



July 10, 2007

ELECTRONIC FILING

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Service Rules for the 690-746, 747-762, and 777-792 MHz Bands, WC Docket No. 06-150, WC Docket No. 06-129; PS Docket No. 06-229; WT Docket No. 96-86*
Ex Parte

Dear Chairman Martin:

The promise of an open, mobile Internet stirs up the entrepreneurial spirit. Skype Communications Sarl (“Skype”), on behalf of its users, believes that this entrepreneurship lies in the hands of a community of developers, consumers and technologists; it is not the exclusive preserve of the network operators. This community is ready to deliver an explosion of new mobile products if the Commission sets its policy correctly. In our view, the best course for the Commission is to adopt 700 MHz auction rules that balance the interests of network operators *and* innovative software developers like Skype. Such a policy will maximize the value of the 700 MHz spectrum and is in the best interest of consumers. To that end, Skype appreciates the Commission’s willingness to consider issues related to device competition and Internet openness in the context of its upcoming 700 MHz auction – a policy discussion in which Skype has been an active participant.¹ This letter follows up on that discussion and further explains Skype’s interest in this proceeding.

¹ Skype is a member of the Coalition for 4G in America. *See* Comments of the Coalition for 4G in America, WT Docket No. 06-150 (May 23, 2007). *See also* Skype Communications S.A.R.L., Petition to Confirm a Consumer’s Right to Use Internet Communications Software and Attach Devices to Wireless Networks, RM-11361 (filed Feb. 20, 2007) (“Skype Petition”); Reply Comments of Skype Communications S.A.R.L., RM-11361 (May 15, 2007) (“Skype Reply Comments”).

As the Commission knows, Skype is a software company, not a telecommunications carrier. Skype does not own or control any telecommunications facilities. Instead, Skype relies upon network partners who themselves are telecommunications carriers, to enable Skype users to communicate over the Internet, share ‘presence’ information online, make video calls, transfer money between users or call ordinary phones.² Like many other Internet companies, Skype collaborates with an ecosystem of software and hardware partners to maximize the capabilities of our software. At the access layer, for example, Skype has joined forces with wireless operators in Europe and Asia who extend Skype into a mobile environment.³

I. Competition Among Wireless Networks

Consistent with this business model, Skype does not intend to transform itself into a telecommunications carrier by bidding for spectrum in the 700 MHz auction. In our view, consumer benefits are advanced when each ecosystem partner performs a function it does best. Our European and Asian wireless carrier partners specialize in building and operating networks, enabling Skype to focus on what it does best: innovating and building software that enables the world’s conversations. Skype is therefore participating in this proceeding on behalf of our users, who might subscribe to the Internet access services provided in the 700 MHz band.

New technologies enable new applications, and in our experience, new entrants are more likely to deploy new technologies. Skype is a member of the Coalition for 4G in America because we believe that new entry is a necessary but not sufficient precondition to promote innovation and lower prices for consumers.⁴ We urge the Commission to avoid defining the objectives of the 700 MHz proceeding too narrowly. Multiple providers of facilities-based wireless services, at least in theory, increase the possibility that competition will spur carriers to innovate with new business models. However, at present the wireless market is dominated by a few large players, and competition between incumbent network providers — all of whom have mixed incentives to encourage VoIP-based competition — is insufficient to maximize consumer benefits in the mobile market. The Commission’s goal for the 700 MHz proceeding should not be simply to introduce additional competitors who have the same incentives to thwart device and application competition. Seen in this light, an increased number of intermodal competitors is a necessary but not sufficient condition to maximize consumer welfare in wireless.⁵

² When a Skype user purchases paid services, these carrier partners allow a communication that might remain completely online to terminate to an ordinary mobile or fixed-line telephone.

³ For a description of the mobile collaboration between Skype and Hutchinson “3”, see <http://xseries.three.com/index.shtml>.

⁴ Skype Petition at 24-25.

⁵ See Barbara van Schewick, *Toward and Economic Framework for Network Neutrality Regulation*, 5 J. on Telecomm. & High Tech. L. 329, 368-78 (2007).

A better, more balanced policy outcome is one that encourages a cycle of investment in networks *and* in applications that consumers use on those networks. This is best achieved through *Carterfone* principles — permitting consumers to use wireless devices and applications of their choice — and wholesale alternatives throughout the wireless industry. To achieve this qualitative shift in the wireless marketplace, the Commission should design its 700 MHz auction to better balance the interests of carriers, their subscribers and the myriad of device and application enterprises that hold the promise of offering new products and content.

Specifically, the record demonstrates that large license blocks, such as a 22 MHz REAG Block in the Upper 700 MHz band proposed by the Coalition for 4G in America, can facilitate new entry without denying smaller carriers spectrum — if those large spectrum blocks carry appropriate conditions to facilitate competitive bidders. In Skype’s view, the surest way to promote wireless competition would be to ensure that all of the 700 MHz spectrum — or, at minimum, the 22 MHz REAG block — is auctioned under both “open access” rules and the “openness” principles described in the following section. There are also a number of additional steps the Commission can take to prevent the largest incumbents from winning the REAG licenses, thereby promoting network-level competition. These include adoption of anonymous bidding and the application of spectrum caps to the largest licenses. Should the Commission not adopt a spectrum cap, the Commission should opt for a band plan that maximizes the number of potential new-entrant bidders — or face the risk of losing any chance at robust competition resulting from this auction.

II. Competition Among Devices and Applications

Skype recently filed a petition — commonly known as the “*Carterfone*” Petition — seeking application of the Commission’s Broadband Policy principles to wireless broadband operators in order to bring the full benefit of competition and innovation to consumers of wireless broadband devices and software applications. As we made clear in our Petition, there is a growing list of discriminatory and anticompetitive practices occurring in the wireless world, whereby users are denied the opportunity to use desired applications.⁶ These carrier practices are stifling innovation by depriving entrepreneurs of incentives to build creative new applications and content. With regard to the 700 MHz auction, however, the Commission has a unique opportunity to inject some needed competition into the wireless market.

That is why Skype has urged the Commission to apply its time-honored *Carterfone* principles to all wireless networks operating in the CMRS bands.⁷ Doing so will maximize consumer benefits and unlock new sources of innovation and price competition. A number of parties in this proceeding have submitted comments arguing for various device and application layer “openness” principles. In our view, the *Carterfone* “openness” principle is captured by the Commission’s *Broadband Policy*

⁶ Skype Petition at 17-20.

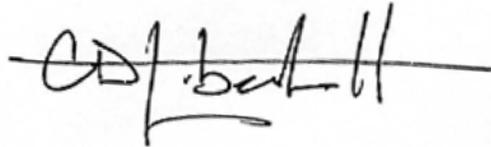
⁷ Skype Reply Comments at 11-15.

Statement. If the Commission decides to diverge from that *Policy Statement*, we urge the FCC to adopt an “openness” principle that protects both a consumer’s right to attach unlocked devices and run applications of their choosing.⁸ An enforceable *Broadband Policy Statement* applied to wireless networks is a necessary pre-requisite to a wireless Internet ecosystem that maximizes the value of the 700 MHz bands and CMRS services in general.

We will not repeat the importance of this proceeding to the Commission’s broadband policy and to the interests of innovators such as Skype. We understand that you share this view with us. For our part, we are committed to developing new software applications that delight our users. It is our hope that when the 700 MHz auction concludes and these networks are built, Skype users will have an additional choice for their Internet access services and the applications that run atop increasingly powerful mobile computing devices.

* * *

Please do not hesitate to contact me if you have any further questions or if Skype can be of any further assistance in this proceeding.

A handwritten signature in black ink, appearing to read "C. Libertelli", with a horizontal line extending to the right from the end of the signature.

Christopher Libertelli
Senior Director
Government and Regulatory Affairs
Skype Communications Sarl

⁸ *Id.*