

# United States Senate

September 16, 2020

The Honorable Chairman Pai  
Federal Communications Commission  
455 12<sup>th</sup> St SW  
Washington, DC 20544

Dear Chairman Pai,

Thank you for your continued leadership addressing the contraband phone crisis in our nation's correctional facilities and reopening the docket for additional public comments. We were encouraged to see that the FCC's budget estimate for the Fiscal Year 2021 listed strategic goals it is seeking to accomplish, including supporting law enforcement "by developing and implementing policies and procedures to strengthen public safety," and taking "steps to propose new rules or facilitate voluntary industry solutions to reduce the use of contraband cellphones in correctional facilities."<sup>1</sup> State correctional facilities are in dire need of access to all available technological solutions.

The use of contraband cellphones in federal, state, and local prisons is rampant, and the consequences of this illegal activity can be deadly. The ability for inmates to commit crimes from behind bars puts not only correctional officers at risk, but also other inmates and innocent members of the public.

For years, the FCC has weighed how to deploy technologies to snuff out the use of these illicit devices. Most recently, in 2017, the FCC streamlined processes for spectrum leasing and temporary authority requests.<sup>2</sup> While we commend the FCC's actions, the use of contraband cellphones and the harm they are causing has not meaningfully diminished since the 2017 Order. In 2018 alone, Arkansas correctional officers confiscated over 1,600 contraband cellphones.<sup>3</sup> Since 2015, South Carolina correctional officers have discovered 25,000 cellphones.<sup>4</sup> According to the Oklahoma Department of Corrections, 52,039 contraband cell phones have been confiscated in the state's correctional facilities since 2011.<sup>5</sup>

In its 2017 Report and Order, the FCC referenced data from throughout the United States on the ubiquity of these contraband devices and acknowledged the serious nature of the problem.<sup>6</sup> Since that time, however, inmates have continued to use contraband cellphones to inflict immeasurable harm both within prisons and outside of them.

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<sup>1</sup> 2021 Budget Estimate to Congress," (online, Federal Communications Commission, February 2020), page 76. For text, please see: <https://docs.fcc.gov/public/attachments/DOC-362381A1.pdf>

<sup>2</sup> Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities, et al., GN Docket No. 13-111, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 17-25 (adopted on March 23, 2017) (2017 FCC Order).

<sup>3</sup> Josh Snyder, "Guards find drugs, cellphones in hole dug in cell wall at east Arkansas prison," Arkansas Democrat Gazette, August 6, 2019, <https://www.arkansasonline.com/news/2019/aug/06/guards-find-drugs-cellphones-hole-dug-arkansas-cel/>.

<sup>4</sup> Joseph Cranney, "SC inmate used cellphone to plan shootings from behind the wall, authorities say," The Post and Courier, September 14, 2020, [https://www.postandcourier.com/news/sc-inmate-used-cellphone-to-plan-shootings-from-behind-the-wall-authorities-say/article\\_cae44a52-dbe1-11ea-9491-1b212739f1e1.html](https://www.postandcourier.com/news/sc-inmate-used-cellphone-to-plan-shootings-from-behind-the-wall-authorities-say/article_cae44a52-dbe1-11ea-9491-1b212739f1e1.html).

<sup>5</sup> Donnie Anderson, "Contraband Cellular Telephones." (online, Oklahoma Department of Corrections: Office of the Inspector General, 21 October 2019), p. 3. For text, please see: [https://accessible.oksenate.gov/sites/default/files/interim\\_materials/Interim-Studies/10-21-2019%20Contraband%20Cell%20Phone%20Presentation.pdf](https://accessible.oksenate.gov/sites/default/files/interim_materials/Interim-Studies/10-21-2019%20Contraband%20Cell%20Phone%20Presentation.pdf)

<sup>6</sup> 2017 FCC Order at ¶¶ 3-4.

Earlier this month, the New York Times reported on illicit cellphones in Alabama prisons, describing how inmates used cellphones to engage in extortion schemes targeting other inmates and their families.<sup>7</sup> The articles detailed how the families of inmates received demands for money to assure the safety of their incarcerated loved ones.<sup>8</sup> A family member of an inmate who was murdered as a part of this scheme, remarked: “With no cellphones, there would be no extortion[.]”<sup>9</sup> As the article noted: “with mobile phone in hand, an inmate can threaten anyone, anywhere, anytime.”<sup>10</sup>

The use of these devices in prisons shows no sign of abating:

- In 2018, cellphones were used during a riot in a South Carolina prison. The riot left seven men dead.<sup>11</sup>
- In 2018, inmates in prisons in North and South Carolina were charged in a “sextortion” ring. The inmates extorted over 440 military service members, falsely leading them to believe they possessed child pornography and demanding payment to avoid reporting them to authorities.<sup>12</sup> One victim of this plot committed suicide.<sup>13</sup>
- In 2019, inmates across six Oklahoma state prisons engaged in coordinated fights, likely facilitated through contraband cellphones. The fights resulted in 36 inmates injured and one death.<sup>14</sup>
- In 2019, Arkansas guards seized a backpack containing 15 cellphones inside a feed sack at the bottom of a grain bin being smuggled into a correctional facility.<sup>15</sup>
- In 2019, an inmate in a Georgia state prison was charged with running a meth operation in Florida, causing the distribution of over 200 pounds of crystal meth in a year.<sup>16</sup>
- In 2019, federal prosecutors charged California prison inmate Ronald Yandell with numerous racketeering charges. Yandell was running the Aryan Brotherhood from prison and directing illegal activity, including plotting murders, using contraband cellphones.<sup>17</sup>
- In 2019, the Wall Street Journal reported Martin Shkreli, serving a seven-year sentence for securities fraud, continued to run his pharmaceutical company from prison using a contraband cellphone.<sup>18</sup>

Due to the rampant use of these devices and the great harm they cause, we submit that it is necessary to have a variety of uncomplicated and cost-effective approaches to combat this problem.

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<sup>7</sup> Sergey Kovalski and Dan Barry, “A Weapon for Extortion Long Ignored in Alabama Prisons: Cellphones,” New York Times, September 6, 2020, <https://www.nytimes.com/interactive/2020/09/06/us/alabama-prisons-extortion-practices.html>.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Cranney, “SC inmate used cellphone to plan shootings.”

<sup>12</sup> Julia Jacobo, “Prison inmates used contraband cellphones in ‘sextortion’ ring targeting military service members, officials say,” ABC News, November 28, 2018, <https://abcnews.go.com/US/prison-inmates-contraband-cellphones-sextortion-ring-targeting-military/story?id=59475340>.

<sup>13</sup> Joseph Darius Jaafari, “How Did They Run an Elaborate ‘Sextortion’ Scam From Prison? Cellphones.” The Marshall Project, Nov. 11, 2019, <https://www.themarshallproject.org/2019/11/11/how-did-they-run-an-elaborate-sextortion-scam-from-prison-cellphones>.

<sup>14</sup> Ken Miller, “Weapons, phones, drugs found after Oklahoma prison fights,” ABC News, Sept. 18, 2019, <https://abcnews.go.com/US/wireStory/weapons-phones-drugs-found-oklahoma-prison-fights-65693866>.

<sup>15</sup> Snyder, “Guards find drugs, cellphones in hole dug in cell wall.”

<sup>16</sup> Ryan Kruger, “Cell phones in prison: A growing problem,” 11 Alive, Nov. 15, 2019, <https://www.11alive.com/article/news/crime/prisons-cell-phones-growing-problem/85-ae225e52-1b48-4f1e-b3c9-62aae096053e>.

<sup>17</sup> Nate Gartrell, “Feds: Aryan Brotherhood defendants caught with 43 prison cellphones in recent years,” The Mercury News, October 1, 2019, <https://www.mercurynews.com/2019/10/01/feds-aryan-brotherhood-defendants-caught-with-43-prison-cell-phones-in-recent-years/>.

<sup>18</sup> Rob Copeland and Bradley Hope, “Martin Shkreli Steers His Old Company From Prison—With Contraband Cellphone,” Wall Street Journal, March 7, 2019, <https://www.wsj.com/articles/martin-shkreli-steers-his-company-from-prison-with-contraband-cellphone-11551973574>.

First, we strongly encourage the FCC to adopt a rules-based approach to cellphone disabling. According to the “Contraband Phone Task Force Status Report” released in 2019, task force members, led by CTIA, advocated for a “court order process” to be used in disabling contraband devices.<sup>19</sup> CTIA insists such a process is preferable before disabling an identified device. We disagree. There is no legal requirement that a phone carrier must obtain a court order before disabling a contraband cellphone, and the cumbersome process is not appropriate given the dangers associated with these devices. We urge the FCC to adopt a rules-based approach that would require immediate disabling by a wireless carrier upon proper identification of a contraband device. Sui generis court applications to disable phones are burdensome and can take days or weeks to execute. In that time, an inmate can easily order a murder, incite a riot, or conspire to commit virtually any crime.

Second, while managed access systems (“MAS”) are an important tool, they can be difficult and costly to maintain. As you know, MAS systems require the cooperation of every carrier with a signal covering a prison and coordination with these carriers to assure networks are updated. In the “sextortion” plot described, *supra*, the Lee Correctional Institution had a MAS in place which had cost them \$1.7 million.<sup>20</sup> It did not stop the brazen scheme.

Correctional personnel need access to all available options. We therefore support the use of geofencing, quiet zones, network-based solutions, and beacon technology. Additionally, we support the continued examination of how prisons could safely use jammers and micro-jammers. We believe jammers and micro-jammers are the most simple, effective tool that can be used quickly at over 1,800 state and federal correctional facilities throughout the United States. To make certain these jammers do not interfere with public safety, we support regulatory guardrails that would assure this technology is limited solely to a facility’s proper boundaries. We encourage the FCC to work with other federal and state agencies, and other stakeholders, to create appropriate technical standards as soon as possible.

We finally encourage the FCC to explore any potential changes it could make in its licensing and authorization processes that would permit wireless carriers to voluntarily block their own signals and comply with federal law.

Thank you for your consideration of these comments. We look forward to reviewing the record and working with the FCC on its commitment to reduce contraband phones in correctional facilities.

Sincerely,



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James Lankford  
US Senator



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Tom Cotton  
US Senator



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John Kennedy  
US Senator



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David Perdue  
US Senator

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<sup>19</sup> “Contraband Cellphone Task Force Status Report,” CTIA, April 26, 2019, <https://api.ctia.org/wp-content/uploads/2019/04/Contraband-Phone-Task-Force-Status-Report-Combined.pdf>. See pp. 7-11.

<sup>20</sup> Joseph Darius Jaafari, “How Did They Run an Elaborate “Sextortion” Scam?”



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Thom Tillis  
US Senator



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Kelly Loeffler  
US Senator



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John Boozman  
US Senator