

September 16, 2022

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Re: State of Competition in the Communications Marketplace, GN Docket No. 22-203

Dear Ms. Dortch:

On September 14<sup>th</sup>, John Bergmayer and Brandon McClain of Public Knowledge (PK) met with Catherine Matraves, Mark Montano and Michelle Schaefer of the Front Office and Judith Dempsey, Kim Makuch, Aleks Yankelevich, Aidan Hennessey, Cher Li, Patrick Sun, Patrick Brogan, Nicholas Copeland, Lonnie Hoffman, and Matthew Collins of the Economics Analysis Division to discuss the above-captioned proceeding. The meeting took place remotely via Microsoft Teams.

PK argued that the practice of locking phones can reduce wireless competition by making it more difficult for consumers to change carriers, and by reducing the number of devices available on the secondary market. PK therefore asked the FCC to report on the prevalence of phone locking and to investigate the effectiveness of the wireless industry's voluntary phone unlocking commitments.

Smaller carriers, new entrants, and MVNOs in particular may be disadvantaged in the marketplace due to a lack of handset availability. The burden on smaller carriers is further compounded by the competitive disadvantages caused by agreements between the handset manufacturers and the larger service providers like AT&T, Verizon and T-Mobile, which smaller carriers may not be able to negotiate. Customers of smaller carriers can face paying upfront for their phone, choosing a phone that is not their top preference, or having to switch to a major carrier. Low-income customers are also disadvantaged by phone locking. An increase in unlocked phones would allow subscribers to save money on handsets, and increase wireless competition, benefiting all wireless users.

While the impact of phone locking on competition is clearer, how the adoption of eSIMs will impact competition remains an open question. Physical SIM cards can make it easy for some users to switch SIM cards while abroad, or when upgrading their phones. But the need to obtain a physical SIM, different SIM card sizes, and other issues can be obstacles. eSIMs allow customers to switch more easily from carrier to carrier. For example, the new iPhone can support up to 8 eSIMs from 8 different carriers simultaneously,<sup>1</sup> with 2 active at any one time. eSIMs can be transferred from one phone to

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<sup>1</sup> Apple, Use eSIM while traveling abroad with your iPhone <https://support.apple.com/en-us/HT213448>

another and added to a handset remotely. But eSIMs are not as widely supported as SIMs yet, and there has been concern that major carriers can influence the standard in ways that actually limit competition.<sup>2</sup>

Other marketplace changes provide further reason for the FCC to report on this issue more thoroughly. The wireless marketplace now has only three national carriers, and modern smartphones are both more expensive, and longer-lasting than just a few years ago. Therefore, in its upcoming report the FCC should consider, among other things, the impact that eSIMs will have on competition, the buying practices of consumers who get their phones unlocked, the number of locked phones versus unlocked and new versus old phones in use on each of the US wireless networks, whether major carriers have better access to premium services, and if the phone unlocking commitments from 2013 have been sufficient to lessen consumer harms.

Public Knowledge also outlined how a balanced spectrum policy and expanded access to unlicensed and shared bands will further competition in the marketplace. Consumer and industry trends show that increased access to these bands would benefit all consumers. It would also help bridge the digital divide and promote competition in rural and Tribal areas. The FCC has shown great promise with innovative approaches to unlock underutilized spectrum for shared use. The FCC should continue and expand on these policies, and its upcoming competition report should report on the beneficial effects of open spectrum on competition.

Respectfully submitted,

/s/ John Bergmayer

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<sup>2</sup> Letter from DOJ to GSMA, November 27, 2019,  
<https://www.justice.gov/atr/page/file/1221321/download>.