

COALITION OF BROADBAND USERS AND INNOVATORS

July 25, 2003

FILED ELECTRONICALLY

Mr. Brent Olson
Deputy Division Chief, Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: CS Docket No. 02-52; CC Docket Nos. 02-33, 98-10 & 95-20;
GN Docket No. 00-185
Notice of *Ex Parte* Presentations**

Dear Mr. Olson:

On July 17, members of the Coalition of Broadband Users and Innovators met with you and other representatives of the Wireline Competition Bureau to discuss the Coalition's filing in the above-captioned proceedings outlining the need for Commission action to preserve the principle of network neutrality in the broadband world. During the meeting, questions were asked whether (1) there are current examples of discrimination by wireline broadband network operators; and (2) the well-established *Carterfone* principle is a relic that should not apply in the broadband world.

1. **No current harm because rules are in place.** There are no examples of current discriminatory practices on wireline broadband facilities because rules are in place that prohibit telcos from engaging in such conduct. Section 201 of the Communications Act prohibits telcos from engaging in "unjust or unreasonable" practices,¹ while Section 202 makes it "unlawful for any common carrier to make any unjust or unreasonable discrimination in . . . practices, . . . regulations, facilities, or services."² Thus, it is not surprising that the telephone companies have acted in a nondiscriminatory manner given that the law dictates it. Moreover, the longstanding *Carterfone* principle ensures the right of consumers to attach their choice of nonharmful devices to the network, so it is equally not surprising that telephone-based broadband consumers have not suffered discrimination in attaching devices.³

¹ 47 U.S.C. § 201(a).

² 47 U.S.C. § 202(b).

³ See *In re* Use of the Carterfone Device in Message Toll Telephone Service; *In re* Thomas F. Carter and Carter Electronics Corp., Dallas, Tex. (Complainants), v. American Telephone and Telegraph Co., (continued...)

2. ***Should Carterfone endure?*** During the meeting, it was indicated that *Carterfone* is “on the table” in the pending broadband proceedings. As we stated at the meeting, we fail to see any reason why this well-established and longstanding principle, which the Commission reaffirmed in April of this year⁴ and as recently as 1998 extended to cable navigation devices, including computers and cable modems,⁵ would not apply to wireline broadband facilities. As an FCC Office of Plans and Policy working paper explained:

The *Carterfone* decision enabled consumers to purchase modems from countless sources, to install and use the modem *without permission from the telephone company*, and to use these modems to take advantage of an array of data services offered by a diverse assortment of service providers over their home telephone service. Without easy and inexpensive consumer access to modems, the Internet would not have become the global medium that it is today.⁶

Given these proven benefits of *Carterfone* over the preceding three decades and the fact that the Commission has never limited the principle’s application to the wireline network, the Coalition is concerned about the possibility of an apparent carve out for broadband services. Abandonment of the right-to-attach principle would send the wrong signal to companies that can innovate and develop new devices for consumers. Moreover, it is hard to believe that the Commission would guarantee narrowband Internet users more protections and greater rights than broadband users when universal broadband deployment is a national policy goal. The Coalition strongly urges the Commission to uphold consumers’ right to attach their choice of nonharmful devices to the network. Failure to do so would not only limit consumers’ access to the network, but also stifle the development of innovative new products by device manufacturers.

Associated Bell System Companies, Southwestern Bell Telephone Co., and General Telephone Co. of the Southwest (Defendants), *Decision*, 13 FCC 2d 420, 423 (1968) (finding unreasonable a tariff that “prohibits the use of interconnecting devices which do not adversely affect the telephone system”) (“*Carterfone*”), *recon. denied*, 14 FCC 2d 571 (1968).

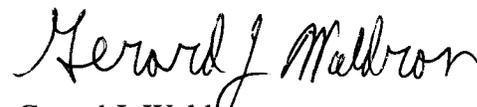
⁴ Wireline Competition Bureau Reiterates the Obligations of Terminal Equipment Suppliers Under Part 68 Rules, *Public Notice*, 18 FCC Rcd 6354 (2003).

⁵ See *In re* Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, *Report and Order*, 13 FCC Rcd 14775, 14778 (1998) (“*Navigation Devices Order*”).

⁶ Jason Oxman, The FCC and the Unregulation of the Internet 15 (FCC, Office of Plans and Policy, Working Paper No. 31, 1999) (emphasis added). The full Commission, too, has recognized the many benefits flowing from the *Carterfone* decision, including that it “resulted in the availability to the consumer of an expanding series of features and functions related to the use of the telephone,” *Navigation Devices Order*, 13 FCC Rcd at 14784-85, and explained that its application to cable navigation devices would “result in the widest possible variety of navigation devices being commercially available to the consumer.” *Id.* at 14785.

Kindly address any questions to the undersigned.

Sincerely,



Gerard J. Waldron

cc: Mr. Paul Gallant
Mr. Chris Libertelli
Mr. Jonathan Cody
Mr. Matt Brill
Ms. Stacy Robinson
Mr. Jordan Goldstein
Ms. Jessica Rosenworcel
Mr. Dan Gonzalez
Ms. Catherine Bohigian
Ms. Johanna Mikes
Mr. Kenneth Ferree
Ms. Barbara Esbin
Mr. Kyle Dixon
Ms. Marjorie Greene
Ms. Mary Beth Murphy
Mr. John Norton
Mr. William Maher
Ms. Michelle Carey
Mr. Thomas Navin
Mr. Brent Olson
Ms. Carol Matthey
Mr. Scott Bergmann
Mr. John Rogovin
Mr. Harry Wingo
Dr. Robert Pepper
Mr. Simon Wilkie
Ms. Jane Mago
Ms. Maureen McLaughlin
Mr. Scott Marcus
Ms. Marlene Dortch