

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Promoting Consumer Choice and Wireless	)	WT Docket No. 24-186
Competition Through Handset Unlocking	)	
Requirements and Policies	)	

**REPLY COMMENTS OF PUBLIC KNOWLEDGE, CONSUMER REPORTS, AND  
OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA**

September 23, 2024

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## **I. Introduction**

Public Knowledge, Consumer Reports, and the Open Technology Institute at New America respectfully submit these reply comments in response to the comments filed for the Federal Communication Commission’s Notice of Proposed Rulemaking on the establishment of an unlocking requirement for mobile devices. We note that Commenters express differing perspectives on this issue, but we continue to urge the Commission to adopt its proposal in order to protect consumer interests and promote fair competition across the wireless industry. We believe that the industry will benefit from an automatic unlocking requirement after no more than 60-days from device activation and that wireless providers can ensure that consumers are protected even with this unlocking requirement. At the end of the day, we ask the Commission to consider pro-consumers interests and hope that wireless providers will take this rule in stride, without responding in ways that result in unaffordable devices or hurt consumers who need mobile devices the most.

## **II. An Automatic Unlocking Requirement Serves the Public Interest by Increasing Overall Competition and Protecting Consumers.**

At the outset, it is important to note that competition will increase as a result of increased uniformity across the wireless industry because of the proposed unlocking requirement. To this extent, several commenters agree. For example, Verizon supports an industry-wide standard, to avoid “disparate obligations that harm competition, and, as a result, consumers...”<sup>1</sup> As such, Verizon is already subject to this requirement, and a uniform policy will level the playing field, enabling providers to focus their efforts on other industry policies and compete more fairly. Another major carrier, T-Mobile has voluntarily adopted an unlocking policy in line with the

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<sup>1</sup> Comments of Verizon at 8, WT Docket 24-186 (filed Sep. 9, 2024).

Commission's proposal.<sup>2</sup> We believe that unlocking policies should not be an area for competition, since unlocking is in the best interest of the consumer, and that carriers can shift their focus to competing in other settings such as on pricing, service terms, device discounts, and more. The elimination of competition across the board for unlocking requirements will drive down prices and help consumers.

**A. A Uniform Unlocking Requirement Will Benefit Consumers by Increasing Overall Transparency and Allowing Consumers the Freedom to Switch Providers as Desired.**

In our Comment we argued that a uniform unlocking requirement will help consumers by creating an industry-wide standard instead of presenting differing policies across providers to their customers.<sup>3</sup> We believe that it is vitally important to standardize the industry's unlocking policies in order to keep messaging consistent across carriers. Consistency will provide clarity to consumers regarding when they can switch providers, make switching easier, and reduce the burden that a consumer faces when switching providers just to get mobile service that works best for them. Furthermore, an automatic unlocking requirement will protect consumers by driving down service prices and allowing for increased consumer choice. A uniform unlocking requirement will increase overall transparency for consumers. Transparency is a pro-consumer policy that will help consumers to make the best decision when selecting a device and provider. We also are pleased to see that several commenters in the record support automatic unlocking, as

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<sup>2</sup> *Applications of T-Mobile, US Inc. and Ka'ena Corporation For Consent to Transfer Control of International Section 214 Authorizations*, GN Docket 23-171, Memorandum Opinion and Order, DA 24-387 (OIA/WTB Apr. 25, 2024).

<sup>3</sup> See Comments of PK, CR, and OTI, WT Docket 24-186 (filed Sep. 9, 2024).

this will make it easier for consumers to switch providers and reduce the customer support burden even for providers.<sup>4</sup>

An automatic unlocking requirement will also enhance secondary markets, allowing low-income consumers to purchase used, high-quality devices at lower costs and helping the global environment by reducing e-waste. Low-income consumers will be impacted most by an effective unlocking rule. The enhanced secondary market will allow these consumers, who are more likely to buy devices secondhand, to afford a wider range of devices.<sup>5</sup> Additionally, communities of color will also benefit greatly, as these households over-index as smartphone-only users for home internet connection.<sup>6</sup> Finally, current device locking policies not only make it difficult for a single user to switch carriers, but also impact entire families. For example, on family plans, one family member's locked device can effectively lock all family members' devices, regardless of whether one or more of those family members have paid in full for their handset.<sup>7</sup>

**B. Device “Subsidies” are Not Inherently Linked to Device Locks, and an Unlocking Requirement Should Not Prevent Providers from Offering Discounted and Affordable Devices.**

In our comments, we argued that the 60-day automatic unlocking requirement must be separate from the “subsidized” purchase agreement for a phone and subsequent service

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<sup>4</sup> See Comments of Comcast at 2, WT Docket 24-186 (filed Sep. 9, 2024); Comments of NCTA at 1, WT Docket 24-186 (filed Sep. 9, 2024); Comments of CRWC at 11, WT Docket 24-186 (filed Sep. 9, 2024); Comments of INCOMPAS at 6, WT Docket 24-186 (filed Sep. 9, 2024); Comments of Consumer Action and NCL at 1, WT Docket 24-186 (filed Aug. 30, 2024); Comments of T-Mobile at 30, WT Docket 24-186 (filed Sep. 9, 2024); Comments of Verizon at 2, WT Docket 24-186 (filed Sep. 9, 2024).

<sup>5</sup> Lauren C. Williams, *How Banning Companies From Unlocking Cell Phones Hurts The Poor*, ThinkProgress (Feb. 27, 2014), <https://archive.thinkprogress.org/how-banning-companies-from-unlocking-cell-phones-hurts-the-poor-1266a5a8a252/> (last visited Sep. 19, 2024).

<sup>6</sup> Branson, et al., *Wireless in Communities of Color: Bridging the Digital Divide*, Multicultural Media, Telecom, & Internet Council (Jul. 2022), available at, <https://www.mmtconline.org/wp-content/uploads/2022/07/Wireless-in-Communities-of-Color-July-2022.pdf>.

<sup>7</sup> See Comments of NCTA at 4, WT Docket 24-186 (filed Sep. 9, 2024).

agreements. We believe that the Commission should clarify this through moving forward with its unlocking rule, as this is a pro-consumer policy that also levels the playing field for carriers and will help drive down the prices consumers pay through a transparent means.

Commenters have expressed concern<sup>8</sup> that implementing an automatic unlocking rule would harm their business models and effectively force providers to discontinue device subsidies. We disagree and believe it is important to examine the nature of subsidies to understand their actual impact. An automatic unlocking rule would not undermine carriers' business models or compel them to discontinue legitimate device subsidies, discounts, or financing. The current financing and discount structures already provide carriers with adequate safeguards and incentives to retain customers without the need for device locks. Unlocking devices empowers consumers, promotes fair competition, and aligns with the broader objective of fostering a competitive telecommunications market.

Firstly, the traditional device subsidy model—where carriers offered phones at a reduced upfront cost or even for free while recouping the costs through higher monthly service fees under long-term contracts—has largely been phased out by most carriers. This model was often criticized for its lack of transparency and perceived unfairness, as it tended to benefit consumers who chose high-end, expensive devices. Meanwhile, those opting for entry-level phones paid the same inflated service fees without receiving equivalent value. This approach obscured the true cost of both devices and services, making it difficult for consumers to make informed decisions.

Today, carriers have shifted toward installment plans and perceived device discounts, which differ fundamentally from true subsidies. In these arrangements, the full price of the

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<sup>8</sup> See Comments of AWBC at 1, WT Docket 24-186 (filed Sep. 9, 2024); See Comments of Conference of National Black Churches and National Action Network Sacramento at 2, WT Docket 24-186 (filed Sep. 9, 2024); See Comments of T-Mobile at 3, WT Docket 24-186 (filed Sep. 9, 2024). See Comments of TRMA at 2, WT Docket 24-186 (filed Sep. 9, 2024); See Comments of CCA at 6, WT Docket 24-186 (filed Sep. 9, 2024).

device is typically recovered over time through monthly payments, often accompanied by service contracts and additional fees. While these plans may create the illusion of a discount, the consumer ultimately pays the full cost of the device.

Moreover, any credits or discounts provided by carriers are generally contingent upon the customer fulfilling the terms of the contract. If the service is canceled prematurely, contractual terms typically require the customer to repay the full amount or forfeit any credits received. These provisions are designed to protect the carriers' financial interests and are independent of device locking. Device locks are used as an additional measure to retain customers and limit competition by preventing device portability.

Importantly, consumers have alternative options for purchasing devices. Retail stores, online outlets, and device manufacturers—such as Apple and others—offer devices through installment plans, often with zero-interest financing, sales, and discounts. These sellers provide devices without the need to lock them to a specific carrier, allowing consumers the freedom to choose or switch service providers without restrictions. This demonstrates that locking devices is not a necessary practice for recouping the cost of the device or for offering competitive financing terms, and there is no reason why carriers would need technological locks when other outlets do not. Device locking, therefore, serves primarily as an unnecessary and anti-competitive tool that restricts consumer choice and hinders market competition. Carriers already have sufficient legal and financial mechanisms within their financing agreements to recover costs and secure financed collateral, regardless of whether the device remains active on their network or is used with a competitor's service.

These installment contracts, disguised as device subsidies, do not depend on device locks. For example, when looking at prices for an Apple iPhone 15 Pro Max 256GB, AT&T

advertises a price of \$20.99 per month for the device with a retail price of \$1099.99.<sup>9</sup> However, the terms of this ‘deal’, which are general financing terms *not* dependent on device-locking, require activation fees, a down payment in most cases, and long-term service contracts with high dollar plans, device payments, and other fees. Regarding AT&T’s iPhone 15 Pro Max 256GB, with a \$0 downpayment the device would cost an estimated \$30.56 per month for 36 months – a total payment of which is even more than the retail price anyway minus the subsidized credits returned.<sup>10</sup> In order to obtain the same device at a subsidized rate of \$20.99 per month for 36 months, credits offset the device cost but the consumer is required to subscribe to unlimited wireless service for the financing term in order to receive the credits.<sup>11</sup> T-Mobile offers similar terms.<sup>12</sup> The money back after the contract term, a credit of up to \$344.36 for AT&T and an amount of \$630 after 24 months for T-Mobile, gives customers incentive to keep devices even if they are unlocked.<sup>13</sup> These large incentives are essentially carrier locks already - if carriers want to prevent customers from switching, the credits are certainly enough alone to prevent customers from switching. Not to mention, consumers can also buy devices from manufacturers as well with similar zero interest financing terms.<sup>14</sup>

The important thing to emphasize is that this is not a direct-to-consumer device subsidy – it is an installment plan and the cost is recovered by the carrier over time. And for any credits

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<sup>9</sup> AT&T, *Customize your phone*, <https://www.att.com/buy/phones/apple-iphone-15-pro-max.html> (last visited Sep. 19, 2024).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> T-Mobile, *iPhone 15 Pro Max*, <https://www.t-mobile.com/cell-phone/apple-iphone-15-pro-max> (last visited Sep. 19, 2024).

<sup>13</sup> *Id.*; AT&T, *Customize your phone*, <https://www.att.com/buy/phones/apple-iphone-15-pro-max.html> (last visited Sep. 19, 2024).

<sup>14</sup> Apple, *Buy iPhone 15*, <https://www.apple.com/shop/buy-iphone/iphone-15> (last visited Sep. 19, 2024).

that would amount to a subsidy or discount for a device, most contract terms require full payment or the return of any credits if the service is canceled. Such terms are not contingent on device locking, and carriers just use locks as a ‘win-win’ to physically lock customers in and stifle competition through preventing device switching. As such, any discounts are akin solely to financing contracts, and device locking is just one more way to secure financed collateral. Carriers do not have to secure such collateral, as they have a basis through the separate financing contracts to recover costs regardless of whether the device is active on their network or a competitors’.

Verizon, which is subject to the same unlocking requirement the Commission is considering industry-wide, is able to offer device subsidies and deals even without carrier locks. The same iPhone 15 Pro Max 256GB with Verizon is just \$10.00 a month for 36 months with zero down – and is unlocked after 60 days.<sup>15</sup> It is evident that this can be done, and it is a commonsense approach to eliminate carrier locks after 60 days to encourage competition on other terms such as those in device financing agreements, activation fees, and service contract fees. Increased competition on these other fees will lower overall prices for the consumer. For low-income consumers who need device subsidies the most, carriers may still compete through their device financing terms, and an unlocking requirement should not – as has been demonstrated by Verizon – in itself end device subsidies or harm low-income consumers.

If it is the Commission’s ultimate goal to serve the public interest in this unlocking rulemaking, the Commission must require unlocking regardless of device payment status. This

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<sup>15</sup> Verizon, *Apple iPhone 15 Pro Max*, <https://www.verizon.com/smartphones/apple-iphone-15-pro-max/> (last visited Sep. 19, 2024).

pro-consumer policy will drive down prices and allow carriers to compete more transparently, all while still enabling carriers to offer device discounts to new customers.

**C. An Automatic Unlocking Policy Should Improve Competition with Limited Security Risks.**

Commenters suggest that unlocking will lead to higher prices, and that this will cause consumers to purchase less secure devices from foreign markets.<sup>16</sup> We must emphasize the premise that unlocking will not directly lead to the end of device “subsidies” or pro-consumer discounts otherwise. That choice is ultimately left to the provider, and it is the providers’ duty to compete with competitors to ensure that trusted devices are affordable on a global scale. However, we recognize the threat that unsecure devices place, so we encourage the Commission to consider how to use its unlocking framework to support the purchase of high quality and secured devices. Ultimately, the wireless industry should be incentivized – even without device locks – to offer internationally competitive deals on devices to enhance overall security of wireless networks, as this is in the industry’s and nation’s best interest.

**D. An Automatic Unlocking Policy Will Lead to Higher Churn Rates, Indicating that Competition has Grown and that Consumers Really do Have More Choice.**

High churn rates are indicative of competition growth, and in turn, more competition is best for the consumer. Commenters show that churn rates are growing over time and suggest that there is enough market competition now.<sup>17</sup> However, such rates could be higher and would grow as a benefit of an unlocking requirement. This would benefit consumers by driving down the prices they pay through increased competition. The annual industry-wide churn rate is 16.7 percent, and carriers expect this to grow as consumers report they are “likely” or “very likely” to

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<sup>16</sup> See Comments of AWBC at 1, WT Docket 24-186 (filed Sep. 9, 2024); Comments of CCA at 2, WT Docket 24-186 (filed Sep. 9, 2024); Comments of T-Mobile at 18, WT Docket 24-186 (filed Sep. 9, 2024).

<sup>17</sup> See Comments of ACLP at 4, WT Docket 24-186 (filed Sep. 9, 2024).

switch service providers.<sup>18</sup> For postpaid devices, the churn rate for AT&T in 2023 was 0.98% compared to an almost doubled churn rate of 1.67% for Verizon, the carrier that *is* required to unlock devices.<sup>19</sup> This data indicates that unlocking, or policies unfolding from automatic unlocking requirements, may increase churn – and this would be a very good thing for consumers and the public interest.

### **III. The Proposed 60-day Unlocking Requirement Provides Enough Time to Allow Service Providers to Detect Fraud and Deter Theft.**

An unlocking requirement of no more than 60 days after device activation is appropriate to balance pro-consumer interests and allow providers time to detect fraud and deter theft. First, several commenters agree that this timeframe, or shorter, is adequate and in the public interest.<sup>20</sup> Next, it can be shown through industry actions that this provides providers with ample time. For example, Verizon remains a leading American carrier while being subject to a 60-day unlocking rule. And T-Mobile even voluntarily implemented a 40-day unlocking policy, which is less time. Indeed, in countries where unlocking requirements prohibit the sale of locked devices at all, some providers have simply relied on unlocking devices at the point of sale as protection against

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<sup>18</sup> See Comments of AT&T at 30, WT Docket 24-186 (filed Sep. 9, 2024).

<sup>19</sup> Ahmed Sharif, *AT&T's wireless postpaid customer churn rate from 2007 to 2023*, Statista (Jul. 25, 2024) <https://www.statista.com/statistics/219831/postpaid-churn-rate-of-atandt-wireless-customers-since-2007/> (last visited Sep. 19, 2024); Ahmed Sharif, *Churn rate of Verizon's wireless retail connections from 2008 to 2023, by type*, Statista (Jun. 6, 2024), <https://www.statista.com/statistics/219801/total-churn-rate-of-verizon-since-2008/> (last visited Sep. 19, 2024).

<sup>20</sup> See Comments of City of Portland at 7, WT Docket 24-186 (filed Sep. 9, 2024); Comments of Cloud Communications Alliance at 2-3, WT Docket 24-186 (filed Sep. 9, 2024); Comments of CRWC at 11, WT Docket 24-186 (filed Sep. 9, 2024); Comments of Echostar at 4-5, WT Docket 24-186 (filed Sep. 9, 2024); Comments of INCOMPAS at 2, WT Docket 24-186 (filed Sep. 9, 2024); Comments of MMTC at 4, WT Docket 24-186 (filed Sep. 9, 2024); Comments of RWA at 2-3, WT Docket 24-186 (filed Sep. 9, 2024); Comments of Consumer Action and NCL at 2, WT Docket 24-186 (filed Sep. 9, 2024); Comments of Repair Coalition at 2, WT Docket No. 24-186 (filed Jul. 26, 2024).

theft.<sup>21</sup> Some commenters suggest that a 180-day limit is necessary to combat fraud and theft.<sup>22</sup> We find that these suggestions undermine the premise of an unlocking policy and do not account properly for the consumer benefits of unlocking and ignore entirely one of the fundamental parts of the criminal device theft rights – that they have teams of ‘unlockers’ who can unlock a stolen device regardless.<sup>23</sup> The potential benefits to the consumer from the proposed rule - more transparency, better prices through increased competition, and enhanced secondary markets - are worthwhile bargains, especially when carriers are still afforded up to 60 days to combat theft and fraud.

#### **IV. The Commission has Authority to Promulgate this Rule.**

We believe that the Commission has legal authority for this rulemaking under both Titles II and III of the Communications Act, as it has proposed in its Notice of Proposed Rulemaking. First, we agree with the Commission that it has authority under Section 303(b) to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.”<sup>24</sup> We believe that regulation of device unlocking impacts the nature of service, as it impacts the ability of a consumer to use or switch services and enhances consumer freedom in deciding when to use and end use of services that mobile carriers offer. Device unlocking is not related to the financing or sale of the device and is rather a part of the service itself as it affects one’s ability to use the device they own with their chosen mobile service. Likewise, for authority

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<sup>21</sup> See Sameer Chhabra, *Bell returns to stocking carrier-locked phones at retail locations*, MobileSyrup (Aug. 13, 2018), <https://mobilesyrup.com/2018/08/13/bell-returns-to-stocking-carrier-locked-phones-at-retail-locations/> (last visited Sept. 23, 2024).

<sup>22</sup> See Comments of Comcast at 2, WT Docket 24-186 (filed Sep. 9, 2024); Comments of NCTA at 9-10, WT Docket 24-186 (filed Sep. 9, 2024); Comments of Verizon at 3, WT Docket 24-186 (filed Sep. 9, 2024) (For prepaid devices only.).

<sup>23</sup> See Stacey Sutton & Amanda Jesteadt, *White Paper on Implications of Proposed FCC Unlocking Rule for Handset Trafficking*, Carlton Fields, P.A. at 9 (Sept. 9, 2024) (“most overseas buyers have an unlocker on staff...”).

<sup>24</sup> 47 U.S.C. §303(b).

under Title II, it is important to note that, because device unlocking is clearly separate from purchase or financing, this rule directly relates to the provision of a service that is a commercial mobile service. The lock status of a device affects the device's connection to mobile radio services. We also believe that it is imperative to clarify that the imposition of an unlocking requirement is not a “major question.” While over 300,000,000 Americans have cell phones, it is false to assume that just because a product is widely used, and the industry is large, that regulation of said product constitutes a major question.

## **V. Conclusion**

In conclusion, we urge the Commission to move forward with its Notice of Proposed Rulemaking and establish an automatic device unlocking requirement of no more than 60-days. This rule is clearly in the public interest because it will protect consumers, enhance transparency, and increase overall competition. We believe that the interests of low-income consumers, especially, are important to consider when implementing this rule and that the opening of a vast secondary market and the continuation of accessible device payment plans will have a positive effect on making prices lower and allowing consumers choice.

Respectfully Submitted,

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