



June 6, 2019

Ms. Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Verizon Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver,
Regarding the Handset Locking Rule for C Block Licensees
WT Docket No. 06–150

Dear Ms. Dortch:

In setting the service rules that govern licensees of the 700 MHz C Block, the Federal Communications Commission (“the Commission”) determined that this wireless spectrum band should “be auctioned to provide open platforms for devices and applications” in order to “[apply] a new regulatory model that attempts to give consumers additional choices.”¹ One result was a requirement that, among other things, “providers may not ‘lock’ handsets to prevent their transfer from one system to another.”² The relevant provision of the final rule states:

(e) Handset locking prohibited. No licensee may disable features on handsets it provides to customers, to the extent such features are compliant with the licensee's standards pursuant to paragraph (b) of this section, nor configure handsets it provides to prohibit use of such handsets on other providers' networks.³

On February 22, 2019, Verizon asked the Commission for permission “to adopt a temporary, 60-day lock on the 4G LTE handsets it provides to ensure they are purchased by a bona fide customer.”⁴ Because Verizon operates its LTE mobile wireless network in part on the C Block, it is subject to the above prohibition against handset locking. Verizon asserts that the temporary locking it contemplates—aimed at curtailing handset theft and fraud—“is not the type of locking with which the C Block rules and order were concerned.”⁵ Accordingly, Verizon asks the Commission to “issue a declaratory ruling to remove this uncertainty and to clarify” that its

¹ Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, *Second Report and Order*, 22 FCC Rcd 15289, 15364, paras. 203, 204 (2007).

² *Id.* at para. 222.

³ 47 CFR § 27.16(e).

⁴ Verizon Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver, Regarding the Handset Locking Rule for C Block Licensees at 3, WT Dkt. No. 06–150 (filed Feb. 22, 2019) (*Verizon Request*), available at <https://ecfsapi.fcc.gov/file/102222460012280/2019%2002%2022%20-%20Verizon%20Request%20for%20Declaratory%20Ruling.pdf>.

⁵ Verizon Request at 4.

proposed new practice is allowed under the rules, or in the alternative, “to grant a partial waiver of its rules” to allow temporary locking.⁶

The National Telecommunications and Information Administration (NTIA) generally supports the granting by the Commission of a partial waiver of the prohibition against handset locking for the narrow purpose requested by Verizon.⁷ NTIA is sympathetic to Verizon’s concerns around theft and fraud and would not object to short-lived locking of handsets to the extent such locking may be effective in combating the described criminal activities. NTIA urges the Commission, however, to narrowly construct any waiver to avoid adverse impacts on consumer choice and handset portability. Such a waiver should only permit temporary device locking for the minimum duration necessary to mitigate the risk of theft or fraud in a particular instance (which may be shorter than sixty days), and should require Verizon to provide customers with a simple and effective way to request accelerated unlocking. Furthermore, it is clear that any relief granted to Verizon from the prohibition against handset locking must come in the form of a partial waiver, as a declaratory ruling in this case would be unsupported by the plain language of the rule.

NTIA and Mobile Device Unlocking

In its capacity as the principal advisor to the President on telecommunications and information policies,⁸ NTIA has long advocated for mobile handset portability. We most recently reaffirmed our support for allowing the carrier unlocking of mobile devices this past September, when NTIA urged the Register of Copyrights to recommend renewal and further expansion of an exemption from the Digital Millennium Copyright Act’s prohibition against circumventing access controls on copyrighted works. In particular, we advocated for—and the Register and Librarian of Congress ultimately adopted—an expansion of the exemption to apply to the full range of lawfully-acquired wireless devices, including newly purchased ones.⁹

Additionally, in 2013 NTIA filed a petition for rulemaking that asks the Commission to “require a provider of certain commercial mobile services, upon request, to unlock any wireless device furnished by that provider” for use with a different mobile wireless carrier’s network.¹⁰ NTIA’s petition prompted much of the wireless industry, after negotiating with the Commission, to

⁶ *Id.* at 4–5.

⁷ NTIA notes that in a comment on this proceeding, Appalachian Wireless, which leases C Block spectrum from Verizon, expresses a desire to receive similar relief to Verizon from the handset locking prohibition. *See* Verified Comments of East Kentucky Network, LLC, D/B/A Appalachian Wireless, WT Dkt. No 06–150 (filed April 4, 2019), available at <https://ecfsapi.fcc.gov/file/1040424597613/Comments%20of%20Appalachian%20Wireless.pdf>. While NTIA takes no position on the merits of granting a partial waiver to Appalachian Wireless, we generally would be open to them receiving a similar partial waiver to Verizon should the company formally request one.

⁸ *See* 47 U.S.C. § 902(b)(2).

⁹ *See* Letter from Ass’t Sec. David J. Redl to Acting Register Karyn A. Temple Re: Exemptions to Permit Circumvention of Access Controls on Copyrighted Works at 40–44, Dkt. No. 2017–10 (Sep. 25, 2018), available at https://www.ntia.gov/files/ntia/publications/ntia_dmca_consultation_09252018.pdf. *See also* Copyright Office Rulemaking Proceedings Under Section 1201 of Title 17 (accessed April 4, 2019), available at <https://copyright.gov/1201/>.

¹⁰ Petition for Rulemaking of the National Telecommunications and Information Administration: In the Matter of Amendment of Part 20 of the Commission’s Rules and Regulations to Require Certain Providers of Commercial Mobile Radio Services to Unlock Wireless Devices Upon Request at 1, WT Dkt. No. PRM13WT (filed Sep. 17, 2013), available at https://www.ntia.gov/files/ntia/publications/ntia_mobile_devices_unlocking_petition_09172013.pdf.

commit to adopting broad device unlocking policies.¹¹ While this voluntary agreement did not completely address the consumer harms outlined in NTIA’s petition, it represented a major breakthrough that meaningfully improved consumer choice.

Scope of a Partial Waiver

Given NTIA’s strong belief that Americans should be able to use handsets they lawfully acquire with the compatible wireless networks they choose, we appreciate Verizon’s statement that it “fully supports the consumer choice enabled by unlocking,”¹² and we understand that, as a result of the unique rules governing C Block licensees, Verizon is the only major wireless carrier that automatically unlocks all handsets at the time of purchase.¹³ We accept Verizon’s assertion that it is “particularly susceptible to fraud because its devices carry a higher value on the black market” due to their unlocked status,¹⁴ but we also note that the prohibition against locking handsets that operate on C Block networks significantly furthers the important device portability goal, removing an artificial constraint on the market for mobile wireless services. Therefore, to the extent the Commission decides that temporary device locking would effectively combat theft and fraud, the Commission should nevertheless narrow the scope of a partial waiver in order to maximize continuing benefits to consumers.

The Commission may, for example, appropriately tailor a waiver in part by requiring Verizon to unlock a newly obtained device as soon as the first payment is successfully processed¹⁵ (but no later than the end of the sixty day period Verizon has proposed). NTIA understands that, as detailed in the employee declaration attached to Verizon’s request, “most consumers obtain new 4G LTE handsets subject to two-year device payment plans that permit them to pay for the device on an interest-free, amortized monthly basis over the life of the plan.”¹⁶ While this common arrangement is indeed likely to result in a delay between the customer obtaining the new device and making the first payment, Verizon also gives customers the option of paying the entire cost of a new device upfront.¹⁷ Moreover, some customers on payment plans may choose to make their first payment prior to the due date. In either case, payment processing may be complete fewer than sixty days after purchase, at which point the fraud-deterrence goal will be fulfilled. Verizon should then promptly unlock the handset.

Similarly, the Commission should consider requiring Verizon to limit the duration of locking (or immediately unlock a device upon purchase) in situations where the fraud risk is low, such as in the case of long-time customers who acquire new handsets for use with existing service, and who

¹¹ See FCC Cell Phone Unlocking (accessed Mar. 19, 2019), available at <https://www.fcc.gov/general/cell-phone-unlocking>.

¹² Verizon Request at 1–2.

¹³ *Id.* at 3.

¹⁴ *Id.* at 8.

¹⁵ The Commission may seek clarification of the point at which payment processing is complete. Verizon states that its proposed sixty day locking period would allow “both for the receipt of the first payment on an account and time for processing that payment to ensure that it was not reversed or otherwise cancelled after it was sent.” Verizon Request at 10. It is reasonable in appropriate circumstances to delay unlocking until a check clears or a credit card transaction posts, but unlocking should not be delayed by the chance that the customer might later dispute a charge.

¹⁶ Verizon Request, Declaration of Stephen Schwed at 5.

¹⁷ See Verizon Smartphones, (accessed Mar. 20, 2019), available at <https://www.verizonwireless.com/smartphones/>.

have new devices shipped to their previously established addresses. While Verizon does note “a rise in first-party fraud, which occurs when an individual uses his or her actual identity to acquire new handsets legally but without any intent to pay for them,”¹⁸ the likelihood of such a crime seems particularly low when an existing customer upgrades from an older handset used on an established line. Given the extensive fraud detection measures detailed in its filing, Verizon itself may be able to suggest similar low-risk scenarios.¹⁹

Any partial waiver granted by the Commission should also require a mechanism through which a customer can, without major inconvenience, successfully request immediate handset unlocking. Such a process may entail providing Verizon with some additional information to verify the customer’s identity—perhaps by leveraging the company’s existing Knowledge-Based Authentication System, or similar third-party identity verification systems.²⁰ While such systems are imperfect and may not address the case of first-party fraud, it is important that any temporary locking not prevent legitimate customers from making lawful use of their devices.²¹ A customer might, for example, purchase a new handset shortly before traveling internationally, and may prefer to use a local SIM card while abroad. That customer should not be prevented by Verizon from engaging in such a legitimate practice.

Declaratory Ruling Not Appropriate

Clearly, the appropriate mechanism for granting Verizon’s request would be via a narrowly tailored, partial waiver of the handset locking prohibition. NTIA cannot support a declaratory ruling. In arguing for a declaratory ruling that its proposal complies with the prohibition, Verizon claims that “when an individual obtains a new account and new handset she does not automatically become a ‘customer’ for [the] purpose of the handset locking rule,” and therefore the individual is not entitled to an unlocked handset until it is clear that the purchase was made in good faith (thus making the individual a ‘customer’).²² We believe consumers purchasing goods or services from any other type of business would likely consider themselves to be customers from the moment they complete a transaction. Moreover, Verizon’s reliance on a strained interpretation of the word “customer” raises the question of whether an existing Verizon customer purchasing a new handset from the company would temporarily no longer be considered a customer.

Verizon further argues that the proposed temporary locking of handsets does not amount to the devices being “‘set up’ or ‘constructed’ to operate only on Verizon’s network or to ‘prohibit’ their legitimate use on other networks.”²³ Clearly, though, a locking mechanism on a handset is a method of configuration that prohibits use of the device on other networks. In contemplating the

¹⁸ Verizon Request at 2.

¹⁹ See Verizon Request, Declaration of Stephen Schwed at 6–8.

²⁰ See Verizon Request at 7.

²¹ Verizon acknowledges that, when carriers “implement increasingly stringent measures to guard against this unlawful behavior,” this “inconveniences legitimate customers and degrades their experience.” Verizon Request at 2. NTIA wholeheartedly agrees that measures to combat theft and fraud can have adverse effects on the vast majority of customers who are acting lawfully, which is why we urge the Commission to narrowly tailor a partial waiver of the handset locking prohibition in order to minimize these harms.

²² Verizon Request at 11–12.

²³ *Id.* at 14.

C Block network access rules that the Commission would ultimately issue, Verizon itself suggested a provision it described as prohibiting “locking or programming a device in a way that would prevent the user from activating the device on another licensee’s network.”²⁴ We appreciate that the locking Verizon now seeks to undertake would be time-limited, and that the purpose is unrelated to restricting choice in wireless networks, but the Commission cannot declare a rule is inapplicable if it is violated temporarily for good reasons.

NTIA urges the Commission to preserve the pro-consumer benefits of the C Block prohibition against handset locking when acting to facilitate Verizon’s efforts to combat theft and fraud. The best way to achieve this would be for the Commission to grant Verizon a narrowly-constructed partial waiver that minimizes the duration and scope of any temporary locking.

Respectfully submitted,



Douglas W. Kinkoph
Deputy Assistant Secretary for Communications
and Information (Acting)

cc: Chairman Ajit Pai
Commissioner Michael O’Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Commissioner Geoffrey Starks

²⁴ Verizon Notice of Exempt *Ex Parte* Presentation at 2, WT Dkt. No. 06–150 (filed July 27, 2007), available at <https://ecfsapi.fcc.gov/file/6519607933.pdf>.