

Statement of
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on behalf of the
ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS (APCO)
INTERNATIONAL

Before the
UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Hearing on
“Contraband Cell Phones in Correctional Facilities:
Public Safety Impact and the Potential Implications of Jamming Technologies”

July 15, 2009

Chairman Rockefeller, Ranking Member Hutchison, and other Members of the Committee, thank you for the opportunity to be here today. As a former Deputy Sheriff, I personally appreciate you scheduling this hearing to address an important, yet highly complicated issue. I understand first hand the importance of combating organized criminal and gang-related networks inside and outside of our Nation’s correctional facilities, as well as inside and outside of our national borders. Because of the established nexus between criminal enterprises and the funding of terrorism, I also understand that this is not just a matter of public safety or criminal justice, but of national and homeland security.

I am Richard Mirgon, and I currently serve as the President Elect of the Association of Public-Safety Communications Officials International, more widely referred to as APCO International. I come here with some unique experiences. During my carrier, I spent 14 years as a deputy sheriff in Jefferson County, Colorado where for my first year I worked in a large correctional facility. I then spent the last 18 years as the Director of Technology Services/911 for Douglas County, Nevada, until my recent retirement in late 2008. As Director of

Technology Services/911 for Douglas County, I managed all public safety communications, information technology and emergency management for the county and its first responder agencies. Prior to all this, I spent 4 years in the Air Force where I had some experience with Radio Frequency Jamming. All this allows me to have a full understanding of the issue that is being debated today.

For the benefit of those of you that do not know, APCO International was established in 1935 and is the largest public safety communications organization in North America, representing nearly 16,000 members worldwide, most of whom are state or local government employees, who build, supply, manage and operate communications systems and facilities for police, fire, emergency medical services and other state and local government public safety agencies. APCO serves the needs of more than 100,000 professionals in the public safety communications industry with training, frequency coordination, engineering, licensing, advocacy, and networking services and opportunities. APCO International is the largest FCC-certified frequency coordinator for Part 90, Public Safety Pool channels, and appears regularly before the FCC on a wide variety of public safety communications issues. APCO includes law enforcement, fire, EMS and other public safety professionals, that is composed of experienced, front line technical experts implementing and overseeing current systems in the field, and is solely focused on public safety communications (including voice, data and video, or radio and information technologies). Thus, we have long provided an informed safe haven for public safety to research, discuss, debate and come to consensus on issues of significance to our profession. As part of the nation's criminal justice system, our members also interact on a daily basis with our correctional institutions and professionals.

When a death row inmate can illegally access a cell phone to call and threaten a state legislator and his family, something needs to be done. When criminals in lock up awaiting trial can access cell phones to get others to intimate or kill witnesses, something needs to be done. When drug trafficking leaders in prison can direct international drug smuggling operations from inside our correctional facilities, something needs to be done. Clearly, there is a need to confront this problem of illegal communications deriving from, among and into our correctional facilities. The question is, what is the best, most efficient and effective solution to realize the results we intend; and how do we do so without unintentionally creating other, possibly more severe problems? We look forward to working with you to help to come closer to these answers.

As long ago as the mid-1990s, the Southern Poverty Law Center provided extensive evidence and training to our law enforcement community on the emerging cooperation of domestic and international terrorists, organized crime, gangs, international criminal enterprises, drug cartels and others, including prison-based recruitment of extremists and ongoing criminal networks. Recent intelligence and criminal investigations, including the emerging problems in the US Southwest Border, provide further evidence of this ongoing threat. Still, I strongly urge Congress and this committee to move carefully, thoroughly and comprehensively in addressing illegal communications of prisoners with others within and beyond our correctional institutions.

APCO's position is that we do not support cell jamming until such time that the vendors and user of this technology can prove that there will be NO negative impact on public safety networks and access to 9-1-1 by legitimate users and that all other viable alternative have failed.

APCO fully appreciates that the sponsor and supporters are merely attempting to develop a process to allow for the FCC to consider use of cell jamming technology in the correctional setting, and that the legislation does not intend to simply allow for acquisition and use of such technologies without a more comprehensive rulemaking process by the FCC. Following is a breakdown of the eight categories that APCO suggest as the primary goals and objectives for Congress to incorporate if it should choose to move forward with this policy area:

- **Ensure that there is no possibility of interference with Public Safety Communications in or around correctional facilities, especially during an emergency.**
- **Ensure that there is no possibility of interference to cellular calls to 9-1-1 outside the prison.**
- **Eliminate the risk of diversion of cell jamming technology to illegal markets as contraband for terrorists and other criminals.**
- **Continue to recognize the primacy of public safety communications separate and apart from, as well as ahead of, other non-emergency, commercial interests.**
- **Require priority consideration of alternative means of addressing illegal cell phone use in correctional facilities.**
- **Provide for Acceptable Level of Product Quality**
- **Require Users to post an assurance bond for each system deployed to insure funds are available to correct any interference problems created.**

- **Actively reach out, include and incorporate the experience, knowledge and perspectives of those in the military, public safety and national security communities (to include FBI, NTIA, NIST, NIJ, TSWG, SPAWAR and others) that are testing, researching and using cell jamming technology both here and abroad to gain their cooperation, experience and insights on this most important matter**

Interference with Public Safety Communications

The public safety community is still dealing with the interference issues that developed with NEXTEL and the 800 MHz public safety systems, which led to a massive, multi-billion dollar project to relocate public safety radio systems. Thus, we must take every possible effort to avoid similar problems from cell-jamming equipment in prisons or elsewhere. Cellular jamming will likely not discriminate between voice and data traffic. Many public safety agencies rely heavily on wireless providers for their mobile computing backhaul needs. Access to data (tactical plans, records, GIS, documents, pictures) in the field can greatly affect the speed and efficacy responders have in dealing with a situation. The potential of jamming outside of the environment of a prison, even if the devices are carefully tailored to avoid public safety frequencies, may not just disrupt 9-1-1 calls, they may also disrupt responders who may need to use these cellular data services in response to an issue within or around the prison campus.

Interference with 9-1-1 Calls

APCO is concerned that the use of jamming devices could block 9-1-1 calls from wireless telephones outside the correctional facility, creating a serious threat to the safety of life and property. In many communities, the majority of 9-1-1 calls are

from wireless telephones. We must ensure that these devices will not interfere with a cellular 9-1-1 call to a public safety answering point.

Diversion of Cell Jamming Technology

The current legislation establishes provisions for destruction of cell-jamming devices when no longer in use within prisons, thus addressing the problem of cell-jamming devices falling into the wrong hands. However, APCO encourages the committee and Congress to look at more accountable and that a registry is kept by a third-party entity, and that any device in use must be registered.

Primacy of Public Safety Communications

The most recent draft of the legislation continues to commingle and equate commercial and public safety interests. APCO strongly believes that public safety and emergency communications are a higher level priority concern, and must be dealt with separate and apart from non-emergency commercial communications issues.

Consider Alternative Means of Preventing Illegal Cell Phone Use in Prisons

Correctional facilities, wireless carriers and others should be required to explore other means of addressing this problem. For example, could prison security be enhanced to stem the flow of contraband into prisons? Are “cell sniffing” devices an option for finding cell phones behind prison walls? Could wireless carriers install “microcells” to capture calls from within prisons and nearby areas, so legitimate calls can be separated from illicit calls?

Quality of Cell Jamming Technology

There seems to be a broad variety of equipment available to perform jamming. Some have military precision and that are developed by the defense industry, however others are relatively inexpensive devices which have little control aside from an on/off switch. Careful consideration must be given to exactly which form of device may be approved for these environments, as allowing a "jammer" may be allowing a device costing hundreds dollars to cripple a public safety system costing millions of dollars.

Incorporate Military, Public Safety & National Security Communities

APCO understands that the same technology that is proposed for providing cell jamming capabilities for purposes of illegal prison communications is currently utilized by our military and law enforcement agencies for protecting against radio controlled improvised explosive devices (RCIEDs). As well, APCO understands that NTIA has already approved FBI's use of cell jamming technology for domestic capabilities against any potential RCIEDs, which often will be incorporated into Vehicle Borne IEDs that are commonly used against our troops and others by terrorists and insurgents in Iraq, Afghanistan and elsewhere. Indeed, DHS is currently funding the expansion of our domestic capabilities in this area.

APCO was recently informed that NIJ and SPAWAR have also tested cell jamming technology for purposes of domestic use, and possibly specifically as it pertains to correctional settings. The most recent draft of the legislation only requires FCC to include "at least one outside body" in its development of pilots and testing of such technologies. We would encourage Congress to provide more formal direction and assist to FCC by specifically including those entities and associations with experience in researching, testing, implementing and overseeing

cell jamming capabilities, particularly as it relates to potential interference with priority and emergency communications.

We at APCO look forward to continuing to work with Congress, the FCC, and our criminal justice and industry partners to effectively and efficiently deal with the illegal smuggling and unauthorized use of cell phones and other means of communication into, within or deriving from our Nation's correctional facilities. Again, I thank you for your time, consideration and shared concern for our Nation's safety and security from crime and terrorism, including that stemming from our correctional facilities and occupants. As the leading association for public safety technology professionals, we at APCO share your unwavering belief that technology, when correctly governed, tested and applied, and when implemented and managed in an cost effective manner, helps us to realize significant progress in our Nation's economic development, public safety, and national security. I am happy to answer any questions that you may have at this time.