



September 12, 2008

**ELECTRONIC FILING**

Commissioner Deborah Taylor Tate  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

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

Dear Commissioner Tate:

Skype Communications S.A.R.L. ("Skype") writes to respond to various statements made at CTIA's Wireless I.T. & Entertainment conference in San Francisco. Attached to this letter is a Reuters report on what seems to be a wireless industry theme at the CTIA meeting. Instead of broadly carrying forward the Commission's tremendous strides toward open networks, the word coming from the CTIA gathering is that open networks present a multitude of problems for the carriers, and that to protect consumers from too many choices, network operators must be the gatekeepers of the consumer experience. This is inconsistent with the Commission's *Broadband Policy Statement* and a market structure that maximizes choice and innovation.

Skype disputes the need for wireless carriers to maintain their closed networks not only in the face of consumer preferences but contrary to their assurances to the Commission<sup>1</sup> that the industry had adopted a policy of openness such as to obviate the need for the relief that Skype sought in its Petition in the above-captioned proceeding ("Skype Petition").<sup>2</sup> Apparently,

<sup>1</sup> Ex Parte filing by CTIA – The Wireless Association, RM-11361, April 14, 2008, at 1 ("Wireless carriers, reacting to the demands of consumers in the competitive market, already have begun implementing a variety of openness initiatives designed to expand consumer access to new and innovative wireless devices and applications. . . . Because both Commission action and the wireless marketplace have addressed the concerns raised by Skype, the Petition should be dismissed.").

<sup>2</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).

these assurances of openness led some at the Commission to believe that there was no present need for Commission action. In this regard, the carriers' apparent change of heart should be a cause for concern.

Despite the carriers' assurances, when lip service to the goals of open networks is translated into their terms of service, they continue to require their subscribers to limit the applications and devices that can be used on their networks. The attitude of the wireless carriers was perhaps best summed up in Sprint Nextel Corp. CEO Dan Hesse's recent comment: "The big Internet can be daunting .... There can be too much choice."<sup>3</sup> This stands in stark contrast to the Commission's wise policies designed to promote as much consumer choice as possible.

Skype respectfully submits that the wireless carriers continued opposition to open networks – including their restrictive terms of service – raises questions about whether the industry will faithfully implement the Commission's rules and policies, including the standards set out in the Commission's *Broadband Policy Statement*.<sup>4</sup> Skype is mindful of the challenges that wireless operators face moving from a close model to an open, Internet-friendly business. As noted, despite some recent steps to modify terms of service toward openness, carriers continue to prohibit voice applications that compete with their core business.<sup>5</sup> Consumer choice, competition and free markets, not carriers acting to block competition, should win the day in wireless – now, not later. If the Commission believed that the transition to more open networks was going to proceed quickly, statements out of CTIA's convention suggest just the opposite.

Skype repeats that the best way for the Commission to maintain the vigilance that is necessary to protect consumers' interest in open wireless networks is to for the Commission to affirm that the Commission's *Broadband Policy Statement* applies to wireless broadband networks. This would be a measured response to the dynamics of the wireless market and would send the correct message to an evasive wireless industry. It would also encourage those in the application development community, like Skype, who have reasonable

---

<sup>3</sup> Allie Winter, *Embracing an Open Network*, RCR Wireless News, Sep. 10, 2008.

<sup>4</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").

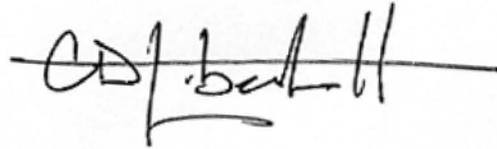
<sup>5</sup> See Letter from Robert W. Quinn, Jr., Senior Vice President-Federal Regulatory, AT&T, to Commissioner Robert M. McDowell, WC Docket No. 07-52, July 25, 2008, at 1, n.1 (noting that all major wireless carriers do not permit the use of peer-to-peer VoIP applications like Skype).

expectations that applications will run as they were designed on wireless broadband platforms.<sup>6</sup>

Affirming that the Commission will enforce the *Broadband Policy Statement* and address any violations of the *Policy Statement* on a case-by-case basis is fully consistent with the Commission approach to constraining Comcast's abusive practices.<sup>7</sup> In this way, the Commission will maintain a policy environment that serves the interests of consumers, carriers and innovative providers of wireless devices and software applications.

Thank you for your continued vigilance in this matter. Please do not hesitate to contact me if you have any questions or concerns.

Respectfully submitted,

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 - North America  
SKYPE COMMUNICATIONS S.A.R.L.  
6e etage, 22/24 boulevard Royal,  
Luxembourg, L-2449 LUXEMBOURG

Attachment

<sup>6</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>7</sup> *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications*, Memorandum Opinion and Order, File No. EB-08-IH-1518, WC Docket No. 07-52, FCC 08-183 (rel. Aug. 20, 2008).



[Print](#) | [Close this window](#)

## Mobile firms like cash from data, but worry about devices

Thu Sep 11, 2008 10:09am EDT

By David Lawsky

SAN FRANCISCO (Reuters) - U.S. mobile phone companies have begun to see substantial returns from delivering data and not just voice, fueled by greater openness on their networks, industry leaders said on Wednesday.

But top executives of three of the nation's four largest mobile carriers also said they are still worried by consumer demands for unfettered freedom to use untested devices or software applications to connect to their networks.

"You are seeing the bulk of our opportunities really coming out of non-voice activities," Robert Dobson, chairman and president of T-Mobile's USA unit, said during a panel at a wireless industry trade show in San Francisco.

"Unfettered access would be a pretty bad experiment," Dobson said. "There needs to be some stewardship or control."

Industry trade group Cellular Telecommunications Industry Association (CTIA), the organizers of the conference, released new statistics showing that \$14.8 billion of U.S. wireless revenue came from non-voice services in the first half of 2008. That's 20 percent of total U.S. wireless service revenue and a 40 percent increase over the first half of 2007, CTIA said.

The rapid growth in data services has been fueled by the success of Apple's iPhone with AT&T Inc and a race by rival carriers such as Verizon and Sprint to offer competing phones and data services with touchscreens and hot software.

Others expressed concern that if there was too much freedom interoperability would suffer.

At the same time, Dobson said networks would be "most productive with stewardship and control."

But consumers have a different opinion.

"Let's take a poll of the audience," said Lowell McAdam, the chief executive and president of Verizon Wireless. "Would any of you like to put any device and any application on any network?"

McAdam was caught off guard as the audience erupted into cheers, applause and a significant number raised their hands.

"I think we have to be careful to not all run to one side of the ship," he said, and then painted a picture of a "Wild West" frontier with unbridled open access.

Consumers have become accustomed to phones that are essentially very expensive computers for which they pay little, McAdam said. And he said customers count on the option for "when things go wrong, to walk into a T-Mobile store, a Sprint store, a Verizon Wireless store, an AT&T store."

But Verizon's chief executive said that the freedom to hook up devices willy-nilly would mean an end to that.

"In an open environment that's going to change. You're going to have to pay more for the devices, just like the PC world. When an application crashes on your Dell laptop you don't call your cable modem provider," McAdam explained.

The picture he painted describes the situation in some countries in western

Europe, where customers go to stores and purchase phones that are never "locked" to one provider, but can easily transfer from network to another. Customers who need support call their wireless companies, which compete head-to-head through price and service for their business.

Josh Silverman, chief executive of Skype, the Web-based telephone calling unit that is the world's largest Internet phone carrier, said he was skeptical about how open conventional U.S. mobile phone operators can be.

"I'm not speaking (of) Verizon specifically, but we've certainly seen from carriers that they often say one thing and in practice do something else," he told Reuters in an interview on Tuesday.

The Skype executive argued that consumers should be able to pick whatever combination of networks or devices they like, along the lines of the computer and Internet industries.

(Additional reporting by Eric Auchard in San Francisco and Sinead Carew in New York; Editing by Bernard Orr)

© Thomson Reuters 2008. All rights reserved. Users may download and print extracts of content from this website for their own personal and non-commercial use only. Republication or redistribution of Thomson Reuters content, including by framing or similar means, is expressly prohibited without the prior written consent of Thomson Reuters. Thomson Reuters and its logo are registered trademarks or trademarks of the Thomson Reuters group of companies around the world.

---

Thomson Reuters journalists are subject to an Editorial Handbook which requires fair presentation and disclosure of relevant interests.