

**FCC FACT SHEET\***  
**Promoting Consumer Choice and Wireless Competition  
Through Handset Unlocking Requirements and Policies**  
**Notice of Proposed Rulemaking**  
WT Docket No. 24-186

**Background:** Locking software is intended to ensure that mobile phones, or handsets, will remain active on the network of the provider that sold the device, especially when the provider discounts or subsidizes the phone in exchange for a service contract that covers a certain period of time or amount of usage. Unlocked mobile phones allow consumers the freedom to take their existing phones and switch from one mobile wireless service provider to another more easily, as long as the consumer's phone is compatible with the new provider's wireless network. Over the past two decades, the Commission has adopted mobile phone unlocking requirements for particular providers in specific circumstances.

**What the NPRM would do:**

- Explores the use of mobile phone unlocking policies as a means to improve consumer choice and flexibility and to enhance competition across the mobile wireless marketplace. It tentatively concludes that adopting a broadly applicable set of unlocking requirements for all mobile wireless service providers would serve the public interest and specifically proposes to require all mobile wireless service providers to unlock mobile phones 60 days after it is activated with the provider, unless within the 60-day period the service provider determines the phone was purchased through fraud.
- Observes several factors supporting its 60-day mobile phone unlocking proposal:
  - A uniform unlocking policy is likely to increase the information available to consumers, reduce possible consumer confusion, and improve consumer choice.
  - Reducing the locking period should increase a consumer's ability to change providers based on price, service characteristics, new technology, or changes in a consumer's circumstances or needs, which should increase consumer welfare.
  - A shorter locking period can increase competition among wireless providers, which can lead to lower prices, better service characteristics, and improved service performance.
  - Adopting an unlocking rule would result in all wireless providers facing the same requirements, which should result in more competitively neutral regulation.
- Seeks comment on whether the 60-day unlocking requirement should be applied only prospectively to avoid interfering with current contractual arrangements between service providers and consumers.
- Seeks comment on the impact of a 60-day unlocking requirement on service providers' incentives to offer discounted handsets for postpaid and prepaid service plans, as well as whether an unlocking requirement would benefit smaller providers, new entrants, and Mobile Virtual Network Operators (MVNOs) by increasing the number of mobile phones potentially available on the secondary market.
- Seeks comment on an appropriate transition period and on any implementation issues that the Commission should consider if it adopts a 60-day unlocking requirement.

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\* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WT Docket No. 24-186, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

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

NOTICE OF PROPOSED RULEMAKING\*

Adopted: []

Released: []

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. With this Notice of Proposed Rulemaking (Notice), we explore 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. Handset unlocking, which allows consumers to take their existing handset with them when they switch from one mobile wireless service provider to another, can be an important tool in facilitating competition and reducing barriers for consumers to switch between wireless providers. Over the past two decades, the Commission has adopted handset unlocking requirements for particular providers in specific circumstances, upon finding that doing so was justified in each of those instances. In this Notice, we tentatively conclude that adopting a broadly applicable set of handset unlocking requirements for all

\* This document has been circulated for tentative consideration by the Commission at its July 18, 2024 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 See, e.g., 47 U.S.C. § 151 (stating that one of the purposes for the creation of the FCC is to foster “a rapid, efficient . . . radio communication service with adequate facilities at reasonable charges . . .”); 47 U.S.C. § 201 (requiring that “[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable . . .”); 47 U.S.C. § 303 (authorizing the Commission, “as public interest, convenience, or necessity requires,” to “(b) [p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class; . . . (g) . . . generally encourage the larger and more effective use of radio in the public interest; . . . (r) make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of [the Act]”); 47 U.S.C. §316 (authorizing the Commission to adopt new conditions on existing licenses if it determines that such action “will promote the public interest, convenience, and necessity”).

mobile wireless service providers would serve the public interest, and we seek comment on which requirements would best facilitate competition and consumer choice. Specifically, we propose 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.

## II. BACKGROUND

2. Unlocking a handset allows consumers to take their existing handset with them when they switch from one mobile wireless service provider to another, as long as the consumer's handset is compatible with the new provider's wireless network.<sup>2</sup> In some instances, handsets are sold with discounts in exchange for a required service plan commitment, often months or years in length, or pursuant to a handset financing plan.<sup>3</sup> Locking software generally is intended to ensure that handsets will remain active on the network of the provider that sold the handset (with a discount or with a handset installment plan) for a certain period of time or amount of usage.<sup>4</sup> A locked handset cannot be used on a competing service provider's compatible network without the handset first being unlocked.<sup>5</sup> The unlocking process varies by handset and by service provider.<sup>6</sup> A service provider may automatically unlock a handset after certain conditions are met, send instructions to customers on how to unlock a handset upon request, or complete the unlocking process in-store.<sup>7</sup> The Commission has found that "[m]obile device unlocking facilitates consumer choice among mobile broadband providers by freeing consumers from having to replace their handset to use another network, thereby reducing switching costs."<sup>8</sup>

3. The wireless industry has established six general handset unlocking commitments as part of the CTIA Consumer Code for Wireless Service (CTIA Unlocking Commitments).<sup>9</sup> Wireless service

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<sup>2</sup> FCC, Wireless Telecommunications Bureau, Cell Phone Unlocking, <https://www.fcc.gov/general/cell-phone-unlocking> (last visited June 17, 2024) (explaining cell phone unlocking) (WTB Unlocking Guide).

<sup>3</sup> WTB Unlocking Guide.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* Certain types of handsets can be unlocked remotely through a software push and other types of handsets must be unlocked using some other means. For instance, Apple handsets can be unlocked remotely with a software push while Android handsets cannot be unlocked in this manner. See 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) (*OTI Ex Parte*); *Application of Verizon Communications Inc and America Movil, S.A.B. de C.V. for Consent To Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17039-41, paras. 122-25 (2021) (*Verizon-TracFone Order*).

<sup>8</sup> *In the Matter of Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, 37 FCC Rcd 15514, 15608, para. 128 (2022) (*2022 Communications Marketplace Report*). In addition, NTIA has previously filed in support of adopting handset unlocking requirements. See Petition for Rulemaking of the National Telecommunications and Information Administration, at 1 (filed Sept. 17, 2013); Letter from Douglas W. Kinkoph, Acting Deputy Assistant Secretary for Communications and Information, NTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150, at 2-3 (filed June 6, 2019).

<sup>9</sup> See CTIA, Consumer Code for Wireless Service, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited June 17, 2024). The wireless industry established these voluntary unlocking standards in 2013 after negotiating with the Commission. See Letter from Tom Wheeler, Chairman, FCC, to Steve Largent, President and CEO, CTIA (Nov. 14, 2013), <https://docs.fcc.gov/public/attachments/DOC-324166A1.pdf> (noting the FCC staff's work with CTIA to update the consumer code and urging prompt adoption of an unlocking policy in the CTIA Consumer Code); Letter from Steve Largent, President and CEO, CTIA, to Chairman Wheeler and Commissioners, FCC (Dec. 12, 2013),

(continued....)

providers, such as AT&T, T-Mobile, and Verizon, who have voluntarily agreed to abide by these commitments will unlock handsets in a timely manner when they receive a request from a consumer to unlock a handset once certain conditions are met. These commitments assist consumers by enhancing transparency and disclosure of service provider locking policies. These commitments cover: (1) disclosure; (2) postpaid unlocking policy; (3) prepaid unlocking policy; (4) notice; (5) response time; and (6) deployed personnel unlocking policy.<sup>10</sup> In summary, service providers who abide by these commitments unlock handsets one year after activation for prepaid, and after fulfillment of a service contract, handset financing plan, or payment of an early termination fee for postpaid.

4. In addition to the industry's voluntary unlocking standards, certain wireless service providers, as discussed below, are subject to unlocking requirements as a result of rules specific to certain frequency bands or to merger commitments.<sup>11</sup> These government-imposed unlocking requirements are more stringent than the industry's voluntary unlocking standards. In addition, the providers subject to these requirements could face possible enforcement action if they were found to be out of compliance.<sup>12</sup>

5. Section 27.16(e) of the Commission's rules prohibits the locking of handsets that operate on the 700 MHz C Block frequency bands.<sup>13</sup> Under this rule, no C Block licensee "may disable features on handsets it provides to customers, to the extent such features are compliant with the licensee's standards . . . nor configure handsets it provides to prohibit use of such handsets on other providers"

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<https://api.ctia.org/docs/default-source/fcc-filings/ctia-letter-on-unlocking.pdf> (announcing certain mobile providers' adoption of voluntary unlocking standards and CTIA's recommendation to add them to the CTIA Consumer Code).

<sup>10</sup> Specifically, these unlocking commitments provide as follows. First, carriers adopting the commitments will post on their websites their policies for post-paid and pre-paid mobile wireless device unlocking. Second, for post-paid service agreements, carriers "upon request will unlock mobile wireless devices or provide the necessary information to unlock their devices for their customers . . . after the fulfillment of the applicable postpaid service contract, device financing plan, or payment of applicable early termination fee." Third, for prepaid plans, carriers "upon request, will unlock prepaid mobile wireless devices no later than one year after initial activation, consistent with reasonable time, payment or usage requirements." Fourth, carriers will notify customers "that their devices are eligible for unlocking at the time when their devices are eligible for unlocking or automatically unlock devices remotely when devices are eligible for unlocking, without additional fee." Fifth, carriers will unlock eligible mobile devices or initiate a request to the original equipment manufacturer to unlock an eligible device within two business days of receiving a request. Finally, carriers "will unlock mobile wireless devices for deployed military personnel who are customers in good standing upon provision of deployment papers." See CTIA, Consumer Code for Wireless Service, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last visited June 17, 2024).

<sup>11</sup> In addition, we note that handset unlocking requirements also apply to Eligible Telecommunications Carriers (ETCs) that demonstrate their compliance with the Commission's universal service support rules by certifying their compliance with CTIA's Consumer Code for Wireless Service, including the Code's handset unlocking standards. All ETCs requesting federal universal service support must annually file reports providing financial and operational information, which is used to validate support disbursed to ETCs from the universal service support mechanisms. See 47 U.S.C. § 254; 47 CFR §§ 54.313, 54.422. ETCs that receive low-income support are required to certify that they comply with applicable service quality and consumer protection standards. See 47 U.S.C. §§ 54.202(a)(3), 54.422(b)(3). The rules provide that ETCs may certify their compliance with the CTIA Consumer Code for Wireless Service in lieu of otherwise demonstrating how they meet these standards. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6383, para. 28 (2005); 47 CFR § 54.202(a)(3); see also *2022 Communications Marketplace Report*, 37 FCC Rcd at 15609, para. 130 (explaining the effect of annual ETC certifications on unlocking).

<sup>12</sup> See, e.g., *Cellco Partnership d/b/a Verizon Wireless*, Order and Consent Decree, 27 FCC Rcd 8932 (EB 2012) (resolving investigation into Verizon's device locking policies by adopting a compliance plan and payment of \$1,250,000).

<sup>13</sup> 47 CFR § 27.16(e).

networks.”<sup>14</sup> The Commission adopted this rule in the 2007 700 MHz *Second Report and Order* as part of a set of “open platform” requirements imposed upon C Block licensees. 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.”<sup>15</sup> As an example of this open platform requirement, the Commission stated that C Block licensees “may not ‘lock’ handsets to prevent their transfer from one system to another.”<sup>16</sup> 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.”<sup>17</sup>

6. As one of the 700 MHz C Block licensees, Verizon must comply with this requirement. In 2019, however, the Wireless Telecommunications Bureau granted Verizon a partial waiver of this unlocking requirement to better combat identity theft and other types of handset-related fraud.<sup>18</sup> The waiver allows Verizon to lock handsets that operate on the 700 MHz C Block frequencies for 60 days from the date the handsets become active on its network.<sup>19</sup> The Bureau found that allowing handsets to be locked for 60 days to combat handset fraud would not significantly interfere with the policy objective of enabling consumers to be able to migrate from one service provider to another on compatible networks.<sup>20</sup>

7. Further, as part of the *Verizon-TracFone Order*, Verizon agreed to extend its 60-day unlocking policy to all 700 MHz C Block handsets purchased from TracFone subject to a two-year waiver of the automatic unlocking requirement to allow manual unlocking for those TracFone handsets that did not have automatic unlocking capabilities.<sup>21</sup> For 700 MHz C Block TracFone handsets that operate on its network and lack an automatic unlocking capability, Verizon agreed to provide these customers with manual means to unlock their handsets 60 days after activation.<sup>22</sup> Verizon also agreed that after a two-year period, any new 700 MHz C Block TracFone handsets that Verizon offered and that operate on its network would be capable of automatically unlocking.<sup>23</sup>

8. As a result of these Commission-imposed unlocking conditions, Verizon, after the expiration of the initial 60-day period, must automatically unlock a customer’s handset regardless of

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<sup>14</sup> 47 CFR § 27.16(e). C Block licensees *may* disable a feature on a handset if: (1) the feature “would not be compliant with published technical standards reasonably necessary for the management or protection of the licensee’s network,” or (2) disabling the feature is “required to comply with [a] statute or applicable government regulation.” *Id.* § 27.16(b).

<sup>15</sup> *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*, WT Docket 06-150, Second Report and Order, 22 FCC Rcd 15289, 15370–71, para. 222 (2007) (*700 MHz Second Report and Order*).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 15358, para. 190 n.430.

<sup>18</sup> At auction, Verizon won nine of the 12 Upper 700 MHz C Block licenses that cover the 48 contiguous states, Alaska, Hawaii, and the Gulf of Mexico. *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*, WT Docket No. 06-150, Order, 34 FCC Rcd 5134, para. 1 & n.1 (WTB 2019) (*WTB Waiver Order*).

<sup>19</sup> *Id.* at 5137, para. 11.

<sup>20</sup> *Id.*

<sup>21</sup> *Verizon-TracFone Order*, 36 FCC Rcd at 16996, para. 8. Verizon agreed to automatically unlock TracFone handsets that operate on its network that are capable of unlocking automatically 60 days after activation. *Id.* at 17040, para. 124.

<sup>22</sup> *Id.* at 17040, para. 124.

<sup>23</sup> *Id.* at 17045, para. 144.

whether: (1) the customer asks for the handset to be unlocked or (2) the handset is fully paid off.<sup>24</sup> With respect to the Verizon unlocking requirements, the Commission has stated that limiting handset locking periods reduces barriers to consumers being able to switch between wireless service providers.<sup>25</sup>

9. Similarly, T-Mobile operates under an unlocking requirement imposed as a merger condition in connection with the *T-Mobile – Sprint* merger. Under merger conditions imposed by the Department of Justice in connection with the Amended Final Judgment, T-Mobile is required to unlock prepaid handsets within a year of activation on its wireless network.<sup>26</sup> The Amended Final Judgment states that T-Mobile must “unlock prepaid mobile wireless devices no later than one (1) year after initial activation, consistent with reasonable time, payment, or usage requirements.”<sup>27</sup> With respect to postpaid handsets, the Amended Final Judgment requires T-Mobile to unlock these handsets only after a customer fulfills the term of the postpaid service contract or handset financing plan, or pays any applicable early termination fee.<sup>28</sup>

10. Further, as part of the recent *T-Mobile-Mint Mobile/Ultra Mobile Order*, T-Mobile made commitments, which were imposed as merger conditions, to implement a 60-day handset unlocking period, subject to certain limitations and exceptions, for all Mint Mobile and Ultra Mobile handsets activated on the T-Mobile network both before and after the closing of the transaction.<sup>29</sup> Handsets subject to a financing plan are not subject to this policy unless a customer pays off the handset early.<sup>30</sup> T-Mobile agreed to automatically unlock new and existing Mint Mobile and Ultra Mobile handsets that are capable of automatic unlocking or provide a means to manually unlock these handsets if they are not capable of automatic unlocking if the handsets have been activated on the T-Mobile network for at least 60 days and are not currently on a handset financing plan.<sup>31</sup> No later than 24 months after the closing of the transaction, T-Mobile will ensure that all new Mint Mobile and Ultra Mobile handsets that the company offers will be capable of automatic unlocking.<sup>32</sup>

11. With the exception of these specific government-enforced unlocking requirements, mobile wireless service providers are free to adjust their unlocking requirements, including increasing the

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<sup>24</sup> The only exception to these requirements is that Verizon does not have to automatically unlock handsets that it determines within the 60-day period to have been purchased through fraud. *WTB Waiver Order*, 34 FCC Rcd at 5137, para. 11.

<sup>25</sup> *Verizon-TracFone Order*, 36 FCC Rcd at 17041, para. 125.

<sup>26</sup> This requirement was imposed on T-Mobile as a condition of the Department of Justice’s consent to T-Mobile’s merger with Sprint. 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) (T-Mobile Amended Final Judgment).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See *Applications of T-Mobile, US Inc. and Ka’ena Corporation For Consent to Transfer Control of International Section 214 Authorizations*, GN Docket No. 23-171, Memorandum Opinion and Order, DA 24-387, at 1, 8–9, paras. 1, 18–19 (OIA/WTB Apr. 25 2024) (approving T-Mobile and Ka’ena’s applications for the transfer of control of international section 214 authorizations held by Mint Mobile, LLC and UVNV, Inc., which operates the Ultra Mobile brand, from Ka’ena to T-Mobile, subject to T-Mobile’s handset unlocking commitment, which was imposed as a condition of approval) (*T-Mobile-Mint Mobile/Ultra Mobile Order*); *OTI Ex Parte* at 1, 3–4.

<sup>30</sup> *T-Mobile-Mint Mobile/Ultra Mobile Order* at 9, 12–13, para. 19, Appx. A.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 9, 13, para. 19, Appx. A.

unlocking waiting period.<sup>33</sup> For instance, T-Mobile recently increased its locking period for one of its brands, Metro by T-Mobile, from 180 days to 365 days.<sup>34</sup>

### III. DISCUSSION

12. In this Notice, we tentatively conclude that adopting a broadly applicable set of handset unlocking requirements for all mobile wireless service providers would serve the public interest, and we seek comment on which specific requirements would best facilitate competition and consumer choice. We propose 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. We find that there are several factors favoring our proposed unlocking policy.

13. First, having a uniform unlocking policy increases market transparency. We recognize that the CTIA Unlocking Commitments require service providers to post on their websites their policies on postpaid and prepaid handset unlocking. Nonetheless, we tentatively conclude that imposing a uniform handset unlocking policy is likely to increase the information available to consumers, reduce possible consumer confusion, and improve consumer choice through improved information.

14. Second, the locking of handsets can pose a barrier to consumers' ability to switch service providers.<sup>35</sup> Reducing the period during which a provider can lock a handset should reduce switching costs and increase a consumer's ability to change providers in response to changing market prices and service characteristics, new technology, or changes in a consumer's circumstances or needs, which should increase consumer welfare. As a result, consumers will incur fewer direct costs when they do switch and will be less likely to be deterred from switching because of the locked handset.

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<sup>33</sup> In general, Verizon unlocks both prepaid and postpaid handsets after 60 days. Verizon, Device Unlocking Policies, [https://www.verizon.com/about/consumer-safety/device-unlocking-policy?cjdata=MXxOfDB8WXww&CMP=afc\\_m\\_p\\_cj\\_na\\_ot\\_2022\\_99&SID=&cjevent=a71c36f6dccb11ee83c93f190a82b82a&vendorid=CJM&PID=9230628&AID=11365093](https://www.verizon.com/about/consumer-safety/device-unlocking-policy?cjdata=MXxOfDB8WXww&CMP=afc_m_p_cj_na_ot_2022_99&SID=&cjevent=a71c36f6dccb11ee83c93f190a82b82a&vendorid=CJM&PID=9230628&AID=11365093) (last updated July 19, 2019). AT&T has a waiting period and a 60-day active service rule before it will unlock a postpaid financed handset and the handset must not be active on another AT&T account, must not have any overdue account balance, and must not have been reported as lost, stolen, or involved with fraud. AT&T Wireless, Get Info about Device Unlock Eligibility, <https://www.att.com/support/article/wireless/KM1262649/> (last updated July 25, 2023). For prepaid handsets, AT&T requires the handset to have been active for at least six months. *Id.* For eligible handsets, T-Mobile automatically and remotely unlocks the handsets within two business days if the handsets support remote unlocking, or T-Mobile sends notifications to affected customers detailing further steps for handsets that do not support automatic unlocking. T-Mobile, Device Unlock Policy, <https://www.t-mobile.com/responsibility/consumer-info/policies/sim-unlock-policy> (last visited June 17, 2024). T-Mobile defines eligible handsets as handsets: (i) sold by T-Mobile, (ii) that are not reported lost, stolen, or blocked, (iii) whose associated account is in good standing, and (iv) that otherwise satisfy all the postpaid or prepaid unlocking requirements. *Id.* Further, for postpaid plans, T-Mobile requires handsets to be active for at least 40 days, fully paid-off if financed, and the associated accounts must have no outstanding balances. *Id.* For handsets purchased using a prepaid plan, T-Mobile requires the handsets to have at least one year of active service or over \$100 in refills for accounts that are active for less than a year, with a limit of two unlocks per line each year. *Id.*

<sup>34</sup> Metro by T-Mobile Phone Unlock Policy, Unlock Eligibility Requirements, <https://www.metrobyt-mobile.com/terms-and-conditions/phone-unlock-policy> (last visited June 17, 2024) (noting that for a Metro by T-Mobile handset to be unlocked free of charge three hundred sixty-five (365) days must have passed since the handset's activation date); *compare with* <https://web.archive.org/web/20240505124743/https://www.metrobyt-mobile.com/terms-and-conditions/phone-unlock-policy> (as of May 5, 2024) (noting that for a Metro by T-Mobile handset to be unlocked free of charge one hundred and eighty (180) days must have passed since the handset's activation date).

<sup>35</sup> See e.g., *700 MHz Second Report and Order*, 22 FCC Rcd at 15358, para. 190 n.430 (stating 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”).

15. Third, by reducing switching costs and increasing consumers' ability to switch, restrictions on handset locking can increase competition among wireless providers, which can lead to lower prices, more attractive service characteristics, and improved service performance. In this regard, we note that the Commission has found that handset locking may inhibit competition by making it more difficult for consumers to switch among service providers, and, in order to encourage competition and preserve consumer choice and flexibility, it has adopted handset unlocking requirements in the context of rules for specific spectrum bands and as merger commitments.<sup>36</sup> Service providers' handset unlocking practices have also been the subject of consumer complaints and inquiries received by the Commission.<sup>37</sup>

16. Finally, to the extent the Commission adopts this proposal, this change would result in all wireless providers facing the same regulatory constraints, which should reduce regulatory asymmetries and result in more competitively neutral regulation.

17. We note that regulators in other countries have restricted or prohibited handset locking on the grounds that it limits consumer choice and reduces competition. For example, in 2017, the Canadian Radio-television and Telecommunication Commission (CRTC) required that all mobile wireless devices provided to consumers by wireless service providers must be unlocked, and for already locked devices, the providers were required to unlock the device upon request without charge.<sup>38</sup> In adopting this requirement, the CRTC found that "[un]locked devices offer more consumer choice and convenience, contribute to a decreased risk of bill shock by providing options to consumers while travelling abroad, and reduce a significant barrier to switching wireless service providers by improving device portability."<sup>39</sup> Similarly, Ofcom, the United Kingdom's telecom regulatory agency, banned the sale of locked handsets in 2020, with the ban becoming effective in December 2021.<sup>40</sup> Ofcom found, *inter alia*, that handset locking: (1) imposed costs and delays on customers seeking to unlock a device and switch providers; (2) deterred some customers from switching providers; and (3) reduced competition.<sup>41</sup> Other countries have also placed limits on the ability of wireless providers to lock customers' handsets. For example, in

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<sup>36</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15363, 15370–71, paras. 202, 222; *Verizon-TracFone Order*, 36 FCC Rcd at 17040–41, para. 124–25; *T-Mobile-Mint Mobile/Ultra Mobile Order* at 8–9, paras. 18–19; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 15-125, Eighteenth Report, 30 FCC Rcd 14515, 14610–11, para. 152 (2015) (“The ability to unlock a handset in order to activate it on another service providers network enables consumers to exercise greater choice in choosing or switching providers and lowers switching costs.”).

<sup>37</sup> Between January 1, 2015 when the Commission began tracking consumer complaints until June 2019 (the date of the *WTB Waiver Order*), the Commission received 5,300 consumer complaints about handset locking. From June 2019 to November 2021 (the date of the *Verizon-TracFone Order*), the Commission received 4,800 consumer complaints about handset locking. From November 2021 to October 2023 (the date of the *T-Mobile Amended Final Judgment*), the Commission received 6,900 consumer complaints about handset locking. From October 2023 to present, the Commission has received 3,500 consumer complaints about handset unlocking. These complaints often concern consumers' expressing frustration that they cannot switch wireless service providers because their handsets are locked to their existing wireless provider's network. See generally, FCC, Consumer Inquiries and Complaints Center, <https://consumercomplaints.fcc.gov/hc/en-us> (last visited June 17, 2024).

<sup>38</sup> Canadian Radio-television and Telecommunications Commission, *Telecom Regulatory Policy CRTC 2017-200*, at 41–49 (rel. June 15, 2017), <https://crtc.gc.ca/eng/archive/2017/2017-200.htm> (last visited June 17, 2024).

<sup>39</sup> *Id.* at 46, para. 298.

<sup>40</sup> Ofcom, *Implementing the New European Electronic Communications Code: Statement 3*, 197–222 (rel. Dec. 17, 2020) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/209504/eccc-statement-dec-20.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/209504/eccc-statement-dec-20.pdf)); see also Ofcom, *Fair Treatment and Easier Switching for Broadband and Mobile Customers: Implementation of the New European Electronic Communications Code* (rel. Oct. 27, 2020) ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/204980/statement-eccc-revised-proposals.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/204980/statement-eccc-revised-proposals.pdf)).

<sup>41</sup> *Id.* at 199.

2015, Japan required all wireless providers to sell wireless devices with their Subscriber Identity Module or SIM cards unlocked if a customer asked for it.<sup>42</sup> Singapore banned mobile operators from selling SIM locked devices in 1997 in an effort to facilitate competition and improve consumer choice.<sup>43</sup>

18. Economic theory also suggests that switching costs, of which handset locking is a form, may reduce competition by locking in customers to a particular provider. Large switching costs tend to lock in buyers when they make an initial purchase, so that they are effectively buying a series of goods over time.<sup>44</sup> While competition, in certain circumstances, may be efficient even in the presence of switching costs, in certain instances, it will not be efficient.<sup>45</sup> For example, consumers may incur direct costs if they switch providers or if they may be deterred from switching to the provider that best serves their needs at the lowest price. In addition, while high switching costs may increase a provider's incentive to compete for a customer initially, it may reduce its incentive to lower prices in subsequent periods after a customer is locked in.<sup>46</sup> Thus, a consumer may enjoy lower prices during the initial period, but then have to pay higher prices in subsequent periods, or not be able to switch to a provider offering a superior service or lower price.

19. Consumer groups also support restricting handset locking. They have “long argued that ‘the practice of locking phones can reduce wireless competition by making it more difficult for consumers

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<sup>42</sup> *Mobile Phone Service Operators Lift SIM Locks* (May 3, 2015) (<https://japantoday.com/category/tech/mobile-phone-service-operators-lift-sim-locks>).

<sup>43</sup> Infocomm Media Development Authority, *Consultation on Embedded SIM Technology* (rel. June 6, 2018), <https://www.imda.gov.sg/-/media/imda/files/inner/pcdg/consultations/consultation-paper/public-consultation-on-embedded-sim-technology/consultation-document-for-esim.pdf> (last visited June 17, 2024).

<sup>44</sup> See, e.g., Joseph Farrell & Paul Klemperer, *Coordination and Lock-In: Competition with Switching Costs and Network Effects*, in 3 *Handbook of Industrial Organization* 1970, 1972 (Mark Armstrong & Robert Porter, eds., 2007) (“Large switching costs lock in a buyer once he makes an initial purchase, so he is effectively buying a series of goods, just as (more generally) with strong enough relationship-specific economies of scope, sellers compete on bundles of goods rather than single goods.”) (Farrell & Klemperer); see also Paul Klemperer, *Competition When Consumers Have Switching Costs: An Overview with Applications to Industrial Organization, Macroeconomics, and International Trade*, 62 *Rev. Econ. Stud.* 515 (1995) (“[C]onsumer switching costs give firms a degree of market power over their repeat-purchasers . . . .”); cf. Philippe Aghion & Patrick Bolton, *Contracts as Barriers to Entry*, 77 *Amer. Econ. Rev.* 388 (1987) (showing that long-term contracts with liquidated damages clauses raise switching costs, which may be used by incumbent sellers to create entry barriers for low-cost competitors). Studies on mobile number portability, which is also intended to reduce switching costs and increase competition, also suggest that limiting handset locking can increase consumer welfare. See, e.g., Minjung Park, *The Economic Impact of Wireless Number Portability*, 59 *J. Ind. Econ.* 714 (2011) (finding the introducing wireless number portability in the United States resulted in price decreases). Economics research also recognizes that there are potential trade-offs, however, between lowering switching costs and increasing competition. In certain circumstances, for example, the ability of firms to create switching costs may intensify competition during the subscriber acquisition phase but weaken competition once consumers have joined a network. See, e.g., Carl Shapiro & Hal R. Varian, *Information Rules* (1999) at chs. 5 & 6.

<sup>45</sup> Farrell & Klemperer, at 1972.

<sup>46</sup> Farrell & Klemperer, at 1972; see also Paul Klemperer, *Competition When Consumers Have Switching Costs: An Overview with Applications to Industrial Organization, Macroeconomics, and International Trade*, 62 *Rev. Econ. Stud.* 515, 516 (1995) (“The most obvious effect of switching costs is to give firms some market power over their existing customer, and thus to create the potential for monopoly profits.”); Juan Pablo Maicas, Yolanda Polo & F. Javier Sese, *Reducing the Level of Switching Costs in Mobile Communications: The Case of Mobile Number Portability*, 33 *Telecommunications Pol.* 544 (2009) (“The existence of switching costs confers market power on firms, allowing them to charge higher prices, reduce product or service quality, create entry barriers and, as a consequence of all this, obtain abnormal returns . . . .”).

to change carriers, and by reducing the number of devices available on the secondary market.”<sup>47</sup> For example, consumers may incur direct costs if they actually switch, and if they do not, they may not end up purchasing from their preferred provider. Consumer groups further note that “[s]maller carriers, new entrants, and [mobile virtual network operators or] MVNOs in particular may be disadvantaged in the marketplace due to a lack of handset availability.”<sup>48</sup> Further, they explain that “[l]ocked 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.”<sup>49</sup> In addition, in an *ex parte* letter filed in the recent T-Mobile-Mint Mobile/Ultra Mobile proceeding, Verizon contends that the Commission’s approach of imposing handset unlocking requirements on a piecemeal basis has resulted in asymmetrical regulation and unequal marketplace conditions among service providers and that such conditions harm consumers and competition.<sup>50</sup> Another recent *ex parte* letter from a group of consumer advocacy organizations and service providers contends that adopting a uniform handset unlocking policy that applies to all providers would benefit consumers and promote competition among service providers.<sup>51</sup>

20. Based on the above discussion, we tentatively conclude that we should adopt a broadly applicable handset unlocking requirement for all mobile wireless service providers, and we propose 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>52</sup> We tentatively conclude that imposing a broadly applicable handset unlocking requirement would have a larger impact by promoting greater competitive choices for all mobile wireless subscribers. We seek comment on this view and on the importance of adopting a more broadly applicable handset unlocking requirement for promoting consumer choice and competition. Additionally, we tentatively conclude that adopting such a requirement would have the benefit of providing for uniform regulation of all mobile wireless providers.

21. More specifically, we seek comment on whether, in addition to allowing greater consumer choice, our proposal would increase competition both with respect to prepaid and postpaid service plans. We also seek comment on how our proposal might affect the incentive and ability of wireless providers to continue offering discounts on handsets, particularly in connection with extended payment plans, and lower prices on plans with minimum term commitments. We note in this regard that Verizon, which is subject to a 60-day handset unlocking requirement, continues to offer discounts on devices purchased under extended payment plans.<sup>53</sup> In addition, we seek comment on how our proposed policy might affect lower-income consumers or those with poorer credit ratings. Further, we seek comment on whether current handset locking policies have dissuaded consumers from switching

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<sup>47</sup> OTI *Ex Parte* at 2 (quoting Letter from John Bergmayer, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, *State of Competition in the Communications Marketplace*, GN Docket No. 22-203 (Sept. 16, 2022) (Sept. 16, 2022 Public Knowledge *Ex Parte*)).

<sup>48</sup> OTI *Ex Parte* at 2 (quoting Sept. 16, 2022 Public Knowledge *Ex Parte* ).

<sup>49</sup> OTI *Ex Parte* at 2.

<sup>50</sup> Letter from William H. Johnson, Senior Vice Pres., Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-171, at 1 (filed Mar. 19, 2024) (*Verizon Ex Parte*).

<sup>51</sup> 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).

<sup>52</sup> To the extent that a provider is currently subject to additional handset unlocking requirements beyond the 60-day unlocking requirement we propose herein, the provider would remain subject to those requirements.

<sup>53</sup> See <https://www.verizon.com/shop/online/5g-cell-phones/>.

providers to more competitive service offerings. Finally, we seek comment on any alternative approaches to handset unlocking that would achieve our objective of promoting consumer choice and competition.

**A. Time Period for Unlocking to Address Handset Fraud.**

22. While the Commission has found that handset unlocking reduces barriers to changing service providers, the Commission also has determined that allowing handsets to be locked for 60 days to combat handset fraud does not significantly interfere with this policy objective.<sup>54</sup> Along these lines, we propose to require 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. Under this approach, the handset unlocking requirement would 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. The 60-day period would be consistent with the 60-day handset unlocking requirement that the Commission has applied previously as described above.<sup>55</sup>

23. We seek comment on this proposal. Commenters supporting a handset unlocking rule should provide examples of how the rule should read. Our proposal includes an exception to the 60-day unlocking requirement, if during the 60-day locking period a service provider determines that a handset was purchased through fraud. We seek comment on how a service provider would determine if a handset was purchased through fraud. What criteria should the service provider use?<sup>56</sup> Should the rule permit any other exceptions? We seek comment on the potential economic impact or burdens of a 60-day unlocking requirement, particularly for small and rural wireless service providers. Would such a general unlocking requirement affect small and rural wireless service providers and wireless resellers differently as compared to national service providers and, if so, how? Is there a different approach to achieving our objective of promoting consumer choice and competition that we should consider?

24. Alternatively, should we require service providers to unlock handsets after a period shorter or longer than 60 days? For example, should we require all handsets to be unlocked by default upon activation?<sup>57</sup> Or, should we require all handsets to be unlocked after the end of the handset's return period or after the first payment on the handset has been processed? Would a standardized time period of a certain number of days be easier to implement and enforce than non-standardized time periods based on return periods or billing cycles? What is the minimum amount of time service providers need to protect themselves from handset fraud? Rather than locking handsets, are there other ways service providers can protect themselves from handset fraud that would allow the Commission to prohibit the locking of handsets altogether?

25. How prevalent is handset fraud and would adopting a 60-day handset unlocking requirement be sufficient to deter fraud? Commenters that argue that handset fraud is common should provide data supporting this assertion. If a wireless service provider determines that a handset has been fraudulently purchased, can the service provider remotely lock the handset at issue or deactivate the handset so it will no longer operate on the provider's network or any other wireless network? Do the security features of smartphones sold today include adequate protection against theft so that service providers no longer need to lock the handset to prevent theft? For example, could a service provider remotely lock or deactivate a handset if it determined that it was obtained fraudulently? More generally, are there other ways service providers could protect against fraud that would not involve handset locking? Could a criminal override any of these alternative methods of fraud prevention?

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<sup>54</sup> *Verizon-TracFone Order*, 36 FCC Rcd at 17040, para. 124.

<sup>55</sup> *WTB Waiver Order*, 34 FCC Rcd at 5137, para. 11.

<sup>56</sup> *Id.* at 5138–39, para. 15 (a 60-day locking period allows service providers time “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 about transactions through indirect agents or national retailers”).

<sup>57</sup> *See OTI Ex Parte* at 1–2.

## B. Impacts on Contractual Arrangements

26. As stated above, we propose to apply this requirement prospectively, and we seek comment on whether this approach would avoid interfering with current contractual arrangements between service providers and consumers. What impact would the rule have on contractual arrangements already in existence between service providers and consumers? For handsets that have already been activated on a wireless provider's network, should we continue to rely on the voluntary unlocking commitments and the government-imposed unlocking conditions?

27. We also seek comment on the impact of a 60-day unlocking requirement in connection with service providers' incentives to offer discounted handsets for postpaid and prepaid service plans. Verizon, for example, suggests that providers may rely on handset locking to sustain their ability to offer handset subsidies and that such subsidies may be particularly important in prepaid environments.<sup>58</sup> Public interest groups, on the other hand, argue that locked handsets tied to prepaid plans can disadvantage low-income customers most of all since they may not have the resources to switch service providers or purchase new handsets.<sup>59</sup> They also note that unlocked handsets "facilitate a robust secondary market for used devices, providing consumers with more affordable options." We seek comment on these arguments. We also seek comment on the impact of a 60-day unlocking requirement on the incentive and ability of a provider to offer term contracts at discounts.

28. What factors should the Commission consider in determining how best to balance the needs of service providers to ensure that they are reimbursed for the handsets that they have subsidized and the needs of consumers with locked handsets to be able to take their handsets to another mobile wireless service provider? Given that a 60-day unlocking requirement already applies to Verizon and Verizon continues to remain competitive in the marketplace, we anticipate that a rule requiring unlocking after a 60-day period would maintain provider incentives to offer handset subsidies while reducing barriers for consumers to switch among service providers. We seek comment on this view. Do commenters agree with arguments that such a requirement would benefit smaller providers, new entrants, and MVNOs, by increasing the number of handsets available on the secondary market?<sup>60</sup> Would it help consumers by providing them with more affordable handset options? Should the Commission consider adopting a different handset unlocking rule for prepaid and postpaid handsets?

## C. Transition Period and Implementation

29. If we were to adopt a 60-day unlocking requirement, we seek comment on an appropriate transition period and on any implementation issues we should consider. Should the unlocking requirement become effective upon publication of the order adopting it in the Federal Register or should the Commission provide for a longer transition period? As noted above, the unlocking process may vary with different types of handsets. Depending on the handset, a service provider may automatically unlock the handset, send instructions to a customer on how to unlock a handset upon request, or complete the unlocking process in-store. Given these differences, would a longer transition period be warranted? If so, what transition period should we adopt? Are there reasons why we should allow a longer transition period for non-nationwide service providers, such as small and rural service providers, as compared to nationwide service providers? What are the percentages of handsets that are currently locked and unlocked to wireless networks? Should we require automatic unlocking for those handsets that can be unlocked automatically?

30. Should we also require that mobile wireless service providers transition to provide for automatic unlocking of all new handsets that they offer? The Commission adopted such a requirement as part of the handset unlocking conditions imposed in the Verizon/TracFone and the T-Mobile-Mint

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<sup>58</sup> Verizon *Ex Parte* at 3.

<sup>59</sup> OTI *Ex Parte* at 2.

<sup>60</sup> OTI *Ex Parte* at 2.

Mobile/Ultra Mobile transactions.<sup>61</sup> In those cases, Verizon and T-Mobile, respectively, were required to ensure that all new handsets activated on their network would be capable of automatic unlocking after a two-year period.<sup>62</sup> If we adopt a handset unlocking requirement generally for all mobile wireless service providers, should we also require them to ensure that, after a two-year period, all new handsets activated on their networks will be capable of automatic unlocking? If so, would automatic unlocking be accomplished through a software push to a handset or is there another way to accomplish automatic unlocking? We seek comment on whether there are any technical or other implementation issues associated with such an approach and whether these implementation issues might be different for small or rural service providers.

31. Further, we seek comment on how customers should be informed about a service provider's unlocking policies and whether we should require service providers to notify their customers when their handset locking period has ended or when their handsets have been automatically unlocked. Along these lines, should we require service providers to post on their websites their unlocking policies? Should we also adopt a requirement that the unlocking policy be expressed using clear and easy to understand language? In addition to requiring service providers to post their unlocking policies on their websites, should we require service providers to post their unlocking policies in their stores and that store employees be available to explain the service provider's unlocking policies to customers at the time they purchase handsets? How do we ensure that service providers fully disclose to their customers their unlocking policies at the time a customer purchases a handset? Further, should we require service providers to notify their customers when their handsets are ready to be unlocked or that their handsets have been automatically unlocked? For instance, should we require service providers to send a text message to a customer's handset when the locking period for the handset has expired or when the customer's handset has been automatically unlocked? Should we also require that the service provider contact the customer by email or by a letter sent to the customer's billing address? How do we ensure that service providers fully disclose their unlocking policies to their customers and that customers are aware that the locking period for their handsets has ended or that their handsets have been automatically unlocked?

#### **D. Legal Authority**

32. We propose to rely on our legal authority under Title III of the 1934 Communications Act, as amended (the Act) to protect the public interest through spectrum licensing and regulations to require mobile wireless service providers to provide handset unlocking. The Commission relied previously on its Title III authority in prohibiting 700 MHz C Block licensees from locking handsets as part of a broader set of open platform requirements that were intended to foster consumer choice and the development of innovative handsets and applications.<sup>63</sup> In doing so, the Commission noted that its authority under Title III allowed it to establish license conditions and operational obligations, if the condition or obligation will further the goals of the Communications Act without contradicting any basic parameters of the agency's authority.<sup>64</sup>

33. We tentatively conclude that Title III also would permit the Commission to more broadly require unlocking of handsets for all mobile wireless service providers. For example, section 303(b) directs the Commission, as required by the public interest, to "[p]rescribe the nature of the service to be

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<sup>61</sup> *Verizon-TracFone Order*, 36 FCC Rcd at 17045, para. 144; *T-Mobile-Mint Mobile/Ultra Mobile Order* at 9, para. 19.

<sup>62</sup> *Verizon-TracFone Order*, 36 FCC Rcd at 17045, para. 144; *T-Mobile-Mint Mobile/Ultra Mobile Order* at 9, para. 19.

<sup>63</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15365, para. 207 & nn.470–71.

<sup>64</sup> *Id.* at 15365, para. 207.

rendered by each class of licensed stations and each station within any class.”<sup>65</sup> Section 303(g) authorizes the Commission to “generally encourage the larger and more effective use of radio in the public interest.”<sup>66</sup> Section 303(r) provides the Commission authority to “make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of [the Act].”<sup>67</sup> In addition, section 316 authorizes the Commission to adopt new conditions on existing licenses if it determines that such action “will promote the public interest, convenience, and necessity.”<sup>68</sup>

34. We propose to rely on this authority to require mobile wireless service providers to unlock handsets. Our proposal to require unlocking of handsets would prescribe the nature of service that a mobile wireless service provider must offer when providing mobile wireless services.<sup>69</sup> By giving consumers greater freedom to switch between mobile wireless service providers, the proposed requirement would serve the public interest and help the Commission meet its responsibility to ensure the availability of communications services.<sup>70</sup> We tentatively conclude that such requirements would also be supported by section 332(c)(1) and provisions of Title II, which require common carriers’ practices to be “just and reasonable,” and prohibit and authorize the Commission to “prescribe rules and regulations as may be necessary in the public interest to carry out the provisions of [the Act.]”<sup>71</sup> We seek comment on this analysis and on other sources of authority for handset unlocking requirements.

#### **E. Promoting Digital Equity and Inclusion**

35. The Commission, as part of its continuing effort to advance digital equity for all,<sup>72</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, women, LGBTQ+ persons, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>73</sup> and benefits (if any) that may be associated with the issues discussed herein. Specifically, we seek comment on how the potential approaches discussed herein may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

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<sup>65</sup> 47 U.S.C. § 303(b).

<sup>66</sup> 47 U.S.C. § 303(g); *see* 700 MHz Second Report and Order, 22 FCC Rcd at 15365, para. 207 n.471.

<sup>67</sup> 47 U.S.C. § 303(r).

<sup>68</sup> 47 U.S.C. § 316(a)(1).

<sup>69</sup> *See* 47 U.S.C. § 303(b); *Cellco P’ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012).

<sup>70</sup> 47 U.S.C. § 151 (stating that one of the purposes for the creation of the FCC is to foster “a rapid, efficient . . . radio communication service with adequate facilities at reasonable charges”).

<sup>71</sup> 47 U.S.C. §§ 201(b), 332(c)(1) (requiring that a provider of commercial mobile service be treated as a common carrier under the Act “except for such provisions of [Title II] as the Commission may specify by regulation as inapplicable to that service or person”).

<sup>72</sup> Section 1 of the Act provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>73</sup> The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; women and girls; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

#### IV. PROCEDURAL MATTERS

36. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>74</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

37. *Filing Requirements.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
- Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

38. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

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<sup>74</sup> 47 CFR § 1.1200 *et seq.*

39. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>75</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>76</sup> Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in this Notice. The IRFA is set forth in the Appendix. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

40. *Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

41. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this Notice will be available on <https://www.fcc.gov/proposed-rulemakings>.

42. *Additional Information.* For further information regarding this Notice, please contact Eli Johnson, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, at 202-418-1395 or [Eli.Johnson@fcc.gov](mailto:Eli.Johnson@fcc.gov) or Jennifer Salhus, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, at 202-418-2823 or [Jennifer.Salhus@fcc.gov](mailto:Jennifer.Salhus@fcc.gov).

## V. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303(b),(g),(r), and 316(a), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(b),(g),(r), 316(a), this Notice of Proposed Rulemaking IS ADOPTED.

44. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission’s Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and reply comments on or before 60 days after publication in the Federal Register.

45. IT IS FURTHER ORDERED that the Commission’s Office of the Secretary SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>75</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>76</sup> *Id.* § 605(b).

**APPENDIX****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the Notice of Proposed Rulemaking (*Notice*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for and Objectives of the Proposed Rules**

2. In this *Notice*, 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. Over the past two decades, the Commission adopted handset unlocking requirements for particular providers in specific circumstances, finding that doing so will serve the public interest. In this *Notice*, the Commission tentatively concludes that adopting a broadly-applicable set of handset unlocking requirements for all mobile wireless service providers would better serve the public interest and the Commission seeks comment on which specific requirements would best facilitate competition and consumer choice. In addition, the Commission specifically seeks comment on whether a 60-day unlocking rule would benefit small mobile wireless service providers because consumers could switch service providers without having to purchase a new handset.

**B. Legal Basis**

3. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 303, and 316 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151, 154(i), 154(j), 303, and 316.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> A “small business

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> 5 U.S.C. § 603(b)(3).

<sup>5</sup> *Id.* § 601(6).

<sup>6</sup> *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>7</sup>

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.<sup>8</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>9</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.<sup>10</sup>

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>12</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>13</sup>

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>14</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>15</sup> indicate there were 90,075 local governmental jurisdictions consisting of general

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<sup>7</sup> 15 U.S.C. § 632.

<sup>8</sup> See 5 U.S.C. § 601(3)–(6).

<sup>9</sup> See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

<sup>10</sup> *Id.*

<sup>11</sup> See 5 U.S.C. § 601(4).

<sup>12</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>13</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>14</sup> See 5 U.S.C. § 601(5).

<sup>15</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number, there were 36,931 general purpose governments (county,<sup>17</sup> municipal, and town or township<sup>18</sup>) with populations of less than 50,000 and 12,040 special purpose governments—-independent school districts<sup>19</sup> with enrollment populations of less than 50,000.<sup>20</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>21</sup>

8. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>22</sup> Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.<sup>23</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>24</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>25</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>26</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report,

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<sup>16</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal, and town or township) and special purpose governments (special districts and independent school districts). See tbl.2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>17</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>18</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>19</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>20</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>21</sup> This total is derived from the sum of the number of general purpose governments—county, municipal and town or township—with populations of less than 50,000 (36,931) and the number of special purpose governments— independent school districts with enrollment populations of less than 50,000 (12,040)—from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

<sup>22</sup> See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>23</sup> *Id.*

<sup>24</sup> See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

<sup>25</sup> See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>26</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.<sup>27</sup> Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.<sup>28</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

9. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."<sup>29</sup> Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small.<sup>30</sup> U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.<sup>31</sup> Of this number, 242 firms had revenue of less than \$25 million.<sup>32</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.<sup>33</sup> Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.<sup>34</sup> Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

10. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.<sup>35</sup> The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.<sup>36</sup> Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>37</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>38</sup> The SBA small business size standard for Telecommunications Resellers

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<sup>27</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

<sup>30</sup> See 13 CFR § 121.201, NAICS Code 517410.

<sup>31</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>32</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>33</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

classifies a business as small if it has 1,500 or fewer employees.<sup>39</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>40</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>41</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.<sup>42</sup> Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.<sup>43</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers<sup>44</sup> is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>45</sup> MVNOs are included in this industry.<sup>46</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>47</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>48</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>49</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.<sup>50</sup> Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.<sup>51</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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<sup>39</sup> See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

<sup>40</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>41</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>42</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>43</sup> *Id.*

<sup>44</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

<sup>48</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>49</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>50</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>51</sup> *Id.*

12. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>52</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>53</sup> Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.<sup>54</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>55</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>56</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>57</sup> Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

13. The *Notice* 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. The *Notice* tentatively concludes that adopting a broadly-applicable set of handset unlocking requirements for all mobile wireless service providers would serve the public interest and seeks comment on which specific requirements would best facilitate competition and consumer choice. The *Notice* proposes to require all mobile wireless service providers to unlock handsets 60 days after a consumer’s handset is activated with the provider. If the Commission were to require all service providers to unlock handsets after a set period of time, the *Notice* seeks comment on an appropriate transition period and on any implementation issues the Commission should consider. This includes asking whether the Commission should allow a longer transition period for non-nationwide service providers, such as small and rural service providers, as compared to nationwide service providers.

14. If the Commission ultimately decides to adopt its proposed approach, this could potentially result in additional costs, new or modified recordkeeping, reporting, or other compliance requirements for small and other providers. For example, new handset unlocking rules may require wireless service providers to unlock handsets 60 days after a consumer initiates service with the provider. New handset unlocking rules may also require that mobile wireless service providers provide automatic unlocking for those handsets that can be unlocked automatically and that they transition to being able to automatically unlock all handsets that they offer for sale to consumers. The *Notice* seeks comment on the impact of the proposed rule on non-nationwide service providers, such as small and rural service providers, if the Commission adopts a generally applicable handset unlocking rule.

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<sup>52</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

<sup>56</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>57</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

15. At present, the record does not include a detailed cost/benefit analysis that would allow us to quantify the costs of compliance for small entities, including whether it will be necessary for small entities to hire professionals to comply with any rules that may be adopted. Small and other entities are encouraged to quantify the costs and benefits of any reporting, recordkeeping, or compliance requirement that may be established in this proceeding. The Commission expects the comments it receives on its proposals, and the matters discussed in the *Notice* to include information addressing costs, benefits, and other matters of concern for small entities, which should help the Commission identify and better evaluate compliance costs and relevant issues for small entities before adopting final rules.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

16. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.<sup>58</sup>

17. The *Notice* seeks comment on implementing a broadly applicable handset unlocking requirement across the mobile wireless industry and proposes to require all mobile wireless service providers to unlock handsets 60 days after a consumer's handset is activated with the provider. The *Notice* seeks comment on the economic impact or other burdens of such an approach, particularly for small and rural wireless service providers. The *Notice* asks whether such a general unlocking requirement would affect small and rural wireless service providers and wireless resellers differently as compared to national service providers and, if so, how. If the Commission were to require all service providers to unlock handsets after a set period of time, the *Notice* seeks comment on an appropriate transition period and on any implementation issues the Commission should consider, especially with regard to small and rural service providers.

18. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *Notice*, including costs and benefits information. Alternative proposals and approaches from commenters could help the Commission further minimize the economic impact on small entities. The Commission's evaluation of the comments filed in this proceeding will shape the final conclusions it reaches, the final alternatives it considers, and the actions it ultimately takes to minimize any significant economic impact that may occur on small entities from the final rules.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

19. None.

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<sup>58</sup> 5 U.S.C. § 603(c)(1)–(4).