

HR 560 IH

111th CONGRESS
1st Session
H. R. 560

To amend the Communications Act of 1934 to permit targeted interference with mobile radio services within prison facilities.

IN THE HOUSE OF REPRESENTATIVES

January 15, 2009

Mr. BRADY of Texas (for himself, Mr. POE of Texas, Mr. SESSIONS, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Communications Act of 1934 to permit targeted interference with mobile radio services within prison facilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Safe Prisons Communications Act of 2009'.

SEC. 2. INTERFERENCE PERMITTED WITHIN PRISONS.

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

- (1) by inserting '(a) IN GENERAL- ' before 'No person'; and
- (2) by adding at the end the following:

'(b) EXCEPTION FOR PRISONS-

'(1) Waiver-

'(A) IN GENERAL- The Director of the Federal Bureau of Prisons or the chief executive officer of a State (or his or

her designee) may, by petition, request that the Commission grant a waiver of subsection (a) to permit the installation of devices for the sole purpose of preventing, jamming, or interfering with wireless communications within the geographic boundaries of a specified prison, penitentiary, or correctional facility under his or her jurisdiction.

` (B) TERM- A waiver granted under this subsection shall be for a term not to exceed 10 years, but shall be renewable by petition.

` (C) FEE- The Commission may not charge a filing fee for a petition under this paragraph.

` (2) Notification; database-

` (A) NOTIFICATION OF CARRIERS- Upon receipt of a petition under paragraph (1), the Commission shall provide a copy of the petition to each commercial mobile service provider serving the area that includes the prison, penitentiary, or correctional facility to which the petition applies.

` (B) DATABASE- The Commission shall maintain an electronic database containing a copy of each such petition received by it and the disposition thereof. The Commission shall update the database at least monthly and shall make the database publicly available on the Commission's Internet website and publish a copy of the database in the Federal Register at least quarterly.

` (3) DISPOSITION OF PETITION- In determining whether to grant a requested waiver, the Commission shall consider, among other factors, whether the grant of the waiver would interfere with emergency or public safety communications. The Commission shall act on a request under this subsection within 60 calendar days after the date on which the Commission receives the petition.

` (4) TRANSFER PROHIBITED- A prison, penitentiary, or correctional facility that receives a waiver pursuant to this subsection may not transfer the ownership or right to use any device authorized pursuant to the waiver to any third party for use outside the area of the prison, penitentiary, or correctional facility for which the waiver was granted.

` (5) LIMITATIONS ON USE- Within 1 year after the date of enactment of the Safe Prisons Communications Act of 2009, the Commission shall adopt final regulations governing the use of devices authorized by a waiver under this subsection that, at a

minimum, require that the prison, penitentiary, or correctional facility--

- ˘ (A) utilize a device--
 - ˘ (i) authorized by the Commission; and
 - ˘ (ii) specifically approved by the Commission for the purpose described in paragraph (1);
 - ˘ (B) operate the device at the lowest possible transmission power necessary to prevent, jam, or interfere with wireless communications by inmates; and
 - ˘ (C) operate the device in a manner that does not interfere with wireless communications that originate and terminate outside the area of the prison, penitentiary, or correctional facility, by operating the device on a directionalized basis, by utilizing all other interference-limiting capabilities available to the device, or otherwise.
- ˘ (6) Suspension; revocation-
- ˘ (A) TERMINATION OR SUSPENSION OF WAIVER-
 - ˘ (i) NOTICE FROM PROVIDER- The Commission shall suspend a waiver granted under this subsection with respect to a prison, penitentiary, or correctional facility upon receiving written notice from a commercial mobile service provider, supported by affidavit and such documentation as the Commission may require, stating that use of a device by or at such prison, penitentiary, or correctional facility is interfering with commercial mobile service provided by that provider or is otherwise preventing or jamming such communications (other than within the confines of such prison, penitentiary, or correctional facility). Within 90 days after receiving such a notice and documentation, the Commission shall conclude an investigation to determine whether the device authorized for use at the prison, penitentiary, or correctional facility is causing such interference and shall issue an order reinstating, modifying, or terminating the waiver based on its findings and conclusions.
 - ˘ (ii) NONCOMPLIANT USAGE- If the Commission has reason to believe that a prison, penitentiary, or correctional facility for which a waiver has been granted under this subsection is not in compliance with the regulations under this subsection, the Commission shall suspend the waiver until it can make a determination with respect to such

compliance after notice and an opportunity for a hearing.

^ (B) REVOCATION- The Commission may revoke a waiver under this section for willful or repeated violations, or failure to observe the requirements, of the waiver or the regulations promulgated by the Commission under this subsection.

^ (C) INTERIM USAGE- If the Commission initiates a suspension or a revocation proceeding under this paragraph, it may prohibit use of the device to which the waiver relates at the prison, penitentiary, or correctional facility for which the waiver was granted during the pendency of any such proceeding.'.

SEC. 3. DEVICE CERTIFICATION CRITERIA RULEMAKING.

(a) IN GENERAL- Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall adopt a final rule establishing criteria for certification for the manufacture, sale, importation, and interstate shipment of devices that may be used pursuant to a waiver under section 333(b) of the Communications Act of 1934 (47 U.S.C. 333(b)), notwithstanding section 302 of such Act (47 U.S.C. 302a). The regulations shall require, at a minimum, that any such device--

- (1) operate at the lowest technically feasible transmission power that will permit prison, penitentiary, or correctional staff to prevent, jam, or interfere with wireless communications within the geographic boundaries of a specified prison, penitentiary, or correctional facility;
- (2) be capable of directionalized operation; and
- (3) comply with any other technical standards deemed necessary or appropriate by the Commission to ensure that the device does not create interference to other than the targeted wireless communications.

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

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