

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

In the Matter of	)	
	)	
Verizon Request for Declaratory Ruling,	)	WT Docket No. 06-150
or, in the Alternative, for Partial Waiver,	)	
Regarding the Handset Locking Rule for	)	
C Block Licenses	)	

**VERIFIED COMMENTS OF EAST KENTUCKY NETWORK, LLC  
D/B/A APPALACHIAN WIRELESS**

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East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian Wireless”), by counsel, submits these comments in support of the *Verizon Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver* (hereinafter, the “Verizon Request”), which was filed on February 22, 2019, in WT Docket No. 06-150.

**I. INTRODUCTION AND SUMMARY**

As a participant in Verizon’s LTE for Rural America (LRA) program, Appalachian Wireless has entered into a Spectrum Manager Lease, pursuant to which Appalachian Wireless leases certain C Block spectrum from Verizon. The Spectrum Manager Lease and applicable Commission rules require Appalachian Wireless to comply with the open access requirements for C Block licenses, including but not limited to Rule 27.16(e), which states that no C Block licensee “may disable features on handsets it provides to customers, or . . . configure handsets it provides to prohibit use of such handsets on other providers’ networks” (the “Handset Locking Rule”).

Appalachian Wireless has experienced a significant increase in device theft and fraud by criminals engaged in credit muling activities, also known as first-party fraud. As mentioned in the Verizon Request, credit muling schemes involve one or more recruiters inducing others to sign service contracts in order to obtain deeply discounted devices from a carrier. The individuals who fraudulently obtain the devices never make any payments on the contract, immediately provide the devices to the recruiter, and the recruiter sells the devices. Recruiters often target college students or young adults with little or no credit history, the elderly, the homeless, the unemployed, those struggling with addiction, and other vulnerable individuals.

Because of the ambiguity of the language in the Handset Locking Rule, Appalachian Wireless has been unable to lock devices as a method of deterring credit muling activities. Appalachian Wireless respectfully requests that the Commission grant the relief requested by Verizon and issue a declaratory ruling that the Handset Locking Rule does not prohibit temporary device locking as a means to deter theft and fraud. In the alternative, if the Commission does not issue such declaratory ruling, Appalachian Wireless requests that it be included in any waiver that may be granted by the Commission to Verizon.

## **II. DISCUSSION**

### **A. The inability to lock devices makes Appalachian Wireless' retail locations more inviting to criminals engaged in credit muling activities, to the great detriment of Appalachian Wireless' employees and legitimate customers.**

Because the Verizon Request provides a thorough presentation of the relevant legal issues, the impact of increased theft and fraud on the experience of legitimate customers, and the proposed temporary locking program, Appalachian Wireless will not duplicate the arguments and authorities presented by Verizon and merely notes its adoption of the same. However, another related issue that Appalachian Wireless urges the Commission to consider in its decision

is how Appalachian Wireless' present inability to lock devices in the face of a known, ongoing criminal enterprise negatively impacts the sales associates and employees who directly interact with the public on a daily basis.

Appalachian Wireless is a wireless carrier serving twenty-five counties in eastern Kentucky, two counties in Virginia and one county in West Virginia. While Appalachian Wireless has great pride in and appreciation for the communities it serves, Appalachian Wireless must also recognize some of the challenges that face certain portions of the region. As many are aware, the opioid crisis impacting much of the Nation has had a particularly significant impact in the eastern Kentucky region. Individuals suffering from addiction are especially susceptible to the tactics of the recruiters in the credit muling schemes. These individuals may be promised drugs or money to obtain a certain number of devices by fraudulently executing service contracts, and as one can imagine, volatile situations can arise if the individual is not permitted to complete the transaction. This creates a very precarious and stressful situation for retail sales associates.

In some areas, law enforcement is able to increase patrol in the vicinity of retail stores during periods of high credit muling activity in an attempt to discourage credit mulers. Where this is not practical or effective, Appalachian Wireless has hired private security in order to help sales associates feel less vulnerable during periods when the credit mulers are particularly active. Appalachian Wireless is doing everything within its power to attempt to provide a safer and more secure workplace for its employees, but employees still grow frustrated and question why Appalachian Wireless does not lock devices. Many employees believe that Appalachian Wireless is targeted much more frequently than other cell phone carriers because of one factor only – unlocked devices. Appalachian Wireless has also had several law enforcement personnel and

prosecutors question Appalachian Wireless' "decision" not to lock its devices. Appalachian Wireless has attempted to explain that it is unclear whether it is permitted to lock devices because of the spectrum it uses, but that concept is difficult for the employees, law enforcement, and prosecutors to understand or accept since most other carriers in Appalachian Wireless' service area lock their devices.

While the financial impact of increased credit muling has been significant, the impact on employee morale and well-being is the more significant issue for Appalachian Wireless. If there is any chance that temporary device locking can deter credit muling activities, Appalachian Wireless believes that it owes it to its employees to implement those measures. Appalachian Wireless also believes that if it can alleviate this stress from employees, legitimate customers can be better served and have a more pleasant and productive experience in the retail stores.

**B. The Commission should declare that device locking policies that conform to the CTIA Consumer Code for Wireless Service do not violate Rule 27.16(e).**

Verizon seeks a declaratory ruling that a temporary 60-day locking period is permissible under the language of Rule 27.16(e). Appalachian Wireless agrees with Verizon's position that a temporary 60-day locking period does not violate the letter or the spirit of the Handset Locking Rule. Indeed, Appalachian Wireless' interpretation is more broad than Verizon's, and Appalachian Wireless urges the Commission to declare that *any* handset locking policy that conforms to the CTIA Consumer Code for Wireless Service (the "CTIA Code")<sup>1</sup> is permissible under Rule 27.16(e).

By its terms, the relevant language of the Handset Locking Rule states that a licensee may not "configure handsets it provides to **prohibit** use of such handsets on other provider's

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<sup>1</sup> A link to the CTIA Code can be found in the Commission's Consumer Guide on Cell Phone Unlocking FAQs. See, <https://www.fcc.gov/consumers/guides/cell-phone-unlocking-faqs>.

networks.” (Emphasis added). A handset locking policy that complies with the CTIA Code will never “prohibit” use of a device on another network. Instead, it would merely *condition* such use on fulfillment of contract terms or payment of the early termination fee, a condition that is entirely reasonable and equitable on its face.

Rule 27.16(f) contains a reasonableness test for device attachment requests and states that network restrictions based on industry-wide consensus standards are presumed to be reasonable. Similarly, any device unlocking requirements that conform to the CTIA Code should be deemed reasonable conditions precedent to having a device unlocked for use on another network.

A declaration that device locking in conformity with the CTIA Code does not violate Rule 27.16(e) would give C Block licensees the flexibility to adopt security measures that best protect employees and customers within the framework of the standard industry practice that consumers have come to expect.

### **III. CONCLUSION**

WHEREFORE, based on the foregoing, Appalachian Wireless respectfully requests that the Commission:

- A. Declare that the temporary device locking policy described in the Verizon Request does not violate Rule 27.16(e);
- B. Declare that any device locking policy that conforms to the CTIA Code does not violate Rule 27.16(e);
- C. In the alternative, grant the waiver described in the Verizon Request and extend the same to Appalachian Wireless; and
- D. Grant such other relief as the Commission deems just and proper.

Respectfully submitted,

/s/ Cindy D. McCarty  
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April 4, 2019

VERIFICATION

The undersigned, Darlene Howell, Customer Relations Director for East Kentucky Network, LLC d/b/a Appalachian Wireless, being first duly sworn, says that the facts set forth in the foregoing Comments are true and correct to the best of her knowledge, information, and belief, formed after reasonable inquiry.

Sworn and affirmed this 3<sup>rd</sup> day of April, 2019 by the undersigned.

Darlene Howell  
Darlene Howell  
Customer Relations Director

COMMONWEALTH OF KENTUCKY  
COUNTY OF FLOYD

The foregoing document was subscribed and sworn to before me on this 3<sup>rd</sup> day of April, 2019, by Darlene Howell, Customer Relations Director of East Kentucky Network, LLC d/b/a Appalachian Wireless.

Raina L. Helton  
Notary Public

My Commission Expires Feb 6, 2020

