

**Before the
Federal Communications Commission
Washington, D.C. 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)

REPLY COMMENTS OF RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”),¹ by its attorneys, replies to the comments filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) Wireless Telecommunications Bureau’s (“WTB” or “Bureau”) March 5, 2019 Public Notice,² through which the Bureau seeks comment on Verizon’s Petition for Declaratory Ruling, or in the Alternative, for Partial Waiver of section 27.16(e) of the Commission’s C Block licensing rules (the “handset locking rule”),³ so that it can implement a 60-day lock on all of its 4G LTE handsets. RWA supports those comments filed by Double Perfect,⁴ Pine Belt Cellular, Inc. (“Pine Belt”),⁵ and T-Mobile USA, Inc. (“T-Mobile”),⁶ opposing Verizon’s request for a declaratory ruling and a partial waiver of the handset locking rule due to the negative effects

¹ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² *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](#), WT Docket No. 06-150 (Mar. 5, 2019) (“Public Notice”).

³ [Verizon Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver](#), WT Docket No. 06-150 (Feb. 22, 2019) (“*Verizon’s Petition*”).

⁴ [Comments of Double Perfect on Verizon’s Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver, of Its C Block License Obligations](#), WT Docket No. 06-150 (Apr. 4, 2019) (“*Double Perfect Comments*”).

⁵ [Comments of Pine Belt Cellular, Inc.](#), WT Docket No. 06-150 (Apr. 4, 2019) (“*Pine Belt Comments*”).

⁶ [Comments of T-Mobile USA, Inc.](#), WT Docket No. 06-150 (Apr. 4, 2019) (“*T-Mobile Comments*”).

such an outcome would have on rural carriers and rural consumers.⁷ Moreover, RWA joins Double Perfect and Pine Belt in opposing device locking in general, and encourages the Commission to prohibit the locking of *any* user equipment, irrespective of manufacturer or application, that relies on licensed spectrum for its upstream network connectivity.⁸

I. BACKGROUND AND INTRODUCTION

As numerous commenters have recognized, when the Commission adopted its open access requirements in the *700 MHz Order*, including the handset locking rule, it did so based on a complete record and with clarity.⁹ Verizon was an active party in the proceedings through which the handset locking rule was adopted,¹⁰ and when the carrier acquired licenses to operate its 4G LTE network over the 700 MHz Block C Band, it did so knowing that its opposition to the handset locking rule had already been rejected and that it would be required to sell all of its LTE devices unlocked and in compliance with section 27.16(e) of the Commission’s rules.¹¹

⁷ RWA also supports the comments submitted by Public Knowledge with respect to its opposition of Verizon’s Petition for Declaratory Ruling. See [Comments of Public Knowledge](#) at 3-6, WT Docket No. 06-150 (Apr. 4, 2019) (“*Public Knowledge Comments*”). RWA does not, however, support Public Knowledge’s comments favoring Verizon’s request for a waiver from the handset locking rule, as RWA believes the alleged “benefits” of a waiver are far outweighed by the benefits the handset locking rule currently provides to the public, carriers, and marketplace competition and innovation. See *infra* Section III.

⁸ See *Double Perfect Comments* at 5-7; *Pine Belt Comments* at 10-11.

⁹ See, e.g., *Pine Belt Comments* at 4; *T-Mobile Comments* at 1-2.

¹⁰ See, e.g., Letter from C. Rath, Executive Director – Spectrum and Public Policy, Verizon Wireless, to M. Dortch, Secretary, FCC, Att. A at 23 (July 25, 2007) (“Verizon Wireless’s July 25 Letter”); see also Letter from J. Scott III, Vice President & Deputy General Counsel – Regulatory Law, Verizon Wireless, to M. Dortch, Secretary, FCC, at 2 (July 27, 2007) (“Verizon Wireless’s July 27 Letter”).

¹¹ See *Pine Belt Comments* at 2 n.5 (“The Commission adopted the handset locking rule contained in section 27.16(e) in August 2007. And while Verizon repeatedly opposed this rule – going so far as to file a lawsuit in the United States Court of Appeals for the District of Columbia Circuit to overturn it – the carrier nonetheless chose to pay over \$4.7 billion dollars for a large portion of the 700 MHz C Block Band in early 2008. Indeed, Verizon elected to pay this much knowing full well that, under the Commission’s 700 MHz auction rules, in the event the C Block auction results ‘do not satisfy the applicable aggregate reserve price [of \$4.6 billion] for those licenses, the Commission will offer alternative licenses without the open platform conditions.’”) (internal citations omitted).

Now, however, in an attempt to interpret out of existence (or, at the very least, free the carrier from complying with) the handset locking prohibition that it has followed for years, Verizon employs arguments that would actually create – rather than resolve – ambiguity. Verizon’s arguments (and thereby its requests) should be dismissed. As numerous commenters have explained, its arguments in support of a declaratory ruling are wrong and inconsistent with the language and intent behind the C Block rules,¹² and its argument that such a policy is necessary to combat fraud and identity theft should not be accepted, as the “benefits” such a policy would provide are far outweighed by the public benefits that are derived from Verizon’s continued compliance with the handset locking rule.¹³

II. THE COMMISSION SHOULD DENY VERIZON’S REQUEST FOR A DECLARATORY RULING BECAUSE SECTION 27.16(E) IS NOT AMBIGUOUS

Verizon claims that there is controversy and uncertainty with respect to the Commission’s handset locking rule because the meaning of the terms “customer” and “configure” as used therein are ambiguous;¹⁴ however, this is definitively not the case, as section 27.16(e) is clear in its intent, meaning, and interpretation as applied to Verizon and every other C Block licensee. Moreover, as numerous commenters have established, resolving the alleged “ambiguities” in accordance with Verizon’s line of thinking and issuing Verizon’s declaratory ruling would actually confuse, rather than clarify, the rules that have been established.

When the Commission adopted the handset locking rule, it did so in order to further promote open access, competition, and innovation within the 700 MHz Block C Band.¹⁵

¹² See *infra* Section II.

¹³ See *infra* Section III.

¹⁴ See Verizon’s Petition at 11-14.

¹⁵ See *In re Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, Second Report and Order, 22 FCC Rcd. 15289, 15364 ¶ 203 (2007) (“700 MHz Order”); see also *Double Perfect Comments* at 4 (“The Commission noted Verizon’s claims about handset locking and fraud but ultimately found that on balance, bright-line openness rules would provide more investment, innovation, and competition [sic]

Achieving these goals would only be possible, however, if *all* C Block licensees comply with the handset locking rule. Accordingly, when the Commission adopted this rule, it set down a clear marker commanding *every single C Block licensee* to protect *every consumer* from being subject to *any restrictions* on the use of their devices.¹⁶ This resulted in a clear, unambiguous section 27.16(e), which makes no distinction between a regular consumer and a “legitimate consumer,” nor between a complete bar on handset configuration or some brief period (*i.e.*, 60-day period) of permitted handset configuration.¹⁷ This conclusion is further supported by the common definitions of the various terms included in section 27.16(e),¹⁸ which, when applied, establish that the rule was written to be a *per se* bar on device locking.¹⁹

benefits to customers, device manufacturers, application providers, and wireless service providers than equivocal rules, after considering the evidence in the record.”) (internal footnotes omitted); *T-Mobile Comments* at 1-2 (“In the *700 MHz Order*, the Commission noted the importance of its open access requirements, including the no-locking provision, as necessary to promote competition and innovation. 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.”) (internal footnotes omitted).

¹⁶ See 47 C.F.R. § 27.16(e); see also *Public Knowledge Comments* at 4; *Pine Belt Comments* at 3-4.

¹⁷ See *Double Perfect Comments* at 3; *Pine Belt Comments* at 3-4; *Public Knowledge Comments* at 3-4.

¹⁸ See *Pine Belt Comments* at 3-4 (“Webster’s Dictionary defines ‘customer’ as ‘one that purchases a commodity or service.’ It defines ‘purchase’ as ‘to obtain by paying money.’ Accordingly, under Section 27.16(e), an individual that pays money for a commodity or service is a customer, and Verizon’s attempt to exclude such individual from such definition based on the individual’s behavior *after* such purchase falls completely outside the scope of the rule.”) (quoting, in part, Merriam-Webster Dictionary (2019 ed.)); *id.* at 3 n.9.

¹⁹ East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian Wireless”) asserts that device locking is permitted under section 27.16(e) because the policy Verizon and Appalachian Wireless support would only “condition ... never ‘prohibit’ use of a device’ ... on fulfillment of contract terms or payment.” See Verified Comments of East Kentucky Network, LLC d/b/a Appalachian Wireless, WT Docket No. 06-150, at 5 (Apr. 4, 2019) (“*Appalachian Wireless Comments*”). However, as Pine Belt has established, “the term ‘prohibit’ has been defined as ‘preventing something by making it impossible.’” *Pine Belt Comments* at 3 n.9 (quoting, in part, Cambridge Dictionary (2019 ed.)). Thus, the fact that Verizon’s configuration of a device to prevent use on other networks may only be temporary does not change the fact that Verizon’s proposal would make use on other networks impossible for a period of time. “This is a strict, bright-line standard, and Verizon’s interpretation of such rule ... runs contrary to it.” *Id.*

In contrast to the clarity that can already be found within the handset locking rule, Verizon's interpretation would instead *create* ambiguity and confusion. As Public Knowledge notes:

If the plain language of the Open Device Rule can be "clarified" to allow locking handsets where the overwhelming majority of customers are "legitimate," for a full two months, what other types of locking or blocking might be permissible?... Once the Rule begins to countenance locking legitimate customers for any length of time, for whatever reason, certainty vanishes. What other types of locking for legitimate customers will the Rule countenance? And for how long? The requested "clarification" would therefore brew confusion for other C Block licensees and for Verizon's future conduct as well.²⁰

Thus, Verizon's interpretation and its request for a declaratory ruling should be denied, as a ruling in its favor could further erode the applicability of the handset locking rule to C Block licensees in general and would run contrary to the Commission's pro-competition and pro-innovation goals, which were clearly laid out in the *700 MHz Order* and applied through a clearly defined section 27.16(e).

III. THE COMMISSION SHOULD DENY VERIZON'S PETITION FOR PARTIAL WAIVER BECAUSE THE PUBLIC BENEFITS THE RULE PROVIDES FAR OUTWEIGH ANY BENEFITS A 60-DAY LOCKING PERIOD WOULD CREATE

RWA also joins those commenters who have urged the Commission to deny Verizon's Petition for Partial Waiver of the Commission's handset locking rule. While Verizon, Public Knowledge, and Appalachian Wireless claim that Verizon's Petition for Partial Waiver requesting a 60-day handset locking period is itself in the public interest, the alleged "benefits" such a 60-day locking period would provide are far outweighed by the public benefits that are derived from Verizon's continued compliance with the rule. Moreover, the Commission has already determined that open access and unlocked devices trump any anti-fraud and anti-theft

²⁰ *Public Knowledge Comments* at 6.

benefits that could be derived from a contrary rule, further supporting the fact that a waiver of this rule is not warranted

While Verizon, Public Knowledge, and Appalachian Wireless repeatedly assert that a 60-day handset locking period would improve its ability to detect and police fraud and theft, these parties fail at any point to explain to what degree this 60-day locking period would improve fraud policing efforts and permanently remove fraudsters from the equation.²¹ As Double Perfect explains, while in a perfect world Verizon's proposal would deter fraudsters and eliminate identify theft, reality shows that this is not the case, as the sensitive information that makes both consumers and Verizon susceptible to such practices is readily available through data brokers and the ever-recurring data breaches that have affected large companies.²² Hence, a 60-day locking period would not remove the concerns Verizon's Petition relies on, instead only forcing fraudsters and identity thieves to go through an alternative door to achieve the same result.

Even if Verizon's 60-day handset locking proposal did slightly reduce fraud and theft, such a benefit pales in comparison to the many public benefits that section 27.16(e) currently provides to rural consumers and rural carriers. As Pine Belt explains, "through section 27.16(e), Verizon subscribers are given the freedom to, *at any time*, switch carriers for better wireless

²¹ Indeed, with respect to Public Knowledge's comments supporting Verizon's request for a partial waiver of the Commission's handset locking rule, the only evidence it provides in support of Verizon's petition are the public "benefits" Verizon itself references in its Petition. *See Public Knowledge Comments* at 6-7. However, as explained above (and in the comments filed by other parties), these anti-fraud and anti-theft benefits have already been dismissed by the Commission and are nonetheless outweighed by the benefits the Commission's open access rules provide rural consumers and rural carriers. *See infra* notes 21-25 and accompanying text.

²² *See Double Perfect Comments* at 1-3. Furthermore, it must be noted that Verizon has already significantly reduced any fraud and theft it is subject to through the "extensive steps" it has taken to ensure unlocked devices do not make their way onto the black market, such as its adoption of internal fraud detection and identity theft authentication programs and policies and its participation in international fraud prevention efforts, such as GSMA's International Mobile Equipment Identity ("IMEI") database. *See Verizon's Petition* at 6-7; *see also Pine Belt Comments* at 9.

coverage or better priced services and keep their existing handsets.”²³ This is a crucial freedom for rural consumers, who typically want to buy the newest mobile devices but may be dissuaded from doing so because the larger carriers offering these devices provide weak or possibly no service near the rural consumer’s home.²⁴ Moreover, section 27.16(e), as currently applied, provides RWA members and other small, rural carriers with the ability to compete with larger carriers and focus their resources not on purchasing the newest phone models, but rather on providing affordable, efficient, and reliable service to areas and populations that would otherwise go underserved or unserved.²⁵

Indeed, combined with the fact that the Commission already rejected Verizon’s fraud- and theft-based arguments when it adopted the handset locking rule in 2007,²⁶ it becomes even more clear that the benefits associated with a *per se* prohibition of device locking far surpass any benefits that could be derived from a 60-day waiver. Accordingly, Verizon’s Petition for Waiver should be dismissed.

IV. THE COMMISSION SHOULD PROHIBIT CARRIERS AND MANUFACTURERS FROM LOCKING ANY USER EQUIPMENT THAT RELIES ON SPECTRUM FOR ITS UPSTREAM CONNECTIVITY

RWA agrees with the comments made by Double Perfect and Pine Belt opposing device locking in general, and joins these commenters in encouraging the Commission to not only retain

²³ *Pine Belt Comments* at 5.

²⁴ *See id.* at 5-6.

²⁵ *See id.* at 6-7.

²⁶ *See 700 MHz Order*, 22 FCC Rcd. at 15364 ¶ 203 (“We are mindful that some of the restrictive practices set forth in the record appear to be used by wireless service providers for purposes other than simply protecting the network from harm. We also recognize supporters’ argument that the 700 MHz Band offers an opportunity to encourage innovation in network devices and applications in spectrum with valuable propagation characteristics, without adversely affecting 700 MHz Band licensees’ network operations or viability. The 700 MHz Band provides a rare opportunity to implement pro-consumer concepts without disrupting an existing service.... In these circumstances, we conclude that prohibiting a provider’s ability to unreasonably limit applications and devices on its network in [the C Block] portion of the 700 MHz Band is both appropriate and feasible.”); *id.* at 15359 ¶ 190 n. 430 (rejecting, *inter alia*, Verizon’s fraud- and theft-based arguments opposing the proposed open access rules); *see also Double Perfect Comments* at 3-5; *Pine Belt Comments* at 7-9; *T-Mobile Comments* at 1-2.

its handset locking rule for 700 MHz Block C licensees, but to also prohibit the locking of *any* user equipment, irrespective of manufacturer or application, that relies on licensed spectrum for its upstream network connectivity.

As both Double Perfect and Pine Belt explain, while today’s wireless equipment is designed to operate on a wide range of wireless networks, individual carriers continue to take actions that lock these devices to a single network. These actions can be taken by carriers independently, such as “in the case of vehicle-installed 4G LTE transceiver equipment, [where] the consumer’s only choice is to subscribe to the service of the chosen carrier or to not have the equipment activated at all since the device itself is embedded deep in the vehicle’s component structure, which is not user replaceable.”²⁷ However, as Double Perfect notes, these actions can also be taken collectively and under the auspices of collusion, such as through AT&T’s and Verizon’s recently-unearthed joint effort to allegedly lock devices with embedded SIM (“eSIM”) technology (such as iPhones, iPads, and Apple Watches), thereby preventing owners of these devices from being able to freely switch to another carrier.²⁸

No matter how carriers proceed with device locking, the end result is always the same: “consumers are left to either acquire new wireless devices when they switch operators or, in the event another operator does not sell that particular device, forgo switching carriers or forgo using that device again.”²⁹ For rural consumers, who disproportionately represent America’s low-income class, this obstacle can create a lose-lose situation whereby one risks financial debt or no connectivity. And for rural carriers, this obstacle creates an artificial barrier within the market

²⁷ *Pine Belt Comments* at 10.

²⁸ See *Double Perfect Comments* at 6-7 (citing and quoting Cecilia Kang, N.Y. TIMES, *U.S. Investigating AT&T and Verizon Over Wireless Collusion Claim* (Apr. 20, 2018)).

²⁹ *Pine Belt Comments* at 10.

that impedes their ability to compete and encourages major carriers to simply maintain the status quo and forgo further network investment.

All of these outcomes are extremely negative; however, each could be resolved through enhanced device locking prohibitions, which would provide consumers greater freedom, enhance consumer welfare, and increase market competition and innovation.

V. CONCLUSION

As discussed above, RWA joins those commenters who have urged WTB to deny both Verizon's request for a declaratory ruling and its request for a partial waiver of the handset locking rule. Verizon's arguments in support of a declaratory ruling are wrong and contravene the letter and spirit of the Commission's 700 MHz Block C Band open access rules, including the handset locking rule, and its 60-day handset locking proposal would have numerous negative effects on rural consumers and rural carriers alike. Furthermore, RWA joins Double Perfect and Pine Belt in opposing device locking in general, and encourages the Commission to not only retain its handset locking rule for 700 MHz Block C licensees, but to also prohibit the locking of *any* user equipment, irrespective of manufacturer or application, that relies on licensed spectrum for its upstream network connectivity.

Respectfully submitted,

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