



May 22, 2008

**ELECTRONIC FILING**

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

**Re: *Ex Parte*, RM-11361**

Dear Chairman Martin:

In recent weeks, representatives of the wireless industry have met with Commission staff and urged the dismissal of the Petition filed by Skype Communications S.A.R.L. ("Skype") in the above-captioned proceeding ("Skype Petition").<sup>1</sup> This lobbying includes a number of mischaracterizations of the relief requested by Skype. Skype therefore takes this opportunity to clarify the record on several issues central to the policy environment for the wireless Internet.

There are now several, interrelated proceedings at the Commission, and an appeal of the Commission's decision in the 700 MHz Auction proceeding, that will determine the level of openness in the wireless market. Skype's pending Petition, The Rural Cellular Association's handset exclusivity Petition, CTIA's DC Circuit appeal of the Commission's C-block openness rules, and Google's request that Verizon Wireless acknowledge and agree to abide by the scope of the C-block rules are each active. Skype respectfully submits that in each of these matters, the wireless industry's opposition to the Commission's openness policy raises questions about whether the industry will faithfully implement the Commission's rules and policies.

<sup>1</sup> Skype Communications S.A.R.L., *Petition to Confirm A Consumer's Right To Use Internet Software and Attach Devices to Wireless Networks*, RM-11361 (filed Feb. 20, 2007).

In this letter, Skype focuses on the essence of its Petition and urges the Commission to grant the grant the Petition consistent with the approach set forth in this letter. If, however, the Commission decides to dismiss the Petition, it should do so without prejudice and should reaffirm – in the strongest language possible – the Commission’s intention to monitor the wireless carriers’ practices and measure them against the standards set out in the Commission’s *Broadband Policy Statement*.<sup>2</sup>

In its lobbying efforts, the wireless industry invariably mischaracterizes the relief Skype requested in the Petition in an effort to establish that such relief is not needed, hence justifying a dismissal. Skype, therefore, takes this opportunity to repeat the essence of its Petition, which was to have the Commission protect wireless consumers by affirming that the Commission’s *Broadband Policy Statement* applies to wireless broadband networks. The requested relief is a measured response to the dynamics of the wireless market and is a view apparently shared by a majority of Commissioners. As such, it is a consensus position that should now be expressed in a formal statement in order to send a message to an evasive wireless industry and to encourage those, like Skype, who have reasonable expectations that wireless broadband platforms will be open to applications and devices.<sup>3</sup>

As we made clear in our Reply Comments in the above-captioned proceeding, the Skype Petition merely asks the Commission to affirm that wireless broadband networks are subject to the principles of the *Broadband Policy Statement*.<sup>4</sup> Skype focused on the two principles most important to protect wireless consumers – their right to attach devices of their choosing to wireless

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<sup>2</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Policy Statement, FCC 05-151 (rel. Sep. 23, 2005) (“Broadband Policy Statement”).

<sup>3</sup> A wide array of industry and consumer groups agree that the *Broadband Policy Statement* should apply to wireless broadband networks. See, e.g., Comments of the Information Technology Industry Council, RM-11361, at 1 (Apr. 30, 2007); Comments of the Consumer Electronics Association, RM-11361, at 2 (Apr. 30, 2007); Comments of the VON Coalition, RM-11361, at 2 (Apr. 30, 2007); Comments of Mobile Industry Executives, RM-11361, at 6 (May 1, 2007); Comments of Consumers Union, Consumer Federation of America and Free Press, RM-11361 (Apr. 30, 2007); Comments of the Ad Hoc Public Interest Spectrum Coalition, RM-11361 (Apr. 30, 2007).

<sup>4</sup> Reply Comments of Skype Communications S.A.R.L., RM-11361, at 3-4, 11-15 (May 15, 2007).

networks,<sup>5</sup> and their right to use applications of their choice on wireless broadband networks.

Skype referred to the seminal *Carterfone* case, which first established consumers' attachment rights as long as they did not cause harm to the network, to highlight a basic principle and not to have detailed *Carterfone* rules applied in today's wireless marketplace. *Carterfone* is cited in the *Broadband Policy Statement* for the very same reason.<sup>6</sup> Indeed, consumers will experience the relief Skype sought in its Petition if the Commission clarifies that the *Broadband Policy Statement* applies to Internet access services supplied by wireless broadband networks and that it will address any violations of the *Broadband Policy Statement* on a case-by-case basis.

Affirming that the *Broadband Policy Statement* applies to wireless broadband networks is consistent with your recent testimony on Capitol Hill and is the logical conclusion of the Commission's declaration in March, 2007, that wireless broadband networks are classified as Title I "information services."<sup>7</sup> In classifying wireless broadband services in the same regulatory category as DSL, cable modem and broadband over power line, the Commission noted that such a classification "furthers [the Commission's] efforts to establish a consistent regulatory framework across broadband platforms by regulating like services in a similar manner."<sup>8</sup> By stating formally that the principles of the *Broadband Policy Statement* apply to wireless networks, the Commission would firmly establish an essential policy of technological neutrality and regulatory parity.<sup>9</sup>

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<sup>5</sup> As noted above, earlier this week the Rural Cellular Association filed with the Commission a Petition for Rulemaking in which it explains that exclusive arrangements between wireless carriers and handset manufacturers deny rural users the ability to use handsets of their choice. Rural Cellular Association, *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM-\_\_\_\_\_ (filed May 20, 2008).

<sup>6</sup> *Broadband Policy Statement* at 3, n. 13.

<sup>7</sup> *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53, FCC 07-30, at 2, ¶ 2 (rel. Mar. 23, 2007) ("Wireless Broadband Order").

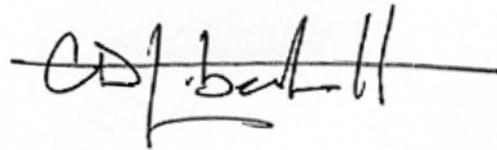
<sup>8</sup> *Id.*

<sup>9</sup> In clarifying that the principles of the *Broadband Policy Statement* apply to all broadband networks irrespective of technology, and in enforcing such principles on a case-by-case basis, the Commission would not be precluded from recognizing that "reasonable network management" may be different for different technologies. The consumer rights expressed in the *Policy Statement*, including the right to attach devices and use applications of one's choice, would be viewed in light of the particular technical characteristics and network topology of wireless, cable and telco networks.

In doing so, the Commission could also make clear that traditional CMRS voice services are not subject to the *Policy Statement*, which is consistent with the settled expectations of CMRS providers whose services will remain under Title II and any other applicable statutes and rules.<sup>10</sup> There is an intrinsic bright line test that is easily implemented: if the wireless “smartphone” or other device can be used by the consumer to reach the Internet, the protective principles of the *Policy Statement* will apply pursuant to Title I of the Communications Act – just as they applied to DSL and cable modem services when such services were classified as Title I information services.

By affirming that wireless broadband services are subject to the *Broadband Policy Statement* and that it will address any violations of the *Policy Statement* on a case-by-case basis, the Commission will protect vital consumer rights with a policy environment that serves the interests of wireless consumers.

Respectfully submitted,



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cc: Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell

<sup>10</sup> It should be noted that the classification of some services offered by wireless carriers is disputed and is the subject of ongoing proceedings before the Commission. In clarifying that the *Broadband Policy Statement* applies to Title I wireless broadband services but not Title II CMRS services, the Commission should not prejudge in any way the Petition filed by Public Knowledge et al. addressing text messages and short codes – a Petition which Skype strongly supports.