

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF INCOMPAS**

INCOMPAS, by the undersigned, respectfully submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Notice of Proposed Rulemaking that seeks input as the Commission explores the use of handset unlocking policies as a means to improve consumer choice and flexibility and to enhance competition across the mobile wireless marketplace as part of the Commission’s ongoing efforts to carry out its statutory obligations to ensure a competitive marketplace for mobile wireless services.<sup>1</sup>

**I. Introduction and Summary**

INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace. We represent fixed broadband companies, including small local fiber and fixed wireless providers, that provide residential broadband internet access service (“BIAS”), as well as other mass-market services, such as video programming distribution and voice services in urban, suburban, and rural areas. We also represent companies that are

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<sup>1</sup> See *Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, Notice of Proposed Rulemaking, WT Docket No. 24-186 (rel. July 19, 2024) (“NPRM”).

providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes; regional fiber providers; transit and backbone providers that carry broadband and internet traffic; and online video distributors (“OVDs”), which offer video programming over BIAS to consumers, in addition to other online content, such as social media, streaming, cloud services, and voice services.

Competition in the marketplace is the leading driver for more affordability, innovation, speed, and better customer service, and INCOMPAS’ members are at the forefront of helping Americans get this type of service. As such, INCOMPAS supports the Commission’s proposal for a uniform 60-day unlocking policy for all mobile wireless carriers as it will promote competition and consumer choice in the mobile wireless market.

## **II. The Commission’s Handset Unlocking Proposal Will Promote Competition in the Mobile Wireless Market.**

In the *NPRM*, the Commission proposes to “require all mobile wireless service providers to unlock handsets 60 days after a consumer’s handset is activated with the provider, unless within the 60-day period the service provider determines the handset was purchased through fraud.”<sup>2</sup> INCOMPAS supports this proposal. Adopting a uniform handset unlocking policy that applies to all mobile wireless providers will empower consumers and promote competition in the marketplace, especially among smaller and/or emerging mobile providers.

As explained by EchoStar and several public interest organizations, the practice of locking phones can reduce wireless competition and consumer choice by making it more difficult for consumers to change carriers and also by reducing the number of devices available on the

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<sup>2</sup> *NPRM*, at para. 12.

secondary market.<sup>3</sup> Indeed, smaller carriers, new entrants, and MVNOs in particular may be disadvantaged in the marketplace due to a lack of handset availability.<sup>4</sup> And the lack of uniform, industry-wide unlocking rules means that consumers must navigate a varied set of requirements when they seek to unlock their phones, which hinders wireless competition. As the Commission found in the Verizon/TracFone merger, “[t]he reduced unlocking period for TracFone devices (from 12 months to 60 days) will reduce barriers to migrating between wireless providers.”<sup>5</sup>

Unlocking requirements allow consumers to access alternative services, which incentivizes carriers to compete on their core business—prices, plans, and service. If customers can switch networks more easily, larger carriers are incentivized to compete for customers, rather than locking them into a plan that they cannot easily get out of, and smaller and/or emerging providers can better compete for customers. As such, a uniform unlocking policy will make switching providers easier for consumers and will lead to more competition in the wireless market by making market entry and expansion more attainable for smaller providers.

### **III. The Commission’s Handset Unlocking Proposal Will Benefit Consumers in the Mobile Wireless Market.**

The practice of locking phones can reduce wireless competition by making it more difficult for consumers to change carriers. As explained by EchoStar and several public interest organizations, locking policies hurt consumers and prevent competitive carriers with superior

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<sup>3</sup> See Ex Parte Letter of Alison Minea, EchoStar Corporation, *Ex Parte Presentation in Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, WT Docket No. 24-186 et al. (fil. Aug. 14, 2024) (“*August 14 Ex Parte Letter*”), at 3.

<sup>4</sup> See *id.*

<sup>5</sup> *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, at para. 125 (rel. Nov. 22, 2021).

offerings from having a fair chance to attract new customers.<sup>6</sup> Unlocking requirements will therefore empower consumers by enabling them to choose the wireless plan that best meets their needs and budget.

The Commission's current policy reflects a patchwork of conditions imposed in the context of approving MVNO acquisitions and an auction licensing condition. Having these various unlocking rules across the different carriers can be confusing for consumers and further fragment the consumer protections related to handset locking. For example, there are currently different unlocking rules between Verizon (automatic 60-day unlocking period) and T-Mobile (unlocking conditions for customers acquired from Mint and Ultra), and other carriers have locking periods that range in duration.<sup>7</sup> This piecemeal policymaking in the context of acquisitions and spectrum auctions has yielded asymmetric regulation.<sup>8</sup> And the patchwork of unlocking policies is likely to become even more uncertain as greater consolidation is being proposed, such as the proposed T-Mobile/UScellular merger.<sup>9</sup> As such, uniform, industrywide requirements for all providers means less customer confusion and more consumer protection. These same principles of a uniform unlocking policy should apply in the prepaid and postpaid market because there should be the same rules no matter what type of consumer you are.

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<sup>6</sup> See *August 14 Ex Parte Letter*, at 2.

<sup>7</sup> See *Ex Part Letter of OTI, Consumer Reports, Verizon, Public Knowledge, Benton Institute for Broadband and Society, EchoStar, GN Docket 24-119* (fil. June 25, 2024), at 1.

<sup>8</sup> See *id.*

<sup>9</sup> See T-Mobile Website, *T-Mobile to Acquire UScellular Wireless Operations and Deliver Exceptional Value, a Superior 5G Experience and Unparalleled Benefits to Millions of Customers* (May 28, 2024), available at <https://www.t-mobile.com/news/business/uscellular-acquisition-operations-assets>.

Moreover, in the *NPRM*, the Commission seeks comment on the impact of a 60-day unlocking requirement in connection with service providers' incentives to offer discounted handsets for various service plans.<sup>10</sup> A uniform unlocking requirement will still allow for carriers to offer discounted handsets. Carriers that still want to offer subsidized devices or payment plans are free to do so and can look to contractual provisions to ensure that devices are paid for without resorting to locking down the phones.<sup>11</sup> For example, as a result of Commission-imposed unlocking conditions, Verizon must now automatically unlock a customer's handset after a 60-day period,<sup>12</sup> and Verizon continues to offer discounted devices under this requirement. As such, a carrier can still offer the same deals, discounts, and plans that it would without an unlocking requirement by simply separating the unlocking requirements from its device contracts.

**IV. The Commission's Transition Period Should be Reasonable for Providers and Consumers and Should Account for Smaller Providers that Suspect Fraudulent Device Purchases.**

In the *NPRM*, the Commission seeks comment on an appropriate transition period and on any implementation issues that it should consider if it were to adopt a 60-day unlocking requirement.<sup>13</sup> Below are responses to the Commission's various questions.

Addressing Handset Fraud: The Commission seeks comment on its proposal to require all mobile wireless service providers to 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. INCOMPAS supports this proposal; however, there are legitimate

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<sup>10</sup> See *NPRM*, at para. 26.

<sup>11</sup> See *August 14 Ex Parte Letter*, at 2.

<sup>12</sup> See *NPRM*, at paras. 6-8.

<sup>13</sup> See *id.* at para. 29.

circumstances where smaller providers may not be able to fully detect and determine that a handset was purchased through fraud within 60 days, especially since these providers do not have as many resources as the largest nationwide providers. As such, INCOMPAS proposes that the standard for the exception to the 60-day unlocking requirement be lowered for smaller providers (e.g. those with less than 2% of the national wireless market) from “determines” to “reasonably suspects” that the handset was purchased through fraud. In addition, we propose that the exception for fraud for these types of providers be 90 days—rather than 60 days—because it will take more resources for these providers to detect and deal with a handset purchased through fraud.

Transition Period: The Commission seeks comment on whether an unlocking requirement should become effective upon publication of the Order in the Federal Register or whether Commission should provide for a longer transition period.<sup>14</sup> INCOMPAS suggests that the new unlocking requirement become effective 30 days after publication in the Federal Register as this is a common timeline for new rules at the Commission and provides providers and the public with sufficient notice.

Automatic Locking: The Commission seeks comment on whether it should require automatic unlocking for handsets that can be unlocked automatically.<sup>15</sup> INCOMPAS supports automatic unlocking as it creates a more seamless customer experience and saves time and money for providers.

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<sup>14</sup> *See id.*

<sup>15</sup> *See id.*

Prospective Policy: The Commission proposes that the handset unlocking requirement would apply to all mobile wireless service providers prospectively.<sup>16</sup> INCOMPAS agrees with the proposal that the unlocking requirement should apply to all mobile wireless service providers prospectively and would require them to unlock all handsets that are activated on their networks after 60 days.

Customer Notification: The Commission seeks comment on whether and how customers should be informed about a service provider's unlocking policies.<sup>17</sup> Consumers today can check their lock status by looking at the settings on their phone. Another potential way to inform customers is through an automated email that must be sent to the customer once the unlocking process is complete.

## **V. Conclusion**

For the reasons stated herein, INCOMPAS urges the Commission to consider and adopt the recommendations in the above comments to further enable and promote competition and consumer choice in the mobile wireless marketplace.

Respectfully submitted,

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<sup>16</sup> *See id.* at para. 22.

<sup>17</sup> *See id.* at para. 31.