

In the Matter of)
)
Service Rules for the 698-746, 747-762 and 777-) WT Docket No. 06-150
792 MHz Bands)

Released: June 25, 2019

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3. Specifically, the Commission determined that C Block licensees “will not be allowed to disable features or functionality in handsets where such action is not related to reasonable network management and protection, or compliance with applicable regulatory requirements.”⁷ As an example of the type of action that C Block licensees were prohibited from taking, the Commission stated that C Block licensees “may not ‘lock’ handsets.”⁸ The Commission noted that “[h]andset or phone ‘locking,’ ... is one practice that arguably prevents consumers from migrating otherwise technically compatible equipment from one wireless service provider to another.”⁹

B. Verizon’s Petition

4. On February 22, 2019, Verizon filed a petition asking the Commission to declare, pursuant to section 1.2 of its rules, that section 27.16(e) permits Verizon to implement a temporary, 60-day lock on the handsets it provides.¹⁰ In the alternative Verizon asks that, if the Commission declines to issue a declaratory ruling or decides that Verizon’s proposal is inconsistent with the handset locking rule, then the Commission should grant the company a partial waiver of the handset locking rule pursuant to section 1.3 of the Commission’s rules.¹¹ Verizon asserts that such temporary locking would allow it to reduce identity theft and related forms of handset fraud.¹²

5. Verizon asserts that providing handsets that are unlocked upon purchase has the “unfortunate consequence ... that it facilitates theft of these devices and may encourage identity theft by bad actors interested in fraudulently obtaining devices.”¹³ Verizon describes two types of fraud that it argues could be prevented or reduced by a temporary lock. First, Verizon claims that unlocking upon purchase allows “subscriber fraud,” with thieves using a stolen identity or other fraudulent means to obtain a new handset on a new or existing account, and then selling the device on the black market without ever having paid for it. That the phone is unlocked and can therefore be used on any network increases its value, thus facilitating or even encouraging such fraud.¹⁴ Second, Verizon asserts that unlocking handsets upon sale also facilitates “first-party fraud,” where an individual uses his or her actual identity to obtain a device, but without any intent to pay for it.¹⁵ Verizon argues that a temporary, 60-day lock on handsets will discourage both types of fraud by providing the company with time to discover the theft.

6. In arguing for a Declaratory Ruling, Verizon asserts that the terms “customer” and “configure” in 27.16(e) are ambiguous where the rule states that no C Block licensee “may disable features on handsets it provides to *customers*,” “nor *configure* handsets it provides to prohibit use of such handsets on other providers’ networks.”¹⁶ Verizon argues that, because it proposes to lock handsets for only a temporary period “until such time as it can determine whether a handset belongs to a legitimate

⁷ *Id.* at 15370-71, para. 222.

⁸ *Id.*

⁹ *Id.* at 15358, para. 190 & n.430.

¹⁰ Petition at 11-15.

¹¹ 47 CFR § 1.3; Petition at 1, 20.

¹² 47 CFR § 1.2; *see also* Petition at 1, 11.

¹³ Petition at 2.

¹⁴ Petition, Attachment A at 2, 5.

¹⁵ Petition at 2.

¹⁶ *Id.* at 11; 47 CFR § 27.16(e).

customer ... it is unclear whether the handset locking rule even applies.”¹⁷ It further argues that temporary locking should be permitted because “a temporary lock does not ‘configure handsets ... to prohibit use’ on other providers networks.”¹⁸

7. Six parties filed comments on the Petition and the National Telecommunications and Information Administration (NTIA) filed a letter expressing its views on Verizon’s requests.¹⁹ Appalachian Wireless, which leases C Block spectrum from Verizon, fully supports Verizon’s Petition.²⁰ Public Knowledge states that Verizon has met its burden of showing that the grant of a waiver is in the public interest, but that a declaratory ruling in favor of Verizon’s proposal would violate the plain text of the rule and the Commission’s clear intent in adopting the rule.²¹ Similarly, NTIA opposes Verizon’s request for declaratory ruling but supports granting a partial waiver, although it urges the Commission to narrow the scope of the specific relief requested by Verizon.²² Double Perfect, Pine Belt, RWA, and T-Mobile each oppose the grant of a waiver or the adoption of a declaratory ruling that would allow Verizon to implement its unlocking proposal.²³ They argue that the unlocking rule is clear, well-reasoned, and unambiguous and, therefore, there is no need for the Commission to issue a clarification. They also argue that Verizon has not shown that granting a waiver is in the public interest.

III. DISCUSSION

8. As a preliminary matter, we deny Verizon’s request for a declaratory ruling, because we are not persuaded that Verizon’s interpretation of section 27.16(e) is accurate. We do, however, find that the limited waiver of the unlocking requirement that Verizon requests would serve the public interest and therefore grant Verizon’s request for a partial waiver.

9. Section 1.3 of the Commission’s rules provides that the Commission may waive a rule “for good cause shown, in whole or in part, at any time.”²⁴ In order to meet the “good cause shown” standard, a petitioner must demonstrate that particular facts make strict compliance with a rule inconsistent with the public interest and that the requested relief would not undermine the policy objectives of the rule.²⁵ In this case, Verizon meets both prongs of that test.

10. First, we agree with Verizon that strict compliance with the unlocking requirement is inconsistent with the public interest because it facilitates and may even encourage fraud. The harms

¹⁷ Petition at 11.

¹⁸ *Id.*

¹⁹ Letter from Douglas W. Kinkoph, Acting Deputy Assistant Secretary for Communications and Information, US Dept. of Commerce, to Marlene Dortch, Secretary, FCC, WT Docket No. 06-150 (filed June 6, 2019) (NTIA *Ex Parte*).

²⁰ Appalachian Wireless Comments at 2.

²¹ Public Knowledge Comments at 1.

²² NTIA *Ex Parte* at 2-4.

²³ Double Perfect Comments at 1; Pine Belt Comments at 1; RWA Reply at 1-2; T-Mobile Comments at 1; *see also* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (filed May 14, 2019) (T-Mobile *Ex Parte*).

²⁴ 47 CFR § 1.3.

²⁵ *See, e.g., WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*) (holding that the FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (holding that waiver of the Commission’s rules may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question).

associated with identity theft and related forms of handset fraud are significant. As Public Knowledge observes in support of the partial waiver, device theft and identity fraud are conspicuous problems, and “ultimately consumers pay for these losses with increased prices.”²⁶ Verizon claims that the number of consumers adversely affected by identity theft has increased from an average of 4800 customers per month in 2017 to approximately 7000 per month in 2018, an increase of 46%.²⁷ Verizon indicates that handset fraud cost the company approximately \$190 million in 2018, up from approximately \$115 million in 2017, and that it lost almost 210,000 devices in 2018, up from approximately 155,000 devices in 2017.²⁸ Verizon maintains that these trends continue, as handset fraud cost it \$34 million in January 2019, a 93% increase over January 2018.²⁹ Appalachian Wireless also indicates that it has experienced a substantial increase in device theft fraud and that this fraud has had a significant financial impact on the company.³⁰

11. Moreover, this limited waiver will not undermine the underlying policy objectives of the handset unlocking rule and will, in fact, better serve the public interest. The locking rule was adopted to enable consumers to migrate from one service provider to another on compatible networks.³¹ Allowing handsets to be locked for 60 days will not interfere significantly with this policy objective. Verizon indicates that only “a tiny fraction” of its customers port their numbers or change carriers within the first 60 days of service and that those who do change carriers usually return their handsets to Verizon within the 14-day return period.³² Accordingly, we agree with Verizon that a temporary 60-day lock will not have an impact on an appreciable number of Verizon’s customers, nor will it have a material impact on their ability to switch carriers.³³ After the expiration of the 60-day period, Verizon must automatically unlock the handsets at issue here regardless of whether: (1) the customer asks for the handset to be unlocked, or (2) the handset is fully paid off. Thus, at the end of the initial 60 days, the unlocking rule will operate just as it does now, and Verizon’s customers will be able to use their unlocked handsets on other technologically compatible networks. The only exception to the rule will be that Verizon will not have to automatically unlock handsets that it determines within the 60-day period to have been purchased through fraud. As a result, granting the 60-day waiver request is consistent with the policy underlying the unlocking rule, and the rule will continue to promote competition in the handset market place. Indeed, grant of the requested waiver will actually promote the public interest by helping Verizon protect against device theft and fraud. This relief will reduce the black-market value of devices acquired through fraud and thereby reduce the incentive to commit fraud to acquire the devices in the first place.

12. We find unpersuasive the arguments of Double Perfect and RWA that grant of the waiver would not eliminate concerns about identity theft or other fraud. RWA argues that Verizon fails to explain the degree to which a waiver would “improve fraud policing efforts and permanently remove fraudsters from the equation.”³⁴ In addition, Double Perfect and RWA both state that grant of the waiver would not remove concerns for identify theft and other fraud in connection with Verizon’s services, given

²⁶ Public Knowledge Comments at 2, 7.

²⁷ Petition at 9.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Appalachian Wireless Comments at 2, 4.

³¹ See *700 MHz Second Report and Order*, 22 FCC Rcd at 15362, paras. 198, 203; see also Pine Belt Comments at 4, 5-6; Public Knowledge Comments at 4.

³² Petition at 4, 15.

³³ *Id.*

³⁴ RWA Comments at 5-6.

that such practices would remain available through data brokers and recurring data breaches that have affected other companies.³⁵ As explained above, however, we reject these arguments because we find that a limited waiver of the handset unlocking rule will provide Verizon with the tools to reduce identity theft and fraud without imposing an undue burden on Verizon's customers.

13. We likewise reject T-Mobile's argument that granting Verizon relief requires a rulemaking proceeding because it will "eviscerate" the unlocking rule and because Verizon is the only major carrier subject to the rule.³⁶ The unlocking rule remains fully in place except for the narrowly time-limited locking permitted here for the important reasons laid out above.

14. We also find unconvincing Pine Belt's and RWA's argument that granting Verizon's waiver request will hurt rural wireless consumers and rural carriers as they try to compete with large carriers.³⁷ These commenters maintain that rural consumers buy the latest handsets from Verizon and then use these handsets on rural wireless networks that may have better service than Verizon's network in these areas. We agree with Verizon's response that cases in which Verizon's customers port their numbers or change carriers within the first 60 days of service are "exceedingly rare."³⁸ Moreover, there is no need for rural customers to acquire handsets through Verizon if they intend to use another carrier's service; they can simply buy a handset directly from the manufacturer or through another retail outlet.³⁹ We find it highly unlikely that many consumers would instead go through the process of signing up for service with Verizon to obtain a device, only to immediately switch service to a rural carrier after paying for the device in full.⁴⁰ In any event, Verizon remains free to sell unlocked handsets to a consumer who wants to pay in full upon purchase.

15. Finally, NTIA generally supports grant of a partial waiver but suggests that we narrow its scope to permit device locking only 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 that we require Verizon to provide "a simple and effective way to request accelerated unlocking."⁴¹ NTIA suggests, for example, that we consider requiring Verizon to unlock its handsets as soon as the first payment is successfully processed or immediately 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"⁴² Verizon, however, responds that 60 days is the minimum necessary to accomplish the purpose of the temporary unlocking, in order to allow for the amount of time it takes to receive and process customer payments, to identify fraud via checks from accounts with insufficient funds or stolen debit or credit cards, and to obtain information

³⁵ Double Perfect Comments at 1-3; RWA Comments at 5-6.

³⁶ T-Mobile Comments at 4-5; *see also* Double Perfect Reply at 6; *Verilink Corporation's Petition for Rulemaking to Amend the Commission's Part 68 Rules to Authorize Regulated Carriers to Provide Certain Line Build Out Functionality as a Part of Regulated Network Equipment on Customer Premises*, RM-8158, Memorandum Opinion and Order, 10 FCC Rcd 8914, 8916, para. 6 (CCB 1995) (noting that the waiver process should not be used to "effectively circumvent the Commission's rulemaking function").

³⁷ Pine Belt Comments at 5-7 (unlocking rule allows consumers to purchase the latest handsets from Verizon and then immediately switch to a small, rural carrier that has better service where they live than Verizon); RWA Reply at 7 (rural consumers want to buy the newest handsets but use them on a rural carrier's network).

³⁸ Petition at 4.

³⁹ *Id.* at 5.

⁴⁰ *Id.* at 4-5.

⁴¹ NTIA *Ex Parte* at 2.

⁴² *Id.* at 3.

about transactions through indirect agents or national retailers.⁴³ We agree with Verizon's assessment that the "added complexity of specifying exceptions" to 60-day waiver of the unlocking rule, as suggested by NTIA, would not "provide offsetting consumer benefits."⁴⁴ Further, as to the accelerated unlocking point, Verizon states that it "will review any unique or unusual circumstances with the customer on a case-by-case basis"⁴⁵ Given the complexities of implementing NTIA's more granular proposal, we find that Verizon's case-by-case review is sufficient to address any concerns about customers' requests for expedited unlocking. As stated above, we find that the limited 60-day waiver that we are granting herein is a reasonable and balanced approach that will help Verizon combat device theft and fraud and will have only a minor impact on consumers.

IV. ORDERING CLAUSE

16. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.131, 0.331, and 1.2 of the Commission's rules, 47 CFR §§ 0.131, 0.331, 1.2, that Verizon's request for a declaratory ruling IS DENIED

17. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.131, 0.331, and 1.3 of the Commission's rules, 47 CFR §§ 0.131, 0.331, 1.3, that Verizon's request for a partial waiver of Section 27.16(e) of the Commission's rules, 47 CFR § 27.16(e), IS GRANTED to the extent specified herein.

FEDERAL COMMUNICATIONS COMMISSION

Donald Stockdale
Chief, Wireless Telecommunications Bureau

⁴³ Letter from William H. Johnson, Senior Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150, at 2-3 (filed June 12, 2019).

⁴⁴ *Id.* at 4.

⁴⁵ *Id.*