

**Before the
UNITED STATES COPYRIGHT OFFICE
Library of Congress**

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| Section 1201 Exemptions to Prohibition |) | Docket No. 2014-07 |
| Against Circumvention of Technological |) | 37 CFR Part 201 |
| Measures Protecting Copyrighted Works |) | |
| |) | |

**The Rural Wireless Association, Inc.
Petition for Exemption of 17 U.S.C. § 1201 (Air Cards)**

1. Submitter and Contact Information

Clearly identify the submitter, and, if desired, provide a means for others to contact the submitter or an authorized representative of the submitter by email and/or telephone. (Parties should keep in mind that any private, confidential, or personally identifiable information appearing in this petition will be accessible to the public.)

The Rural Wireless Association, Inc. (“RWA”) is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural customers and those consumers traveling in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

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2. Exemption to Allow Unlocking of Mobile Broadband Wireless Modems

Provide a brief statement describing the proposed exemption (ideally in one to three sentences), explaining the type of copyrighted work involved, the technological protection measure (“TPM”) (or access control) sought to be circumvented, and any limitations or conditions that would apply (e.g., a limitation to certain types of users or a requirement that the circumvention be for a certain purpose).

RWA petitions the Librarian of Congress, pursuant to Section 1201(a)(1) of the United States Code¹, to grant an exemption of Section 1201(a)(1)(A) of the Digital Millennium Copyright Act (“DMCA”)² to allow for the circumvention of the technological measures that control access to

¹ 17 U.S.C. § 1201(a)(1).

² 17 U.S.C. § 1201(a)(1)(A).

the software and firmware of mobile broadband wireless modems, which are also known as wireless air cards (“Air Card”), to allow the owner of a lawfully acquired Air Card, or a person designated by the owner of the lawfully acquired Air Card, to modify the Air Card’s software and firmware so that the device may be used on a technologically compatible wireless network of the customer’s choosing, and when the connection to the network is authorized by the operator of the network.

The technological measures that control access to Air Cards adversely affect the ability of consumers to make lawful uses of their devices. This exemption will allow consumers to unlock lawfully acquired Air Cards and use the devices on compatible wireless networks of his or her choice, which is a lawful and a noninfringing use of copyrighted works within the meaning of section 1201(a)(1) of the DMCA.

3. Copyrighted Works Sought to be Accessed

Identify the specific class, or category, of copyrighted works that the proponent wishes to access through circumvention. The works should reference a category of work referred to in section 102 of title 17 (e.g., literary works, audiovisual works, etc.). Unless the submitter seeks an exemption for the entire category in section 102, the description of works should be further refined to identify the particular subset of work to be subject to the exemption (e.g., e-books, computer programs, motion pictures) and, if applicable, by reference to the medium or device on which the works reside (e.g., motion pictures distributed on DVD).

Computer programs in the form of software and firmware located within mobile broadband wireless modems (*i.e.*, air cards) that allow these devices to connect to a wireless telecommunications network.

4. Technological Protection Measure

Describe the TPM that controls access to the work. The petition does not need to describe the specific technical details of the access control measure, but should provide sufficient information to allow the Office to understand the basic nature of the technological measure and why it prevents open access to the work (e.g., the encryption of motion pictures on DVD using the Content Scramble System or the cryptographic authentication protocol on a garage door opener).

The computer programs in the form of software and firmware that prevent an Air Card from connecting to the wireless telecommunications network of a carrier other than the initial carrier.

5. Noninfringing Uses.

Identify the specific noninfringing uses of copyrighted works sought to be facilitated by circumvention (e.g., enabling accessibility for disabled users, copying a lawfully owned computer program for archival purposes, etc.), and the legal (statutory or doctrinal) basis or bases that support the view that the uses are or are likely noninfringing (e.g., because it is a fair use under section 107, it is a permissible use under section 117). Include a brief explanation of how, and by whom, the works will be used.

The noninfringing uses of copyrighted works will be the use of the Air Cards on the wireless network of the customer’s choosing.

6. Adverse Effects.

Explain how the inability to circumvent the TPM has or is likely to have adverse effects on the proposed noninfringing uses (e.g., the TPM limits wireless connection to the network of the mobile carrier from which the cellphone was originally purchased or prevents an electronic book from being accessed by screen reading software for the blind). The description should include a brief explanation of the negative impact on uses of copyrighted works. The adverse effects can be current, or may be adverse effects that are likely to occur during the next three years, or both. While the petition must clearly and specifically identify the adverse effects of the TPM, it need not provide a full evidentiary basis for that claim.

The Copyright Office has previously established that allowing customers to circumvent the “[c]omputer programs, in the form of firmware or software, that enable used wireless telephone handsets to connect to a wireless telecommunications network, when circumvention is initiated by the owner of the copy of the computer program solely in order to connect to a wireless telecommunications network and access to the network is authorized by the operator of the network.”³ Allowing consumers to unlock their Air Cards so the devices can be used on another carrier’s network is also a noninfringing use of copyrighted works.

It has been widely established that the technological measures that control access to wireless telephone handsets adversely affect the ability of consumers to use lawfully acquired handsets on the wireless telecommunications network of their choice.⁴ The same effects adversely impact

³ See *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2008-8, Final Rule, 75 Fed. Reg. 43825 (July 27, 2010) (2010 Final Rule); *Library of Congress, Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, Docket No. RM 2005-11, Final Rule, 71 Fed. Reg. 68472, 68476 (Nov. 27, 2006) (2006 Final Rule); See also 17 C.F.R. § 201.40(b)(3).

⁴ See Letter from Lawrence E. Strickling, United States Department of Commerce, The Assistant Secretary for Communications and Information, to Maria Pallante, Register of Copyrights, Library of Congress (Sept. 21, 2012) (NTIA supporting the continuation of the exemption to allow unlocking of wireless devices) (“NTIA Letter”); *Unlocking Consumer Choice and Wireless Competition Act* (reinstating Library of Congress exemption to the DMCA to “promote consumer choice and wireless competition by permitting consumers to unlock mobile wireless devices, and for other purposes”); *Amendment of Part 20 of the Commission’s Rules and Regulations to Require Certain Providers of Commercial Mobile Radio Services to Unlock Wireless Devices Upon Request*, WT Docket No. ___, Petition for Rulemaking of the National Telecommunications and Information Administration (filed September 17, 2013) (NTIA petition asks the Federal Communications Commission to initiate rulemaking to modify its rules to require carriers to unlock consumer wireless devices, including smartphones and tablets, upon request); *Statement from FCC Chairman Julius Genachowski on the Copyright Office of the Library of Congress Position on DMCA and Unlocking New Cell Phones*, News Release (March 4, 2013) (commenting that the Library of Congress’ decision to reverse its longstanding position of allowing consumers to unlock new mobile phones with the wireless carrier’s permission, and subjecting consumers to criminal penalties if they do, “raises serious competition and innovation concerns, and for wireless consumers, it doesn’t pass the common sense test.”); See also *We the People White House Petition* (petition garnered 114,000 signatures seeking to legalize handset unlocking).

consumers' use of Air Cards and will continue to adversely impact consumers over the next three years as these devices gain in popularity.

The purpose of the DMCA is to protect copyrighted works from infringement and piracy. However, some wireless carriers have used the copyright laws to lock wireless devices as a means to bind customers to that carrier. In his 2012 letter to Maria Pallante, Register of Copyrights, Library of Congress, Lawrence Strickling, Assistant Secretary for Communications and Information and Administrator of the National Telecommunications and Information Administration ("NTIA") stated "the primary purpose of the locks is to keep consumers bound to their existing networks, rather than to protect the rights of copyright owners in their capacity as copyright owners."⁵ The requested exemption will allow a consumer to unlock his or her Air Card and use the device on a compatible wireless network of his or her choice. Copyright laws should not stand in the way of consumers using their wireless devices on the wireless network of their choice. Consumer choice of switching wireless carriers is not only a lawful and noninfringing use of copyrighted works within the meaning of section 1201(a)(1) of the DMCA, consumer choice advances competition in the provision of wireless telecommunications services.

Consumers in rural America are adversely impacted by the prohibition on circumvention because while rural carriers provide highly competitive wireless services, they do not always have access to the myriad of popular and most current wireless devices that are available to larger service providers because rural carriers do not have the buying power of their larger carrier counterparts to allow them to acquire these devices from the manufacturers. Allowing consumers to unlock their wireless devices so they can be used on another carrier's wireless network will allow a consumer in rural America to purchase a wireless device, unlock it, and use it on the wireless network he or she chooses, which may include the local rural carrier's network. Unlocking wireless devices will provide rural consumers with access to highly popular and in-demand wireless devices that might otherwise not be available.

Consumers are adversely affected by the requirement that they rely on carriers' voluntary unlocking policies when they seek to move to a new carrier. There are delays in acquiring carrier "permission" to unlock wireless devices, not all carriers have policies that allow for the unlocking of Air Cards and carriers have anticompetitive incentives to make wireless device unlocking as difficult as possible for consumers. Absent the requested exemption, consumers could be required to purchase new Air Cards each time they seek to move to a different carrier's network. A consumer that lawfully purchases a wireless device should be allowed to use that device on the telecommunications network of his or her choice. The *DMCA* should not be used by wireless carriers as an anticompetitive tool to limit consumer choice between wireless telecommunications carriers.

⁵ *NTIA Letter* at p. 15.