests would result from the use of a cell detection system to locate unauthorized wireless devices within the correctional facility. In its comments, CTIA expressed concern that this proposal would implicate many complex issues that the Commission had not fully considered, and that it would create uncertainty for carriers. Several others echoed these concerns.

In its opening comments, CTIA stressed that for CellAntenna’s proposed framework to be effective, it is critical that wireless carriers receive complete and accurate information about the device to be shut off. CTIA therefore cited the importance of a certification regime for managed access solutions. In its opening comments, Verizon Wireless reported that in connection with trials of managed access and detection solutions, the lists of contraband devices it received contained a number of devices “purported to be Verizon Wireless subscriber devices [that] were not Verizon Wireless subscriber devices.”¹⁴ Carriers will require assurance that the information they receive is correct so that they do not inadvertently shut down wireless service to a bystander subscriber. The Commission would be best-positioned to provide such certification and should perform this role. It should do this by subjecting cell detection systems to its Part 2 certification rules and by establishing a process by which the Commission validates that a cell

¹³ NPRM at Appendix A, ¶ 8.

¹⁴ Verizon Wireless Comments at 6.

detection system is operating properly and capturing accurate, necessary information regarding potentially unauthorized phones.

Several parties noted that the deactivation proposal exposes wireless carriers to significant liability. As AT&T observed, there is a possibility that a managed access system could mistakenly capture information regarding a lawful device, and “the deactivation of a legitimate account by a carrier could result in endangering the safety of a law-abiding user, not to mention endangering disputes, potential liability and reputational harm.”¹⁵ Tecore, meanwhile, expressed concern that “in the event that a SIM card is deactivated, there are potential liability issues associated with the wireless carrier for transactions that occur on the contraband device from the time of their notification to the institution to the time of deactivation.”¹⁶ As Verizon Wireless observed, the Commission can only go so far in insulating wireless carriers from liability in this context, and there will always be a threat in the event that the device terminated proves not to be contraband.¹⁷

In sum, the record makes clear that the CellAntenna proposal does not provide sufficient certainty to carriers. In particular, the record supports the adoption of a requirement that any notice to terminate an identified contraband device must come from a court of relevant jurisdiction. Obtaining and responding to court orders are familiar processes to both prison officials and wireless carriers.¹⁸ Requiring a court order as a condition precedent to a termination requirement would also help to insulate wireless carriers from liability in the event of

¹⁵ AT&T Comments at 7.

¹⁶ Tecore Comments at 24.

¹⁷ Verizon Wireless Comments at 8.

¹⁸ *Id.* at 9.

an erroneous termination.¹⁹ By requiring that the notice come from a court of relevant jurisdiction, the Commission would ensure a high standard for such requests and provide much-needed clarity to CMRS providers.

IV. THE COMMISSION MUST REJECT CALLS TO INTRUDE ON LICENSED WIRELESS CARRIERS' SPECTRUM RIGHTS.

Several commenters have advanced additional proposals that they believe would facilitate the prevention of contraband wireless device use in prisons. CTIA is concerned that several of these proposals constitute an unwarranted intrusion on licensed wireless carriers' spectrum rights. The wireless industry has stepped forward to help correctional departments address this problem, including by leasing certain of their spectrum rights to a third party. However, the proposed intrusions on licensees' rights are unnecessary and go too far. Further, they may have unintended negative consequences separate and apart from the matter of licensee rights. CTIA discusses these proposals in further detail below.

A. Licensee Consent Must Be a Condition Precedent to the Establishment of a Managed Access System.

In its comments, Boeing proposes that the Commission authorize the use of managed access systems in licensed wireless spectrum without the need to obtain a spectrum lease or carrier consent.²⁰ CTIA strongly opposes this proposal, and stresses that any rules adopted by the Commission in this proceeding must preserve wireless licensees' existing, exclusive-use rights to their licensed spectrum.

¹⁹ AT&T Comments at 7; Verizon Wireless Comments at 8.

²⁰ Boeing Comments at 6, 9 (“Boeing requests that the Commission expressly reserve its right to continue to authorize non-carrier use of wireless carrier spectrum to enable operation of managed access systems in prisons.”).

CTIA submits that the draconian action suggested by Boeing is not necessary to ensure prompt managed access deployment. The Commission in the NPRM has proposed various procedural rules that would greatly streamline the process for obtaining a lease or STA to operate a managed access system. Further, and as Boeing has conceded, wireless providers have been fully cooperative in establishing these arrangements.²¹ Thus, the Commission's existing proposals should be sufficient to considerably expedite the process of managed access deployment. As such, there is no public interest basis to intrude upon the spectrum rights of licensed wireless carriers. The Commission generally does not deviate from its policy of granting licensees exclusive rights to their spectrum, and it should not do so here.²²

There are also many benefits to requiring carrier consent and involvement in the establishment of a managed access system. Indeed, and as many commenters have observed, managed access systems have the potential to impact wireless subscribers in the vicinity of a correctional facility who have no affiliation with the facility.²³ Given the potential impact to their subscribers outside of the prison, wireless carriers must be involved in the coordination of managed access leases.

²¹ *Supra* at 3.

²² CTIA notes that Boeing is primarily concerned that the outcome of this proceeding could impact the Commission's future treatment of licensed wireless frequencies aboard aircraft. However, CTIA stresses that Commission intrusion on licensee rights in the aircraft license would be similarly inappropriate.

²³ *See, e.g.*, Comments of NENA – The 9-1-1 Association, GN Docket No. 13-111, at 1 (July 18, 2013) (“NENA Comments”) (noting the potential for call blocking to the general public at the borders of managed access systems' service areas); Comments of the Alarm Industry Communications Committee, GN Docket No. 13-111, at 6 (July 18, 2013) (“Still, because of the fluid nature of RF signals, which propagate differently depending on the weather, the environment and time of day (among other factors), even the most carefully designed and maintained managed access system has the potential of interrupting or interfering with wireless operations outside of the controlled facility.”).

B. Wireless Licensees Must Retain Flexibility With Respect to Network Design in the Vicinity of Corrections Facilities.

Certain parties to this proceeding have advanced proposals that would restrict wireless carriers' flexibility to design and deploy their networks even outside the boundaries of a prison. Specifically, commenters seek the establishment of "quiet zones" around prisons, or the creation of a requirement that carriers coordinate their network design with managed access providers. CTIA stresses that these proposals would be unnecessarily restrictive for wireless carriers and could have unintended negative consequences on consumers. Further, they are not necessary to achieve the end results sought by their proponents.

Certain parties in this proceeding have proposed that the Commission establish "quiet zones" around correctional facilities.²⁴ Wireless carriers would then be required not to transmit to those areas, and a prison service provider would be authorized to prevent or create interference to any unauthorized transmissions within prison confines.²⁵ CTIA is concerned that the "quiet zone" proposal, if adopted, would unnecessarily complicate wireless network design, potentially to the detriment of consumers.²⁶ In rural areas, wireless service is often provided via tall towers

²⁴ Comments of NTCH, Inc., GN Docket No. 13-111, at 3 (July 18, 2013) ("NTCH Comments") ("It should declare the confines of prisons, including surrounding lands owned or controlled by the prison system, to be 'quiet zones' akin to the Commission's treatment of radio astronomy and other research facilities designated by the Commission."); Comments of Network Communications International Corp., GN Docket No. 13-111, at 2 (July 18, 2013) ("NCIC Comments") ("Recently, the country of Honduras implemented legislation that required the mobile phone providers to create 'Dead Zones' in their own network around prison facilities. By forcing the cellular providers to block the signals from prisons, you eliminate the cost (and tax burden) of purchasing and managing systems within government entities and pass the expense to the handful of CMRS providers in our country.").

²⁵ NTCH Comments at 4-5.

²⁶ Not only would adoption of this proposal complicate network design, but it would also be an unwarranted intrusion upon licensees' exclusive rights. Wireless licensees purchased their geographic rights to spectrum through competitive bidding with the expectation that they would be permitted to provide service throughout their licensed area. Unlike managed access leasing,

that cover great distances, a network design that has facilitated the provision of service to rural subscribers. However, designing new “quiet zones” – particularly in rural areas – would require wireless carriers to re-engineer their networks – potentially to the detriment of consumers. This is because compliance with the quiet zone rules may require wireless carriers not to serve certain consumers as an engineering matter. As a result, the service provided to legitimate wireless subscribers in the vicinity of prisons could be inhibited. Given these drawbacks, and because a well-engineered managed access system should make “quiet zones” unnecessary, CTIA opposes this proposal.

Others have requested that the Commission require wireless carriers to coordinate any network changes in the vicinity of a managed access system with the managed access system provider.²⁷ As a matter of course, there has been open communication and cooperation between wireless carriers and managed access providers with respect to network design issues. CTIA submits that there is no need for the Commission to adopt rules in this context, and that the Commission can best facilitate this continued communication by preserving parties’ flexibility to tailor these discussions to individual relationships.

the use of “quiet zones” would not enable wireless licensees to recoup the costs associated with the partial loss of their spectrum rights.

²⁷ See, e.g., Petition for Rulemaking of Global Tel*Link Corporation, PRM11WT, at 9 (July 20, 2011) (proposing a requirement that a CMRS carrier provide notice to managed access system operators within the carrier’s service area in advance of making technical changes to the CMRS network that would adversely impact a managed access system’s operations so that managed access system settings can be coordinated with the planned CMRS modifications); Comments of CellAntenna, GN Docket No. 13-111, at 2-3 (July 18, 2013) (“CellAntenna Comments”) (“It is our belief that the long term success of any system requires the participation of the carriers in one form or another . . . cellular providers can reduce power levels, and adjust the direction of the antennas to make any cell phone control equipment more effective. This level of cooperation has not taken place in the industry with the responsibility of making any system work in any condition on the provider of cell phone control systems.”).

V. THE COMMISSION SHOULD NOT INTERFERE IN BUSINESS RELATIONSHIPS BETWEEN WIRELESS CARRIERS AND MANAGED ACCESS PROVIDERS.

The Commission should reject the calls by parties in this proceeding that would have it interfere in the business relationships of wireless carriers and managed access providers.

Specifically, Tecore has proposed a variety of rules it claims are necessary to the deployment of managed access, but which would be needlessly burdensome for carriers. For example, Tecore requests the adoption of a “shot clock” for the full implementation of a managed access system²⁸ and a “model lease” to be used with the FCC’s endorsement.²⁹ Tecore also requests that wireless providers grant their spectrum rights to managed access providers free of charge.³⁰

Tecore believes that an outside limit on the time taken to fully implement a managed access solution is “key” to ensuring that “timely implementation of managed access solutions is possible.”³¹ CTIA disagrees, and believes that a shot clock is unnecessary at best and harmful at worst. CTIA notes that wireless carriers have a strong record of cooperation in the course of establishing managed access systems. This historical cooperation, coupled with the proposed streamlining measures, will be sufficient to ensure timely deployments of managed access systems. Indeed, Tecore itself suggests that a primary cause of delay is the time needed to process spectrum lease applications,³² a process clearly outside the control of carriers that would

²⁸ Tecore Comments at 13.

²⁹ *Id.* at 15-16.

³⁰ *Id.* at 14-15.

³¹ Tecore Comments at 13.

³² Tecore Comments at 16 (“The benefit of that environment will be lost, in part, if spectrum leases languish pending approval.”); *id.* at 17 (“These procedural revisions, as well as the other streamlining proposals made by the Commission, are welcomed by Tecore and will

be significantly shortened with the adoption of the streamlining rules. As a general matter, the carrier consent process has been essential in working out technical details that result in more effective managed access systems. While an initial managed access arrangement between a wireless carrier and a managed access provider may take some time to establish due to technical evaluations and testing, subsequent deployments tend to go much faster. Thus, a shot clock such as that proposed by Tecore has the potential to truncate the initial planning process to the detriment of the managed access system, and may simply be unnecessary in subsequent deployments.

With respect to costs, wireless carriers have been willing to lease their spectrum to managed access providers to further this important public safety measure. However, wireless carriers must be permitted to recover the costs associated with these ventures. Wireless providers do not view these managed access leases as profit ventures, and Tecore's fears in this regard are unfounded. Cost recovery, however, can and should be permitted. The Commission should not entertain calls to dictate the means by which carriers recoup their costs. Further, the Commission should adopt no rules regarding the fees to be charged for managed access leases. Tecore alleges that in the absence of such requirements, "the last holdout may be in position to extract a premium over what the carriers have received."³³ In the absence of any evidence that Tecore's fears have or will come to pass, the Commission must not intrude on the business arrangements between wireless providers and managed access providers. Similarly, Commission adoption of a "model lease" would be an inappropriate intrusion into private business negotiations.

make a significant difference in the time needed for the deployment of managed access solutions.").

³³ Tecore Comments at 10.

VI. THE COMMISSION SHOULD FOCUS ON LAWFUL TECHNICAL SOLUTIONS TO COMBATING CONTRABAND WIRELESS DEVICE USE IN PRISONS.

Despite repeated findings and statements regarding the illegality of jammers, several parties in this proceeding continue to push for the authorization of jammers in prisons.³⁴ As the Commission indicated in the NPRM, however, jamming by non-Federal entities is illegal, and the Commission has not otherwise addressed jamming in this proceeding.³⁵ CTIA appreciates the Commission's statement of commitment to take enforcement action against unauthorized jammer use.³⁶ Both the Commission and the NTIA have warned of the dangers resulting from the unauthorized use of signal jammers and noted that such use by non-Federal entities is in violation of the Communications Act.³⁷

The Commission in this proceeding has raised several important questions about the operation of managed access and detection systems in prisons. The Commission should focus its efforts on these lawful measures, and should not allow calls for illegal jamming to become a distraction to this proceeding. Further discussion or consideration of jamming as a solution to

³⁴ See, e.g., CellAntenna Comments at 1-2; Comments of Oklahoma Corrections Professionals, GN Docket No. 13-111 (July 18, 2013); NCIC Comments at 2; Comments of State of Indiana Department of Correction, GN Docket No. 13-111 (July 17, 2013); Comments of Securus Technologies, Inc., GN Docket No. 13-111, at 7 (July 18, 2013).

³⁵ NPRM at ¶¶ 18-19.

³⁶ *Consumer Alert: Using or Importing Jammers is Illegal*, Public Notice, DA 12-1642 (October 15, 2012) (“The FCC Enforcement Bureau has a zero tolerance policy in this area and will take aggressive action against violators.”).

³⁷ NPRM at ¶¶ 18-19; NTIA, *Contraband Cell Phones in Prisons: Possible Wireless Technology Solutions* at 37 (December 2010) (“The use of jammers by State or local prison officials is a violation of the Communications Act of 1934, and hence illegal. Jamming cell signals may be effective where legal in Federal applications, and in some settings with careful design, but its effectiveness and utility may be greatly diminished by interference with other communications, including critical police, firefighter and emergency medical communications and 9-1-1 calls.”).

the problem of contraband wireless device use in prisons is, quite simply, without merit or legal basis.

VII. CONCLUSION

CTIA applauds the efforts of its wireless industry members to work with managed access solutions providers to fight back against the unauthorized use of wireless devices in prisons. The Commission can best facilitate these efforts by adopting only those rules that simplify the efforts of stakeholders, by declining to disturb the spectrum rights of licensed wireless carriers, by allowing parties to tailor business relationships to their individual and collective needs, and by focusing only on lawful solutions.

Respectfully submitted,

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