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May 14, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*

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

Dear Ms. Dortch:

Like all carriers, T-Mobile USA, Inc. (“T-Mobile”)^{1/} is a victim of subscriber fraud and identity theft, and it has actively engaged with its customers and law enforcement to reduce its occurrence.^{2/} It strongly supports efforts by carriers, the Commission, other Federal agencies, and state/local law enforcement, to curb this ongoing problem. However, notwithstanding its reply comments in this proceeding,^{3/} Verizon does not demonstrate a sufficient nexus between the relief it seeks and the fraud it seeks to prevent. Moreover, any change to Verizon’s obligation must be as a result of a change to the Commission’s rules.

Verizon Does Not Demonstrate that the Requested Relief Will Provide the Desired Result

T-Mobile agrees that combatting fraud is important. But Verizon does not demonstrate that allowing it a 60-day period to lock phones would help address the problem. According to Verizon, permitting it to lock devices on its 700 MHz C-Block spectrum for that period would “reduce handset fraud and identity theft.”^{4/}

^{1/} T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly-traded company.

^{2/} See, e.g., T-Mobile, FRAUD & SPAM: IDENTITY THEFT, available at <https://www.t-mobile.com/responsibility/privacy/fraud-spam/identity-theft>.

^{3/} Verizon’s Reply in Support of its Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver, WT Docket No. 06-150 (filed Apr. 19, 2019) (“Verizon Reply”).

^{4/} Id. at 3.

There is no evidence this limited action would have the desired effect. During the proposed 60-day period, a fraudulent party would be required to make a single payment – likely of about \$40. Once that payment is made, Verizon would unlock the phone. But \$40 is a small price to pay for an unlocked phone. Indeed, the fact that other carriers that lock devices experience this problem as well but only unlock phones based, for example, on payment for the device, demonstrates that a limited locking period may not prevent subscriber fraud and device theft.

Verizon Mis-Applies the Waiver Standard

Verizon’s assertion that its situation is unique, and that it therefore merits a waiver of the no-locking rule,^{5/} is flawed, since its alleged uniqueness comes solely from its own action. The test for justifying a waiver based on unique circumstances is whether the applicant is uniquely positioned *with respect to other entities subject to the same rules*.^{6/} The fact that Verizon is the only major provider subject to the rule is based on Verizon’s acquisition of the majority of the C-Block spectrum. Having created a category of one, Verizon cannot, except through a change in the rules, ask the Commission to compare its obligations to those outside its category.

The fact that other carriers, with other spectrum holdings, are not subject to the no-locking rule does not justify the Commission waiving a rule that it purposefully applied to spectrum that Verizon holds. To the contrary, it demonstrates that what Verizon requests can only be accomplished through a rulemaking proceeding. As T-Mobile noted in its comments,^{7/} Verizon knew the conditions that would be imposed on this spectrum when it bid on it at auction,^{8/} not only because the Commission made this provision clear in its *700 MHz Order*,^{9/} but because the no-locking rule was imposed *over objection from Verizon*, a fact that the Commission discussed in detail in its determination to impose the rule.^{10/} Indeed, while Verizon was the winning bidder on the majority of the 700 MHz C Block at auction,^{11/} it purchased additional licenses in that band subsequent to the auction^{12/} raising no objection to the continued application of the no-locking provision for its then-existing and future licenses.

^{5/} *Verizon Reply* at 5.

^{6/} *See, e.g., In re XM Satellite Radio Holdings, Inc.*, 23 FCC Rcd 12348 at ¶ 162 (2008) (“Here, the prohibition against merger applies only to the two Applicants...Thus, grant of a waiver clearly would eviscerate the rule and for that reason is not appropriate here.”)

^{7/} *Comments of T-Mobile USA, Inc.*, WT Docket No. 06-150 (filed Apr. 4, 2019) (“*T-Mobile Comments*”).

^{8/} *See* Matthew Lasar, *Verizon: We promise to honor the Block C open access rules*, ARS TECHNICA, (May 7, 2008) available at <https://arstechnica.com/uncategorized/2008/05/verizon-we-promise-to-honor-the-block-c-open-access-rules/>.

^{9/} *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*”).

^{10/} *Id.* at ¶¶ 189-93 and 208-22.

^{11/} *See Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (2008).

^{12/} *See* FCC Form 603 Assignment Application for Call Sign WQJU651, File No. 0004343143 (granted Sept. 30, 2010) and FCC Form 603 Assignment Application for Call Sign WQJQ798, File No.

As T-Mobile noted in its comments, the no-locking provisions of the rules almost certainly affected the auction price of this spectrum.^{13/} The Commission's post-auction results^{14/} show that the C Block was sold for just over 76 cents per MHz-pop, compared to more than \$1 per MHz-pop for the A Block and over \$2.50 per MHz-pop for the B Block, despite the C Block being arguably more desirable spectrum.^{15/} In fact, the C Block barely met its reserve price, which was just over \$4.5 billion.^{16/} To change the no-locking provision now would unjustly increase spectrum value outside the auction process with, as noted above, no justification. To accomplish that result, the Commission must engage in a rulemaking proceeding.

There is no Ambiguity in the Rule

Finally, Verizon's assertion of ambiguity with respect to the word "customer" is also not a basis for the declaratory ruling it seeks.^{17/} Indeed, ambiguity exists only because Verizon has now attempted to create it well after the rule was adopted. As noted above, Verizon knew that the no-locking condition applied to the C Block spectrum it purchased but only now complains that this rule is ambiguous.^{18/} The Commission should reject Verizon's current attempt to evade compliance with this rule on the basis of a newly-invented and non-common sense interpretation of a commonly used term.

If circumstances have changed since Verizon agreed to the 700 MHz C-Block no-locking condition, adopted on the basis of a complete record in a prior proceeding, the Commission must revisit the need for the rule in a rulemaking proceeding, not improperly eviscerate it through a waiver or interpret it away through a declaratory ruling.

0005501481 (granted May 10, 2013). Verizon now holds all but one 700 MHz C Block license, with the remaining one for Puerto Rico and the Virgin Islands (call sign WQJU652) held by PRWireless PR, LLC.

^{13/} *T-Mobile Comments* at 5 n. 19.

^{14/} *See Statement of Chairman Kevin J. Martin to the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet*, U.S. House of Representatives, April 15, 2008.

^{15/} *See 700 MHz Order* at ¶ 240 (noting the large, paired 11 megahertz block size, which would allow high data rates and extensive innovation). The difference in prices for A Block and B Block spectrum were likely based on several factors, including A Block proximity to television channel 51 (and the "exclusion zones" established across the country to protect Channel 51 stations) and interoperability issues. *See In the Matter of Promoting Interoperability in the 700 MHz Spectrum*, 28 FCC Rcd 15122 ¶¶ 9-10, 12 (2013).

^{16/} *Id.* at ¶ 304 n. 700.

^{17/} *Verizon Reply* at 6.

^{18/} *See 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). *See also 700 MHz Order* at ¶¶ 189-93 and 208-22 (dismissing Verizon's concerns about legal authority and fraud prevention, but making no mention of ambiguity).

Pursuant to Section 1.1206 of the rules, a copy of this letter has been submitted in the record of the above-captioned proceeding.

Respectfully submitted,

/s/ Steve B. Sharkey

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