

**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)	

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

September 9, 2024

EXECUTIVE SUMMARY

Public Knowledge, the Open Technology Institute at New America, and Consumer Reports respectfully submit these comments in response to the Federal Communication Commission's Notice of Proposed Rulemaking on the establishment of an unlocking requirement for mobile handsets. We support the Commission's objectives and believe that the Commission should adopt its proposed requirement that "all mobile wireless service providers unlock handsets 60 days after a consumer initiates service with the provider, unless within the 60-day period the service provider determines the handset was purchased through fraud."¹ As the Commission finalizes its proposed rules, it should prioritize creating a fair, cohesive unlocking requirement considering the following:

- An automatic unlocking requirement after no more than 60-days protects consumer interests while affording providers ample time to detect fraud.
- An automatic unlocking requirement best serves the public interest by increasing competition, giving consumers the freedom to choose or switch carriers, and increasing overall transparency.
- A uniform unlocking requirement across the industry will level the playing field for providers and further promote fair competition.
- Any unlocking requirement should be separate from device payment agreements and service contracts.
- Locked devices disproportionately affect lower income communities and communities of color; therefore, the Commission must factor in diversity, equity, inclusion, and accessibility to develop a fair and equitable unlocking rule.

¹ *Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, Notice of Proposed Rulemaking, WT Docket No. 24-186, FCC 24-77 (rel. Jul. 19, 2024), ¶ 22.

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I. Introduction

Creating a uniform, industry-wide unlocking requirement will serve the public interest by increasing consumer protection and market competition.² Commenters have long supported the establishment of this industry-wide unlocking requirement and have even supported, in line with the policies of other nations, unlocking all phones by default in order to give consumers more choice about the device and service they purchase, increase competition among providers, and boost low income and disadvantaged communities.³ Commenters offer the following as guidance, based on our longstanding interest in this issue and strong commitment to the public interest, for the Commission to use as it considers permanent device unlocking rules.

II. The Commission should adopt an automatic unlocking requirement no longer than 60 days.

Consumer advocacy groups and industry members alike have shown support for the idea that device unlocking is important, as demonstrated through their actions and advocacy efforts. In a joint letter to the Chairwoman, the Open Technology Institute at New America, Consumer Reports, Verizon, Public Knowledge, the Benton Institute for Broadband & Society, and EchoStar urged the Commission to initiate this very rulemaking in order to establish a uniform unlocking policy to benefit consumers and promote competition.⁴ Following this, others have expressed similar views, showing wide trade association support and industry buy-in.⁵ We

² Letter from Michael Calabrese, Dir. Wireless Future, Open Technology Institute at New America, Stacey Higginbotham, Policy Fellow, Consumer Reports, William H. Johnson, Senior Vice Pres., Verizon, John Bergmayer, Legal Director, Public Knowledge, Andrew Jay Schwartzman, Senior Counselor, Benton Institute, Jeffrey H. Blum, Exec. Vice Pres., External & Legislative Affairs, EchoStar to the Hon. Jessica Rosenworcel, Chairwoman, FCC, GN Docket No. 24-119 (filed June 25, 2024) (“June 2024 Letter”).

³ June 2024 Letter; *See also* Letter from Michael Calabrese, Director, Wireless Future, Open Technology Institute at New America et al., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171, at 3 (filed Feb. 5, 2024).

⁴ *See* June 2024 Letter.

⁵ *See* Letter from Angie Kronenberg, President, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 24-186 (filed July 10, 2024); *See also* Statement from Peter Adderton, Founder and CEO, MobileX, Founder, Boost Mobile, WT Docket No. 24-186 at 1 (filed July 11, 2024).

therefore agree with the Commission’s proposed unlocking requirement and support its goals of preventing risks of fraud, protecting consumer interests, boosting competition, and harmonizing standards across the industry and internationally.

A. An unlocking timeframe no longer than 60-days is appropriate to protect consumers and allow providers an opportunity to prevent fraud.

The current 60-day period is based on Verizon’s experience several years ago with theft and fraud. Since its purchase of 700 MHz spectrum in 2008, Verizon has successfully managed its theft and fraud issues, clearly demonstrating that carriers do not need a longer delay than 60-days to manage their concerns.⁶ For this reason, Verizon agreed with the Commission’s 2019 finding that 60 days was enough time to allow providers the time to receive payments, process checks or debits from accounts, and obtain transaction information in order to identify fraud.⁷ This has set a reliable standard timeframe in which to allow fraud detection. However, in addition to allowing for fraud detection, a time frame of no more than 60-days also protects consumers. In 2021, the Commission found that unlocking devices operating on the Verizon network 60 days after activation was in the public interest since it “reduce[d] barriers to migrating between wireless providers.”⁸ In one recent example, T-Mobile voluntarily made a commitment to automatically unlock devices after 60-days, and the Commission found that this commitment “will make it easier for... customers to switch service providers...”⁹ Like Verizon and T-Mobile, we agree with the Commission that an unlocking requirement no longer than 60-

⁶ See Verizon Request for Declaratory Ruling, or, in the Alternative, for Partial Waiver, WT Docket No. 06-150 (filed Feb. 22, 2019).

⁷ *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*, WT Docket No. 06-150, Order, 34 FCC Rcd 5134 (June 25, 2019).

⁸ *Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket 21-112, Memorandum Opinion and Order, 36 FCC Rcd. 16994, 17041 ¶ 125 (Nov. 22, 2021).

⁹ *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).

days is appropriate to achieve the dual goals of protecting consumers and allowing providers the chance to detect and prevent fraud.

At the same time, Commenters also observe that other countries have adopted even shorter wait periods (or prohibit any wait period), and that other advocacy organizations have urged the Commission to require that all phones sold are unlocked. For example, in December 2021, the UK's Ofcom began enforcing rules preventing the selling of locked devices completely, noting that unlocking was costly, complicated for customers, and difficult to initiate.¹⁰ It cited examples of harms suffered by consumers due to problems with device unlocking including, in many cases, loss of service.¹¹ It further noted that half of the customers trying to unlock their device to switch providers experienced some sort of difficulty doing so, and that the problem was only projected to increase.¹²

And even earlier in December 2017, the Canadian Radio-television and Telecommunications Commission (CRTC) modified its regulations, requiring that “all newly purchased devices must be provided unlocked from that day forward.”¹³ At least one major carrier continued to stock locked phones to deter theft, but in such cases these devices were unlocked during the new customer activation process.¹⁴ In line with these policies, some

¹⁰ Ofcom, *Mobile companies now banned from selling locked handsets* (rel. Dec. 17, 2021, last updated Jul. 5, 2023), <https://www.ofcom.org.uk/phones-and-broadband/mobile-phones/mobile-companies-now-banned-from-selling-locked-handsets/> (last visited Sept. 5, 2024).

¹¹ Ofcom, *Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code*, at 203 (pub. Oct. 27, 2020), <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/184485-proposals-to-implement-the-new-european-electronic-communications-code/associated-documents/secondary-documents/statement-eecc-revised-proposals.pdf?v=325380> (last visited Sept. 9, 2024).

¹² *Id.* at 204.

¹³ Canadian Radio-television and Telecommunications Commission, *CRTC puts an end to locked cellphones and unlocking fees* (rel. Jun. 15, 2017), https://www.canada.ca/en/radio-television-telecommunications/news/2017/06/crtc_puts_an_endtolockedcellphonesandunlockingfees.html (last visited Sept. 5, 2024).

¹⁴ 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. 9, 2024).

advocacy organizations, including iFixit, U.S., The Repair Association, Secure and Resilient Future Foundation, Electronic Frontier Foundation, and Waveform (the Repair Coalition, collectively) support the elimination of device locking altogether.¹⁵ We therefore wish to make clear that, should the record support a shorter waiting period or no waiting period at all, we would support the outcome that is least restrictive to consumers. In any event, for the reasons above, 60 days should be, under any circumstances, the maximum wait period permitted by the Commission.

B. Automatic unlocking after no more than 60-days serves the public interest by increasing transparency for consumers, enhancing consumer freedom to switch carriers, and increasing overall competition.

An important tenant to an unlocking policy that furthers the public interest is that unlocking must be automatic. We believe that an automatic unlocking requirement, set for no more than 60-day after device purchase, is necessary to help the Commission meet its intended goals of increasing transparency, improving the consumer’s ability to switch providers, and increasing competition.¹⁶ In line with the automatic unlocking conditions imposed in response to Verizon’s 2019 Waiver Petition¹⁷ and T-Mobile’s voluntary acceptance of automatic unlocking in some circumstances just recently,¹⁸ it is clear that automatic unlocking is, as the Commission has found, in the “public interest as [it] will make it easier for... customers to switch service providers.”¹⁹ We support the Commission’s finding and strongly believe that an industry-wide

¹⁵ Repair Coalition Comments, *Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, WT Docket No. 24-186 (Filed Jul. 26, 2024).

¹⁶ *Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, Notice of Proposed Rulemaking, WT Docket No. 24-186, FCC 24-77 (rel. Jul. 19, 2024), ¶¶ 13-15.

¹⁷ *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*, WT Docket No. 06-150, Order, 34 FCC Red 5134 (June 25, 2019).

¹⁸ *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).

¹⁹ *Id.*

automatic unlocking rule is in the public's best interest because it increases transparency, consumer freedom, and fair competition.

First, the Commission's proposed unlocking requirement will protect consumers by creating a standard that is transparent and easy to understand. Today, consumers often lack knowledge of device unlocking and in turn can be harmed from this lack of knowledge. For example, a subscriber who is unexpectedly abroad may be prevented from using an international data plan because they have not requested to unlock their device. Or a consumer who has moved to a new area with poor service from their current provider may be prevented from finding new, more-reliable service due to the status of their locked device. In these examples, of which there are many more, consumers are harmed by the status quo. An unlocking requirement will enhance transparency by creating just one industry standard policy; and implementation of the new requirement will help to increase transparency further as each subscriber should receive notice of the new 60-day framework in their plan documents, service contracts, online portals, and on all media outlets. We believe that notice is important for enhancing transparency and that such notice is consistent with the CTIA Unlocking Commitments.²⁰ A consistent framework and consistent messaging of the proposed unlocking requirement is important for consumers to prevent them from harm. And furthermore, automatic unlocking is important, as it will benefit consumers by removing the extraneous step of contacting the provider to have the device unlocked. Automatic unlocking also addresses the potential harms of a carrier having to be involved in unlocking after a contract ends and reduces the overall workload and call-volume for a carrier in responding to customer requests. In these cases, even if the consumer is unaware of

²⁰ See CTIA, *Consumer Code for Wireless Service*, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited Sept. 6, 2024).

the phone auto-unlocking after 60 days, they can freely switch carriers at the end of the contract without jumping through hoops.

Second, the Commission’s proposal will protect consumers by giving them the ability to choose new devices and switch providers at will. As Ofcom has reported, “more than a third of people who decided against switching said having to get a handset unlocked put them off changing provider.”²¹ We recognize that consumer choice is vital, and consumer advocates have long suggested 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.”²² Unlocking devices after a reasonable time will enable consumers to do what is in their best interest: to switch their phone numbers to new plans based on their needs and budget. It also makes technological sense to make switching carrier services easier in order to keep up with the new ease of switching carriers enabled by developments in ESIMs. As T-Mobile recently conceded, an unlocking requirement “will make it easier for Mint Mobile and Ultra Mobile customers to switch service providers...”²³ The proposed rules will do just that.

And third, the Commission’s proposal will protect consumers by lowering the prices that they must pay through enhancing fair competition and opening a largely-expanded secondary market for used devices. An unlocking requirement, as described above, will allow consumers to switch carriers more easily. With this ease comes increased competition between providers, as consumers have more choice and will seek out the lowest prices. Standardized, automatic

²¹ Ofcom, *Mobile companies now banned from selling locked handsets* (rel. Dec. 17, 2021, last updated Jul. 5, 2023), <https://www.ofcom.org.uk/phones-and-broadband/mobile-phones/mobile-companies-now-banned-from-selling-locked-handsets/> (last visited Sept. 5, 2024).

²² 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).

²³ *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).

unlocking of devices will also enable consumers to have more choice in regard to their devices. Consumers will be free to upgrade devices as needed, boosting the market for manufactures but, even more importantly, these same consumers will not *have* to buy new devices just to switch carriers. Consumers save by being able to switch providers without buying new devices, and at the same time resellers benefit by being able to sell second hand unlocked devices in the event that a consumer does decide to buy a new device. This will especially impact low-income consumers, as the secondary market will provide devices for sale at lower costs. This market enhancement will also have beneficial environmental impacts, since locked phones would now be sold as unlocked (and resold more easily) and will no longer contribute to the massive amounts of e-waste that is generated from device upgrades and switching.²⁴ All in all, device unlocking will result in a benefit to all communities, especially low income and other disadvantaged populations, as lower prices will be associated with plans, devices, and fees as a result of unlocking.

C. The Commission’s proposed 60-day unlocking requirement is fair and will level the regulatory constraints on mobile providers, fostering consistency among providers.

It is important also to consider the impact of the unlocking requirement on the carriers who will need to implement such policies in light of the way that locking requirements exist currently throughout the industry. The Commission correctly concludes that the proposed industry-wide 60-day unlocking requirement will “reduce regulatory asymmetries and result in more competitively neutral regulation.”²⁵ Both Verizon and T-Mobile, but not necessarily all of

²⁴ Millions of cell phones with activation locks have been scrapped completely instead of reused or recycled because of activation locks. Lucas Gutterman, *Refurbishes, repairers and recyclers call on the FCC to stop phone software locks*, PIRG (Jul. 30, 2024), <https://pirg.org/articles/refurbishers-repairers-and-recyclers-call-on-the-fcc-to-stop-phone-software-locks/> (last visited Sept. 5, 2024). While the Commission’s proposal will not solve all manufacturer device locking issues, it will help to reduce massive amounts of waste.

²⁵ *Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, Notice of Proposed Rulemaking, WT Docket No. 24-186, FCC 24-77 (rel. Jul. 19, 2024), ¶ 16.

their subsidiaries, have 60-day requirements imposed or enforceable by the Commission. Other providers have no specific requirement. The three major wireless providers have strikingly different policies. Verizon automatically unlocks pre- and post-paid devices after 60 days if fraud is not detected.²⁶ For T-Mobile, an unlocking request must be made by the consumer, and for postpaid T-Mobile devices, the device must be active for at least 40 days and fully paid off.²⁷ For AT&T, the device must also be paid in full or fully paid through its installment contract and at least 60 days must have passed since purchase.²⁸ These policies differ, and differ quite more when considering the policies for the many smaller carriers. Such inconsistent regulation hinders competition. Treating providers fairly will level the playing field for carriers, thus fostering increased competition. Especially in a world where there are fewer carriers, it is important to treat all providers equally to ensure that competition is fair and that prices respond to consumer needs. Furthermore, this will have a positive impact on smaller carriers, as they will be able to offer incentives for switching providers.

D. Unlocking is separate from a device payment installment contract and should not be contingent or related to the device payment status.

An important issue that the Commission has not considered in its Notice for Proposed Rulemaking is that of providers linking unlocking to device payment status. As noted above, two of the three major US carriers do link device payment contracts with unlocking status. We believe that the 60-day automatic unlocking requirement must be separate from phone purchase and service agreements, and the Commission should clarify as such. Without rules explicitly

²⁶ Verizon, *Device Unlocking Policies*, <https://www.verizon.com/support/device-unlocking-policy/> (last visited Sept. 5, 2024).

²⁷ T-Mobile, *Device Unlock Policy*, <https://www.t-mobile.com/responsibility/consumer-info/policies/sim-unlock-policy> (last visited Sept. 5, 2024).

²⁸ AT&T, *Get info about device unlock eligibility*, <https://www.att.com/support/article/wireless/KM1262649/> (last visited Sept. 5, 2024).

unlinking device payment status from unlocking requirements, we have concerns that carriers may find a loophole that could undermine the rules or the purpose for these rules. For example, a provider may offer a consumer a phone “discount,” which is really just an installment contract with a monthly payment described as a “discount,” that is established a non-transparent way in order to prevent consumers—who often don't recognize the difference between service contracts and device contracts—from being able to switch devices due to their locked status. In this light, an unlocking rule separate from and not dependent on payment status will also prevent consumer confusion when signing a contract for service.

We find that there is no reason why a device's unlock status must be contingent on completion of the payment contract, as these contracts are separate agreements which do not rely on the fact that a certain device is used on a particular network. They can be paid off separately and, in cases where there is a balance on a device, providers may bill for the device once service is terminated regardless of whether the device is still on the network. As such, it is a separate contract. Furthermore, there is no compelling or necessary reason to keep a phone locked until it's fully paid off, as devices are frequently sold on the installment plan even when there is a contract. The selling of locked devices harms consumers, stifles competition, and leads to vast amounts of e-waste, perpetuating the sort of problems the Commission is trying to solve.

Whatever policy the Commission adopts, carriers should be required to make clear to consumers at the point-of-sale what portion of their payment is attributable to the device, how long it will take for them to pay off the handset under the existing payment plan, and that unlocking is independent of both. If the Commission allows carriers to lock equipment pending repayment, the Commission must prohibit any prepayment penalty or other mechanism designed to discourage consumers from switching networks.

III. The Commission must consider diversity, equity, inclusion, and accessibility, as well as sustainability and the environment, as it weighs the impacts of its unlocking rules.

While the Commission considers its proposal and other commenters' viewpoints, it is critical that the Commission examines all proposals and suggestions from a lens that considers diversity, equity, inclusion, accessibility, sustainability, and the environment. Locked devices disadvantage low-income consumers the most by limiting their ability to find better or cheaper service, and by locking them in with devices or providers. Additionally, low-income consumers are more likely to need payment contracts in order to buy devices. Devices are necessities, especially for low-income communities and populations of color, as mobile devices are the only source of broadband connectivity in many homes. Requiring unlocking after 60-days, regardless of payment status, will reduce fees and costs associated with switching providers, helping low-income consumers. More generally, all consumers will save money with more secondary devices on the market. Here, sellers, too, will benefit since consumers will not be required to trade-in old devices to carriers and can opt to resell devices to third parties elsewhere. Increased competition will save consumers money. All parties, consumers and even industry, will benefit from lower prices resulting in the increases in fair competition.

An unlocking policy has environmental benefits too, as it will reduce overall e-waste through device recycling. Phone unlocking extends the life of phones, makes it easier for them to be sold and reused, thus reducing e-waste. E-waste is a growing problem in the United States and globally, where estimates find that more than 48 million tons of e-waste is produced each year—and America's share is over 14%.²⁹ E-waste contributes to toxic chemical leaching in soils and water and can be mitigated by the prioritization of device recycling over thrashing.³⁰ Locked

²⁹ iFixit, *E-waste is the Toxic Legacy of our Digital Age*, <https://www.ifixit.com/Right-to-Repair/E-waste> (last visited Sept. 5, 2024).

³⁰ *Id.*

devices (carrier-locked and activation-locked) are a major contributor to e-waste, and millions of cell phones contribute to the growing e-waste mass as devices are trashed instead of recycled.³¹ Requiring devices to be unlocked automatically will help reduce e-waste, as more devices can be recycled and reused. Further, lower income and underrepresented populations will benefit most from recycled devices, which may be used by equity programs that provide free and discounted devices to communities in need. Overall, factoring in DEIA principles is important to ensure that the rules protect disadvantaged consumers, especially in a time when a mobile device is a critical resource.

IV. Conclusion

In conclusion, the undersigned urge the Commission to move forward with its Notice of Proposed Rulemaking and establish a device unlocking requirement of no more than 60-days for the wireless industry. We support the Commission's goals of protecting consumers, increasing competition, leveling the playing field, and focusing on DEIA principles to underlie the proposed rules, and we agree with the Commission that the proposals put forth help to meet these goals. In furtherance of these goals, we ask the Commission to specifically consider requiring automatic unlocking and to consider the impact that device payment contracts could have on the Commission's proposals.

Respectfully Submitted,

/s/ Peter Gregory
Public Knowledge
1818 N Street NW, Suite 410
Washington, DC 20036

September 9, 2024

³¹ Lucas Gutterman, *Refurbishes, repairers and recyclers call on the FCC to stop phone software locks*, PIRG (Jul. 30, 2024), <https://pirg.org/articles/refurbishers-repairers-and-recyclers-call-on-the-fcc-to-stop-phone-software-locks/> (last visited Sept. 5, 2024).