

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petition to Confirm A Consumer's Right to Use)	RM-11361
Internet Communications)	
Software and Attach Devices to)	
Wireless Networks)	

COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("USCC") hereby files its Comments on the above-captioned petition filed by Skype Communications S.A.R.L. ("Skype").¹ USCC opposes the Skype petition, and it will demonstrate below that it poses a fundamental threat to the competitive structure of the wireless industry as it has developed over the past two decades and thus should not be adopted.

I. The Skype Petition Seeks To Misapply the Carterfone Precedent to a Vibrantly Competitive Marketplace

The Skype Petition involves issues of considerable complexity regarding wireless networks in transition to "third generation" and other advanced digital networks but its fundamental premise is quite simple. It is that the contemporary wireless market closely resembles that of the wireline telephone industry in the nineteen sixties and thus that it would serve the public interest apply the principles behind the Carterfone decision to the wireless industry. The FCC's 1968 Carterfone² policy declared a right for consumers to "attach any

¹ See Petition of Skype Communications S.A.R.L. to Confirm a Consumer's Right to Use Internet Communications Software and Attach Devices to Wireless Networks RM-11361, filed February 20, 2007 ("Skype Petition"); Public Notice "Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed" Report No. 2807(CGB, released Feb. 28, 2007).

² Use of Carterfone Device in Message Toll Telephone Service, 13 FCC 2d 420,424-25 (1968).

device to the wireline network as long as it did not harm the network"³ and began the process of deregulating the market for wireline customer premises equipment (CPE).

Applied to the contemporary wireless marketplace, the Carterfone principle would, in Skype's view, create "an unfettered right" for consumers "to run [broadband] applications of their choosing on wireless networks."⁴ In practical terms, it would mean that all CMRS carriers would be compelled to allow their networks to be used by Skype and its customers as well as by other similarly situated wireless IP platform service providers. Such a policy would have various foreseeable and unforeseeable impacts on wireless carriers. USCC would consider such a shift in policy unwise and unjust, for reasons to be discussed below, but it first ought to be opposed because the analogy on which it is based is entirely misplaced.

The wireless industry of today is not like the telephone industry of the nineteen sixties. In fact, it is fundamentally unlike it. The telephone industry was then a vertically and horizontally integrated monopoly providing one service, namely voice communications. AT&T as it was then constituted provided local service (along with a relatively few independent companies integrated into its overall structure) and long distance service, as well as manufacturing and owning the CPE used to provide those services. Carterfone was important, but limited in its effects. It introduced the idea of competition in connecting to the network, but it did not alter the nature of what was transmitted over the network. Nor did it alter the monopoly nature of AT&T's control over local and long distance service.

In contrast, the wireless market of today is not defined by monopoly, but rather by competition. As is noted in the FCC's most recent CMRS "Competition Report,"⁵

³ Skype Petition, pp. 5-6.

⁴ Ibid., p. 6.

⁵ Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Eleventh Report, 21 FCC Rcd 10947 (2006) ("Eleventh Report")

"[T]here is effective competition in the CMRS marketplace 98 percent of the total U.S. population lives in countries with access to three or more operators offering mobile telephone service. . . .

[T]he record indicates that competitive pressure continues to drive carriers to introduce innovative pricing plans and service offerings, and to match the pricing and service offerings introduced by rival carriers. . . . In addition, the deployment of next generation networks based on competing technological standards continues to be an important dimension of non-price rivalry in the U.S. mobile telecommunications market."⁶

The wireless industry's competitive structure has produced innovation and variety in all its sub-markets, including the handset market. Data collected by CTIA and to be discussed in its comments in this docket disclose that there are currently at least 36 manufacturers offering more than 830 handset models, with a variety of features tailored to customer wishes. It is undisputed that U.S. wireless customers have access to an ever growing number of optional voice and data services, pricing plans, and network improvements. To choose one example of many, the Eleventh Report notes the intensification of competition in the past year resulting in the development of wireless broadband services which will "compete with Verizon Wireless's EV-DO offerings."⁷ USCC is "trialing" its own EV-DO product. The marketplace is functioning well.

The world described in the Eleventh Report, which is characterized by flourishing competition, innovation and variety, is nothing like the monopoly "one black Western Electric telephone per household" environment which was altered by Carterfone. Thus, the analogy Skype seeks to draw between the sixties and now simply does not work and cannot serve as the basis for FCC action. Skype's proposals have to be justified on their own merits, apart from misapplied analogies to the irrelevant past. As will be shown below, they cannot be.

⁶ Eleventh Report, at 10950.

⁷ Eleventh Report, at 11002.

11. The FCC Should Not Fundamentally Alter The Wireless Industry Regulatory Structure

The America wireless industry is one of our country's great economic success stories of the past two decades. The industry has constructed a national wireless network without government subsidy, except for the limited support in some states provided to wireless Eligible Telecommunications Carriers by the Universal Service Fund. Indeed, the industry has contributed billions of dollars to the federal government and to state governments through spectrum auction payments, regulatory fees, and taxes. As of April 27, 2007, according to CTIA, there were 235,748,534 wireless subscribers. As of the end of 2006, the industry provided over 253,000 direct carrier jobs, and paid over \$ 7 billion in direct wages in the first half of last year. It invested \$10 billion in capital in the first half of 2006 and almost \$14 billion in the last half of the year.' The Skype Petition itself acknowledges that "wireless communications are an unquestioned success."⁹ The industry now faces its greatest challenge, namely the transition to advanced digital and IP based wireless services. It is a challenge the industry is confident it can meet, which confidence is reflected in the capital investment statistics referred to above, provided the existing regulatory structure is maintained.

The wireless industry's prior success has not been an accident. Intelligent and farseeing regulatory policies pursued by the FCC have been crucial to wireless development. Governments can err, but federal wireless policy is one thing the government has generally done right. The government has regulated with a light hand, encouraging competition and innovation, with a minimum of technological mandates. Wisely, the FCC has sought to ensure public access to the network (e.g. Hearing Aid Compatibility) or to fulfill important public interest mandates (Number Portability and CALEA for example) but has not sought to oversee its technological

⁸ [Http://ctia.org./media/industry_info/index.cfm/aid/10323](http://ctia.org./media/industry_info/index.cfm/aid/10323)

⁹ Skype Petition, p. 3.

evolution or dictate industry technical standards. It has also been essential to wireless progress that CMRS carriers have had a reasonable license renewal expectancy, which has been crucial to long term capital investment and have maintained operational control over their networks and the frequencies entrusted to their stewardship as licensees. The Skype Petition, we submit, strikes at the heart of that necessary network control.

Unlike what was involved in the Carterfone policy, Skype does not seek only to attach devices to wireless networks, it also seeks to run applications of its choosing over those networks with those devices. Obviously, bandwidth intensive applications such as music downloads, gaming and VOIP, which the Skype petition would require carriers to accommodate, would subject individual carrier networks to severe capacity strains and other technical difficulties, especially since wireless carriers could not plan for system usage not under their control and concerning which they would not have advance notice. It may well be that one or more carriers will enter into a cooperative relationship with Skype or similar carriers in order to benefit their customers. But such relationships can only work if they are voluntarily entered into with adequate network safeguards, with pricing and other terms which are mutually beneficial.

What the Skype Petition overlooks throughout is that wireless carriers are profit making enterprises functioning in a free economy with multiple competing networks, including Skype's. The theory of such an economy is that customers are benefited when suppliers compete by offering differing service plans designed both to make a profit for the supplier and to meet varied customer needs, which is precisely what wireless carriers now do.

Skype discusses such routine wireless practices as bundling/alternative service terms, handset locking, and closed application platforms as self evidently abusive. But what Skype overlooks is that such practices are crucial both to carriers realizing a return on their investment

and customers obtaining services configured to their needs. Wireless carriers are now free, pursuant to the FCC's wise 1992 "bundling" order,¹⁰ to offer handsets and wireless service on a "bundled" basis, provided that they are also offered separately, which is entirely appropriate. However, the opportunity to offer bundled services has meant that carriers have been able to acquire a larger number of customers, with all the positive "network effects" of an expanded customer base, by offering customers free or very inexpensive wireless handsets – provided customers are willing to accept length of service terms. This is how a free market works. Skype, however, questions this policy (Petition p. 21), essentially because it is a barrier to the use of handsets with different features than those a carrier offers. But any FCC order requiring an end to bundling would certainly increase the price of handsets. This Skype evidently believes would be in its interest, but it would be contrary to the interest of wireless carriers and of wireless consumers not looking for handsets capable of running advanced IP applications.

The fundamental issue involved here, which Skype avoids, is one of network control. Skype wishes to have the FCC adopt a rule requiring that carriers run its applications over wireless networks without the consent of the carriers involved. By implication, Skype also demands FCC control over the "features" of handsets which can access carrier networks. We submit that this form of command and control regulation would be contrary to public interest.

Obviously, wireless customers are interested in access to Wi-Fi and VOIP via wireless networks and such innovations are being developed by wireless carriers. But those carriers want to develop such applications under their own auspices and under their own control, as in the past. We submit that the FCC should preserve its existing and highly successful model and not undermine it, which adopting the Skype proposal would assuredly do.

¹⁰ Bundling of Cellular Customer Premises Equipment and Cellular Service, Report and Order, 7 FCC Rcd 4028 (1992).

Skype portrays its proposal as reasonable, conceding that there is "an interdependent ecosystem of wireless carriers, mobile operating system (OS) developers and device manufacturers" and acknowledging the need for "marketplace competition" as well as "meaningful government oversight."¹¹ However, it is the latter phrase, with its unmistakable hint of coercion, which is really at stake here.

Government regulation of the applications which run on wireless networks is a bad idea. It will create an unfortunate precedent, one which is contrary to the principles of deregulation and free market competition which have served the country well in its regulation of the wireless industry.

Conclusion

For the foregoing reasons, the Skype proposal should not be adopted.

Respectfully submitted,

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¹¹ Skype Petition, p. 6-7.