

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”)<sup>1/</sup> submits the following comments in response to the above-referenced request that the Commission issue a declaratory ruling regarding, or partial waiver of, the rules requiring that handsets using 700 MHz C Block spectrum be unlocked.<sup>2/</sup> The Commission cannot provide the relief that Verizon seeks either by issuing a declaratory ruling or waiving the rules. Any modification of the obligations imposed by Section 27.16(b) of the rules can occur only through a rulemaking proceeding.

**I. THE OBLIGATIONS IN SECTION 27.16(B) ARE CLEAR AND WERE BASED ON A COMPLETE RECORD**

The rules governing devices using the 700 MHz C Block were adopted based on a record that leaves little doubt about what the Commission intended.<sup>3/</sup> In the *700 MHz Order*, the Commission noted the importance of its open access requirements, including the no-locking

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<sup>1/</sup> T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

<sup>2/</sup> *Verizon Request for Declaratory Ruling Or, In The Alternative, For Partial Waiver*, WT Docket No. 06-150 (Feb. 22, 2019) (the “*Petition*”); *Wireless Telecommunications Bureau Seeks Comment on Verizon’s Petition for Declaratory Ruling, Or In The Alternative Partial Waiver, Of the Commission’s C-Block Licensing Rules*, Public Notice, DA 19-146 (rel. Mar. 5, 2019).

<sup>3/</sup> *In the Matter of Service Rules for the 698-746, 747-762, and 777-792 MHz Bands et al.*, Second Report and Order, 22 FCC Rcd 15289 (2007) (“*700 MHz Order*”).

provision, as necessary to promote competition and innovation.<sup>4/</sup> The Commission explicitly rejected opposition to the proposed rules, including from Verizon, based on the assertion that the rules would undermine the utility and desirability of this spectrum.<sup>5/</sup> And while the Commission considered whether to apply these rules to the entire 700 MHz band, after careful analysis and consideration, it determined to apply them specifically to the C-Block.<sup>6/</sup>

## **II. THE RELIEF REQUESTED CAN ONLY BE PROVIDED THROUGH A RULEMAKING PROCEEDING**

The relief Verizon requests constitutes a change of the Commission's rules that would require consideration in a rulemaking proceeding – and cannot be achieved with a declaratory ruling or waiver.

### **A. The Petition Seeks a Change in the Rule, Not a Declaratory Ruling**

The Commission has stated that a declaratory ruling is not appropriate when a petitioner instead seeks a change to the rules.<sup>7/</sup> But changing the rules is precisely what Verizon seeks to do with its Petition. Verizon claims that the Commission should issue a declaratory ruling to

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<sup>4/</sup> *Id.* at ¶¶ 189-191.

<sup>5/</sup> *Id.* at ¶¶ 192-193 and 208-22. As discussed below, Verizon raised the concern about locking being necessary to combat fraud at the time, and these concerns were dismissed by the Commission.

<sup>6/</sup> *Id.* at ¶¶ 202-205.

<sup>7/</sup> See, e.g., *In re Request of MCI Communications Corporation British Telecommunications plc, Joint Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d)*, 9 FCC Rcd 3690 ¶ 26 (1994) (noting that policy should be changed in a rulemaking, not a declaratory ruling, proceeding); *In the Matter of Competition in the Interstate Interexchange Marketplace Petitions for Modification of Fresh Look Policy*, 8 FCC Rcd 5046 ¶ 20 (1993) (noting that, where there is no language justifying an alternative interpretation of a rule, the appropriate relief is a petition for reconsideration or rulemaking, not for declaratory ruling.); *In re Request of Cellular Telephone Company For a Declaratory Ruling that Nonwireline Cellular Carriers should not be required to provide Resale Service to Wireline Cellular Carriers in the Same Market*, 3 FCC Rcd 6274 ¶ 9 (1988) (treating a petition for declaratory ruling as a petition for rulemaking where the relevant policy “was adopted in the context of rulemaking proceedings and the proper mechanism for such a change is via a petition for rulemaking”).

resolve “ambiguity,”<sup>8/</sup> but there is no ambiguity either in the rules or the Commission’s intent. What Verizon wants to do is to “disable features on handsets...[and] configure handsets...to prohibit use of such handsets on other providers’ networks” in contravention of Section 27.16 of the rules and the *700 MHz Order*, which states unequivocally that C-Block licensees would not be permitted to “lock handsets to prevent their transfer from one system to another. The Order does not permit or even contemplate temporary locking.”<sup>9/</sup>

Similarly, despite Verizon’s assertions, there is no ambiguity in the word “customer” in the rules. Verizon creates that ambiguity by inventing a new category of “legitimate customer,”<sup>10/</sup> not based on anything in Section 27.16, nor in the *700 MHz Order*’s discussion of device locking.<sup>11/</sup> As far as the rule and the *700 MHz Order* are concerned, once someone signs a contract for service on Verizon’s network, the person is a “customer” and has access to all of that provision’s protections, regardless of whether Verizon has determined if the customer is “legitimate” or not.

## **B. The Petition Seeks a Change in the Rule, Not a Waiver**

Like its request for a declaratory ruling, Verizon’s alternative request for a waiver is ill-founded. The Commission may grant a waiver if it finds that compliance with the rule is

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<sup>8/</sup> See 47 C.F.R. § 1.2 (giving the Commission authority to issue declaratory rulings to “remove uncertainty.”)

<sup>9/</sup> *700 MHz Order* at ¶ 222.

<sup>10/</sup> *Petition* at 3-4. According to Verizon, legitimate customers are those who “obtain a new handset with the intent to pay for it,” in contrast to those who do so “with the intent to commit fraud and resell it on the black market” or who are “using a stolen identity or otherwise engaged in fraud.” *Petition* at 13-14.

<sup>11/</sup> The *700 MHz Order* does note “legitimate technical reasons” for *prohibiting* some devices from network access, but not for locking devices *to* a carrier’s network. *700 MHz Order* at ¶ 223.

inconsistent with the public interest in a particular instance.<sup>12/</sup> However, the Commission has also noted that “it is well established that the function of a waiver is not to change the general standard...but to justify an *ad hoc* exception to that standard on the grounds that it works against the public interest in the particular case.”<sup>13/</sup> In the absence of “special circumstances” justifying particular relief for the petitioner, the correct avenue for relief is a rulemaking proceeding, not a waiver request.<sup>14/</sup> There is nothing unique or particular about Verizon’s situation with respect to device locking; indeed, any C-Block licensee would have the same requirement to sell devices unlocked.

The Commission may not waive rules when the result would be to eviscerate them.<sup>15/</sup> Verizon questions the underlying need for the anti-locking prohibition and disputes the Commission’s original decision to impose the rule, claiming it was imposed “without appropriate justification.”<sup>16/</sup> It further asserts that there have been changes in the wireless industry since the

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<sup>12/</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (“*WAIT Radio*”).

<sup>13/</sup> *In the Matter of Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings, Transferor to Sirius Satellite Radio, Inc., Transferee*, 23 FCC Rcd 12348, 12422 (2008).

<sup>14/</sup> *In the Matter of GVNW Inc./Management and Citizens Utilities Company Applications for Review*, 14 FCC Rcd 13670 (1999) (noting that, in absence of “special circumstances,” a rulemaking proceeding is the correct avenue for relief).

<sup>15/</sup> *See, e.g., In the Matter of NEXTEL COMMUNICATIONS, INC.; Requests for Waiver of 47 C.F.R. §§ 90.617(c) and 90.619(b)*, 14 FCC Rcd 11678 ¶ 31 (noting that it is “axiomatic” that the Commission must not eviscerate a rule by waiver) (citing to *WAIT Radio* at 1159 “The court’s insistence on the agency’s observance of its obligation to give meaningful consideration to waiver applications emphatically does not contemplate that an agency must or should tolerate evisceration of a rule by waivers.”); *See also In the Matter of: Verilink Corporation’s Petition for Rulemaking to Amend the Commission’s Part 68 Rules to Authorize Regulated Carriers to Provide Certain Line Build Out Functionality as a Part of Regulated Network Equipment on Customer Premises*, 10 FCC Rcd 8914 ¶ 6 (1999) (noting that the waiver process should not be used to “effectively circumvent the Commission’s rulemaking function.”)

<sup>16/</sup> *Petition* at 19.

700 MHz Order.<sup>17/</sup> With these arguments, Verizon effectively acknowledges that it is seeking reconsideration of the rule, which requires a rulemaking rather than a waiver.<sup>18/</sup> Before determining whether the change that Verizon proposes is in the public interest, the Commission must develop and assess a complete record.<sup>19/</sup>

#### IV. CONCLUSION

For the reasons above, T-Mobile urges the Commission to deny Verizon's request. What Verizon seeks is inappropriate for a declaratory ruling (since there is no ambiguity in Section 27.16) or a waiver (since it seeks a complete revision of the rules). The only appropriate vehicle for the relief Verizon seeks is a rule-change accomplished through notice-and-comment rulemaking.

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<sup>17/</sup> *Petition* at 19.

<sup>18/</sup> Further evidence that the relief Verizon seeks can only be provided through a rulemaking proceeding is based on Verizon's own actions. Less than two years ago, Verizon attempted to avoid compliance with the requirements of the unlocking rule when it asked the Commission to effectively eliminate the rules in an entirely unrelated proceeding. *Comments of Verizon*, WT Docket No. 10-112 at 9 (Oct. 2, 2017) (suggesting that several band-specific rules, including Section 27.16, should not apply to renewed licenses).

<sup>19/</sup> In particular in this case, the rule change proposed by Verizon undoubtedly had a significant impact on the value of the spectrum at auction. If other bidders had known that the no-locking provision would be effectively eliminated in the future, they might have challenged Verizon for that spectrum. The requested change to the rule-based obligation, therefore, should not be made outside the rulemaking context where a complete record can be developed.

Respectfully submitted,

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