

**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)
)

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by the undersigned, respectfully submits these reply comments in response to comments filed in the record regarding 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.¹

I. There is Overwhelming Agreement in the Record that a Uniform Unlocking Requirement Promotes Competition and Benefits Consumers.

As explained in INCOMPAS’ comments, the Commission’s handset unlocking proposal will promote competition and benefit consumers in the mobile wireless market.² And there is overwhelming support in the record in this proceeding from various organizations and carriers that all agree on the importance of a uniform unlocking requirement and its benefits to

¹ 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).

² See INCOMPAS Comments, WT Docket No. 24-186 (fil. Sept. 9, 2024), at 2-5. Unless stated otherwise, all comments cited hereafter were filed in this proceeding.

competition and consumers. In fact, even among commenters that disagree on what the exact timeline of an unlocking policy should look like, there is agreement on the underlying importance of a uniform mobile handset unlocking requirement.

For example, while Verizon, Comcast, and NCTA do not agree on a uniform 60-day policy, they all support and acknowledge the benefits of a uniform unlocking policy:

- Verizon “supports the Commission’s proposal to adopt a uniform approach to unlocking policies for all wireless providers. A uniform regime that allows providers to lock postpaid and prepaid devices for a reasonable time, with automatic unlocking after that time, will benefit consumers and competition.”³ Moreover, “competition will benefit because, as the Commission has correctly recognized, reducing regulatory asymmetries creates an equal playing field that fosters increased competition.”⁴
- According to Comcast, “[b]ased on such competitive and consumer benefits, Comcast supports adoption of an industry-wide automatic handset unlocking requirement.”⁵ Comcast acknowledges the importance of a uniform unlocking period for smaller carriers because as a newer entrant, Xfinity Mobile—Comcast’s mobile virtual network operator (“MVNO”) offering—“also stands to benefit from any initiative that facilitates wireless customers’ ability to switch providers.”⁶
- As NCTA explains, “[c]onsumers and competition would benefit from an appropriately tailored automatic handset unlocking requirement that applies to all mobile wireless providers. A uniform, automatic handset unlocking requirement would make it easier for consumers to switch providers in response to changes in market prices, service characteristics, and consumers’ circumstances and needs.”⁷

Indeed, the majority of commenters in the record support the FCC’s proposal and acknowledge the benefits it would have for competition and consumer choice in the wireless market. For example:

³ Verizon Comments, at 1.

⁴ *Id.*

⁵ Comcast Comments, at 4.

⁶ *Id.* at 1.

⁷ NCTA Comments, at 2.

- According to the City of Portland, “mobile phone service providers have widely disparate unlocking requirements of the devices they sell, leading to customer confusion.”⁸ However, a standardized set of mobile device unlocking requirements will “abate this confusion” and “expand customer flexibility in being able to switch providers.”⁹
- EchoStar, which is a competitor in the mobile wireless market, supports the proposed unlocking requirement and agrees with the Commission that the proposed unlocking requirement will, among other things, “reduce barriers for consumers seeking to switch providers and therefore promote competition and the public interest.”¹⁰ As EchoStar explains, “today consumers seeking to switch wireless providers must navigate a patchwork of unlocking policies and procedures that vary significantly by provider,” which harms consumers and competition. As such “a simple, uniform unlocking policy across all carriers will alleviate the burden of navigating this arbitrarily confusing landscape.”¹¹
- As the Hispanic Leadership Fund highlights, the FCC’s “decision to explore the use of handset unlocking policies is an opportunity to enhance competition via increased consumer choice.”¹²
- Multicultural Media, Telecom and Internet Council applauds the Commission’s proposal as it “would benefit consumers and enhance competition in the wireless marketplace, especially for communities of color.”¹³
- As Public Knowledge, Consumer Reports, and Open Technology Institute at New America explain, “the FCC’s proposed unlocking requirement will protect consumers by creating a standard that is transparent and easy to understand” as well as “giv[e] them the ability to choose new devices and switch providers at will.”¹⁴ Moreover, “[t]reating providers fairly will level the playing field for carriers, thus fostering

⁸ City of Portland Comments, at 2.

⁹ *Id.*

¹⁰ EchoStar Comments, at 2.

¹¹ *Id.*

¹² Hispanic Leadership Fund Comments, at 1.

¹³ Multicultural Media, Telecom and Internet Council Comments, at 1.

¹⁴ Public Knowledge, Consumer Reports, and Open Technology Institute at New America Comments, at 5-6.

increased competition.”¹⁵

- The Rural Wireless Association fully supports the Commission’s proposal and agrees that “the proposed rule will improve consumer choice and promote competition among mobile wireless service providers.”¹⁶
- The United States-Mexico Chamber of Commerce also supports the Commission’s proposal and considers it of “great importance that the unlocking policy that derives from this proceeding establishes industry-wide standards for the benefit of all wireless customers, and to allow for fair competition among companies that provide mobile services.”¹⁷

As explained by INCOMPAS and others in the record, the current practice of locking phones, and the variation of unlocking policies among carriers, reduces 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 secondary market.¹⁸ The varying unlocking policies among carriers is confusing and can be harmful to consumers and newer entrants in the market. The record supports the Commission’s proposal and the importance of a uniform, symmetric unlocking policy in order to promote competition and consumer choice in the wireless market.

Moreover, a handful of commenters in the record argue that an unlocking policy should exclude certain types of handsets.¹⁹ However, a uniform unlocking policy should apply to all

¹⁵ *Id.* at 8.

¹⁶ Rural Wireless Association Comments, at 2.

¹⁷ United States-Mexico Chamber of Commerce Comments, at 1.

¹⁸ *See* INCOMPAS Comments, at 2-3.

¹⁹ *See* T-Mobile Comments, at 25 (“Any resulting rule accordingly should exempt enterprise or non-consumer handsets.”); *see* Association of Women’s Business Centers, at 1-2 (“we urge the FCC to consider excluding enterprise or non-consumer handsets from the unlocking requirement.”); *see also* Competitive Carriers Association, at 11 (enterprise or non-consumer devices should be “excluded from the unlocking requirement.”).

handsets as the benefits to competition and consumer choice remain. As explained by the Cloud Communications Alliance, this includes multi-SIM and eSIM devices as mobile device locking policies and practices also undermine competition in the business sector.²⁰

II. The Mobile Wireless Market is Not Sufficiently Competitive.

Several commenters in the proceeding that do not support the Commission’s proposal for an unlocking requirement claim that such a policy is unnecessary because the mobile wireless market is currently competitive.²¹ However, in reality, the mobile wireless market is dominated by three incumbent carriers and is not sufficiently competitive.

As explained by EchoStar in the Commission’s most recent Communications Marketplace Report proceeding, “[t]oday’s wireless marketplace is dominated by three entrenched nationwide facilities-based carriers.”²² One main reason is that “AT&T, T-Mobile, and Verizon hold the vast majority of the nation’s supply of suitable and available spectrum. This spectrum concentration makes it easier for them to amass market share to the detriment of consumers, competition, and innovation.”²³ In a market with only three dominant providers, helping competitive providers compete is critical to expand the market, promote competition, and increase consumer choice. As explained by Public Knowledge, Consumer Reports, and Open

²⁰ *See generally* Cloud Communications Alliance Comments.

²¹ *See, e.g.*, AT&T Comments, at 29 (“What the Commission should not do is risk the tremendous benefits to consumers available in today’s competitive wireless marketplace for the sake of an unneeded handset unlocking rule.”); *see e.g.*, T-Mobile Comments, at 1 (“the proposed handset unlocking rule is unnecessary as competition and consumer choice are thriving under the existing legal framework.”).

²² EchoStar Comments, *Communications Marketplace Report*, GN Docket No. 24-119 (fil. June 6, 2024), at 2.

²³ *Id.*

Technology Institute, “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.”²⁴The Commission’s proposal for a uniform device unlocking policy is key to the goals of promoting competition and enabling consumers to more easily switch among providers especially in light of the concentrated state of the current mobile wireless market.

III. Conclusion

For the reasons stated herein, INCOMPAS supports the Commission’s efforts to further enable and promote competition and consumer choice in the mobile wireless marketplace through the implementation of uniform handset unlocking policies.

Respectfully submitted,

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September 23, 2024

²⁴ Public Knowledge, Consumer Reports, and Open Technology Institute at New America Comments, at 8.