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National Institute of Justice Conference 2010

Plenary Panel: Cell Phones in Prison

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Thank you so much for the opportunity to attend the 2010 NIJ Conference and to have the opportunity to meet with public safety officials involved in ensuring the safety and security of this nation's correctional facilities. The matter of illegal cell phone use in prisons is a strong concern of the Federal Communications Commission and it is an item of intense interest to me personally.

In this regard, a number of technologies are being tested and advocated, primarily involving forms of managed network access, cell phone jamming, interception, and detection.

Let me briefly describe the legal landscape concerning the cell jamming technique. Simply stated, today, cell phone jammers are illegal in the United States. It is illegal to manufacture, import, sell, offer for sale, operate or use devices designed to prevent, jam or interfere with the operation of cell phones. The Communications Act of 1934, as amended, and the FCC's rules prohibit the manufacture, importation, marketing, sale or operation of these devices within the United States. The legal citations are Section 302(b) of the Communications Act, and Section 2.803(a) of the FCC's rules. In addition, under Section 333 of the Act, it is unlawful for any person to willfully or maliciously interfere with the radio communications of any station licensed or authorized under the Act or operated by the U.S. Government. Further, Section

301 of the Act requires persons operating or using radio transmitters to be licensed or authorized under the Commission's rules.

Parties violating the provisions of the Communications Act and/or FCC rules mentioned above may be subject to the penalties set forth in 47 U.S.C. §§ 501-510. Monetary forfeitures for a first offense can be as much as \$11,000 a day for each violation and could subject the offender to criminal prosecution. Equipment may also be seized by the United States Marshals and forfeited to the U.S. Government.

I appreciate that some prison administrators desire to use cell jammers as a means to combat the serious problems they face with prisoners using cell phones to conduct criminal activities, including threatening government officials and the public, and even to carry out serious offenses including murder. In my view, the right balance would involve a technology that best assists prison officials in combating the use of illegal cell phones while also ensuring that legitimate wireless calls, including calls by the public to reach 911 or communications conducted by public safety officials, are not impacted. This requires the involvement and cooperation of all commercial service providers in the affected area, as well as public safety agencies. It will be

important to consider the impact of the legalization and commercial availability of these technologies, such as how having legal jammers on the market will affect law enforcement, public safety and counter-terrorism. Another important consideration is how to prevent the misuse of such technologies to invade protected privacy interests or to threaten life or property.

In 2009, the United States Senate passed a bill that would permit a correctional facility to operate a system to prevent, jam, or otherwise interfere with unauthorized wireless communications by prisoners. Later in 2009, Congress tasked the National Telecommunications and Information Administration (NTIA), in coordination with the Federal Communications Commission, the Federal Bureau of Prisons (FBOP), and the National Institute of Justice (NIJ), with developing a plan to investigate and evaluate how wireless jamming, detection, and other technologies might be utilized for law enforcement and corrections applications in Federal and state prison facilities. Congress asked that the plan consider the adverse effects that these technologies impose on commercial wireless and public safety communications services in areas surrounding the prisons. Congress is showing true leadership in this area, and I am pleased that we can build upon

our strong and collaborative relationship with NTIA by consulting further on this matter.

The newest product of this collaboration is NTIA's recent Notice of Inquiry on preventing contraband cell phone use in prisons, which was drafted in response to this legislation. This was another great opportunity for the FCC to work with NTIA, FBOP, and NIJ in developing this document, and I believe that the NOI serves as an excellent platform for not only accomplishing Congress's goals, but for leading the way for a collaborative federal effort to resolve the difficult and serious problem associated with contraband cell phone use in prisons. I support the approach of the NOI to explore three categories of cell phone intervention – jamming, managed network access, and detection.

This approach permits a straight-forward way to compare and contrast the effectiveness and potential drawbacks of each technology category. There are many intricate and interdependent issues involved, including technical efficacy and adaptability, legal considerations, relative costs, interference concerns, preserving legitimate consumer, public safety, and 911 wireless communications, and avoiding unintended and harmful consequences. The NOI does a great job asking a broad range

of appropriate and relevant questions to guide public input on these and other issues.

Comments on the NOI came due this past Friday, June 11. As I expected, the NOI evoked a rich public dialogue, with comments submitted by managers of correctional institutions, manufacturers, prison employees, and interested members of the public, to name a few. I look forward to our continued work with NTIA, NIJ and the Federal Bureau of Prisons as we evaluate the comments and develop the plan Congress requested.

Most recently, we've been working with a vendor of a managed access system that is due to conduct trials in Mississippi later this month, beginning at the Parchman correctional facility. In order to facilitate these operations, the commercial service providers are executing spectrum leases, as permitted under FCC rules, to enable the operation of the vendor's base station on their licensed spectrum. These leases include provisions to address compliance with 911 and CALEA related obligations. Initially, the vendor could proceed absent spectrum leases, with an FCC grant of special temporary authority or experimental license to permit operations, provided the vendor obtains prior consent from the carriers.

I intend to remain actively involved both with what we learn following NTIA's Notice of Inquiry, as well as continued trials and experiments such as the Mississippi example. I am convinced that technology can play a major role in eliminating the dangerous problems of illegal cell phones in prisons without creating new and even more pervasive dangers. I look forward to continuing to work with NTIA and our federal and state partners to achieve the best outcome for all involved. Thanks again for the opportunity to address this important matter.