

February 5, 2024

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Ex Parte Presentation in Applications Filed for The Transfer Of Control Of Mint Mobile, LLC and UVNV, Inc. (d/b/a Ultra Mobile) To T-Mobile US, Inc, GN Docket No. 23-171

Dear Ms. Dortch:

T-Mobile's proposed acquisition of Mint and Ultra Mobile raises concerns about the impact of the loss of these maverick MVNOs on the wireless market, including that consumers may face unnecessary obstacles when switching wireless providers. In approving Verizon's acquisition of MVNO TracFone in 2021, the Commission recognized that Verizon's commitment to unlock certain devices operating on the Verizon network 60 days after activation was in the public interest. In adopting this commitment, the FCC found that "[t]he reduced unlocking period for TracFone devices (from 12 months to 60 days) will reduce barriers to migrating between wireless providers."¹

The undersigned public interest groups urge the Commission to adopt a similar condition if it approves the above-captioned transaction. T-Mobile has argued that unlocking requirements are "N/A"² in the context of this acquisition because the company is already subject to the unlocking requirements of DOJ's Final Judgment. However, with respect to prepaid devices, the Final Judgment obligates T-Mobile to unlock such devices within one year of activation.³ With respect to postpaid devices, the Final Judgment requires T-Mobile to unlock such devices only after a customer fulfills the term of the postpaid service contract or device financing plan, or pays any applicable early termination fee.⁴ The period to meet these criteria may amount to more than a year.

Consumer advocates have long argued that mobile phones should come unlocked by default, allowing users to more easily make choices about the device and service they purchase, as they can for

¹ *Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, Memorandum Opinion and Order, GN Docket 21-112, 36 FCC Rcd. 16994, 17041 ¶ 125 (Nov. 22, 2021). The Commission also required that within two years after closing (by November 2023) any new TracFone device that operates on Verizon's network using 700 MHz C Block spectrum must also be "capable of automatically unlocking." *Id.* at ¶144.

² Letter from Nancy Victory, DLA Piper LLP (US) to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171 (June 5, 2023).

³ Amended Final Judgment, *United States v. Deutsche Telekom AG*, Case 1:19-cv-02232, at § VII.F.iii (TJK) (D.D.C.) (Oct. 23, 2023) ("Divesting Defendants and Acquiring Defendant will unlock prepaid mobile wireless devices no later than one (1) year after initial activation, consistent with reasonable time, payment, or usage requirements").

⁴ *Id.*

most products. Ofcom has required mobile phones to be sold unlocked in the UK since 2021.⁵ Canada’s Commission (CRTC) did so even earlier, in 2017.⁶ The process for unlocking phones can be cumbersome and stifle consumer choice and hence competition. As Ofcom observed in announcing the implementation of its decision: “Our research shows that more than a third of people who decided against switching said having to get a handset unlocked put them off changing provider. This means they could be missing out on a better deal.”⁷

In the U.S., our groups and other consumer advocates have long argued that “the practice of locking phones can reduce wireless competition by making it more difficult for consumers to change carriers, and by reducing the number of devices available on the secondary market,” as Public Knowledge told the Commission in 2022.⁸ “Smaller carriers, new entrants, and MVNOs in particular may be disadvantaged in the marketplace due to a lack of handset availability.”⁹ Locked phones, particularly those tied to pre-paid plans, can disadvantage low-income customers most of all, since they may not have the resources to switch carriers or purchase new phones. Unlocked phones also facilitate a robust secondary market for used devices, providing consumers with more affordable options.

In December, the Commission addressed a similar anti-competitive practice when it adopted a Notice of Proposed Rulemaking related to early termination fees charged by cable and DBS video subscription providers.¹⁰ The NPRM proposes to protect consumers and promote competition by prohibiting early termination fees (ETFs) in this context: “Because an ETF may have the effect of limiting consumer choice after a contract is enacted, it may negatively impact competition for services in the marketplace.”¹¹ The Commission goes on to observe that this proposal aligns with President Biden’s *Executive Order on Promoting Competition in the American Economy*, which “encouraged the Commission to consider ‘prohibiting unjust or unreasonable early termination fees for end-user communication contracts; enabling consumers to more easily switch providers’ in order to promote competition and lower prices.”¹² Phone locking operates similarly to inhibit consumer choice and competition in the mobile market.

⁵ Ofcom, “Mobile Companies Now Banned from Selling Locked Handsets” (Dec. 17, 2021), <https://www.ofcom.org.uk/news-centre/2021/mobile-companies-now-banned-from-selling-locked-handsets>.

⁶ See Canadian Radio-television and Telecommunications Commission, Telecom Notice of Consultation 2016-293, as amended (June 15, 2017), <https://crtc.gc.ca/eng/archive/2017/2017-200.htm>. Chile, Israel, Singapore and China similarly have made it illegal for providers to sell SIM locked devices.

⁷ *Id.* Ofcom research has found that 35% of consumers who decided against switching mobile providers cited the time or cost of unlocking. Ofcom, “Mobile Firms to be Banned from Selling Unlocked Handsets” (Oct. 27, 2020), <https://www.ofcom.org.uk/news-centre/2020/mobile-firms-banned-from-selling-locked-handsets>.

⁸ Letter from John Bergmayer, Public Knowledge, to Marlene H. Dortch, FCC, *State of Competition in the Communications Marketplace*, GN Docket No. 22-203 (Sept. 16, 2022), https://regmedia.co.uk/2022/09/20/pk_letter.pdf.

⁹ *Id.*

¹⁰ *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, Notice of Proposed Rulemaking, MB Docket No. 23-405 (rel. Dec. 14, 2023) (“ETF NPRM”).

¹¹ *ETF NPRM* at ¶ 2.

¹² *Id.*, citing Executive Order 14036, 86 FR 36987, §(1)(iv) (July 9, 2021), <https://www.whitehouse.gov/briefingroom/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

Given the recognized competitive and consumer-related benefits of a “reduced unlocking period,” the Commission should require T-Mobile to commit to a shorter unlocking period for *all* devices activated on its network. This would align with Verizon, which has been under a general open access and unlocking licensing condition related to devices operating on its nationwide 700 MHz C Block spectrum. With respect to TracFone, Verizon’s 60-day unlocking condition applies to all 700 MHz C Block devices purchased from TracFone and activated on the Verizon network. The condition permits applicable consumers to switch to a non-TracFone/Verizon carrier without acquiring a new handset. Under the condition, two years after closing (as of Nov. 23, 2023) “Verizon and TracFone must ensure such handsets are capable of automatically unlocking after 60 days.”¹³ Verizon must also affirmatively provide notice of this policy to all new affected customers upon activation.¹⁴

Our groups believe the following language, modeled after Verizon’s commitment in the TracFone proceeding, would accomplish this goal:

Handset Unlocking: Within 30 days after closing, T-Mobile will unlock all devices purchased from its brands after closing and activated on the T-Mobile’s network.

- Within 30 days after closing, T-Mobile will notify all customers of its new unlocking policies. In addition, beginning 30 days after closing, T-Mobile will notify customers of its unlocking policies upon activation of a new device that will operate on the T-Mobile network.
- For devices that operate on the T-Mobile network and are capable of unlocking automatically (e.g., Apple devices), they will unlock automatically [60] days after activation.
- For devices that operate on the T-Mobile network and lack an automatic unlocking capability, T-Mobile will provide customers with manual means to unlock the device [60] days after activation. When the [60]-day period expires, T-Mobile will provide clear and easy to follow instructions to those customers as to how they can manually unlock their devices.
- T-Mobile will report the total number of locked devices and, of that number, the total number of devices that have the ability to automatically unlock within [60] days of closing and again on the first and second anniversary of the closing, after which time [2 years] all new devices provided through T-Mobile and activated on the network must be capable of automatic unlocking.

¹³ See Affiliated Monitors Inc., “Monitoring Compliance with Conditions Imposed in the Verizon-TracFone Transfer of Control Order,” WT Docket No. 22-210, at 57-58 (Jan. 23, 2024).

¹⁴ *Id.* at 58.

Adopting this commitment as a condition of any approval of T-Mobile's acquisition of Mint will help address the competitive concerns raised by this transaction.

Respectfully submitted,

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