October 8, 2008

Electronic Filing

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: ***Ex Parte Presentation;*** RM-11361

Dear Chairman Martin:

Skype Communications S.A.R.L. ("Skype") responds briefly to CTIA's letter of September 24th and Sprint Nextel's letter of September 26th, both of which take issue with Skype's earlier letter to you regarding the lack of openness of wireless networks. CTIA and Sprint go to great lengths to rebut Skype's characterization of remarks made at a CTIA conference earlier this month, which Skype viewed as indicative of a hesitant, closed network mentality among wireless operators.

Rather than prolong an empty debate about whose characterization of remarks at the conference is correct, let me point out that Skype's application is forbidden, blocked and otherwise interfered with by the largest CTIA members.[1] When CTIA members claim that "the entire Internet is open," the intended implication is that the entire Internet is open, including to multi-modal Internet communications applications like Skype. The truth of the matter, however, is that, despite their representations to the contrary, applications are blocked even on the most recently-announced advanced handsets.[2] The proof of Skype's argument is in the conduct of CTIA members, no

[1] Most network operators continue to restrict VoIP and or P2P applications on their network in apparent violation of the protocol-agnostic network management techniques employed by other operators, including Comcast.
[2] *See, e.g.*, Daniel Roth, *Android: No VOIP for You -- and Other Oddities With the Google Phone*, http://blog.wired.com/business/2008/09/three-years-and.html. Sep. 23, 2008. In addition,

matter what speeches are made at conferences. If Skype is blocked, the network is not open.

I also would like to take this opportunity to remind you that CTIA is currently suing the Commission to overturn the very openness rule they now claim to embrace. If the wireless industry is serious about openness, CTIA would immediately withdraw that litigation.

CTIA attempts to sidestep the fact that its members' networks are not open by arguing that Skype itself is closed and, apparently, therefore cannot advocate consumer empowerment principles and network openness. To make this point, they cite a blog post by Mr. Michael Robertson, CEO of Gizmo Project, a VOIP application. Fundamentally, Mr. Robertson is wrong. Mr. Robertson confuses open networks with open platforms. Skype is an open platform. Anyone, anywhere on the planet can download Skype for free, and he or she will be able to use Skype. Skype's software is open to any application developer through our public Application Programming Interface ('API') program. Over 10,000 developers have taken advantage of this API and are part of Skype's developer program. In fact there are many applications that use Skype's APIs to send calls to/from Skype users and SIP endpoints, including VoSky, Fring, etc. Skype also recently collaborated with Digium/Asterisk, which will now bring Skype into "soft PBXs" for millions of users and allow many forms of applications and services to connect to Skype seamlessly.

Mr. Robertson is also wrong on the law. He rehashes the incumbent wireless operators' various arguments against network neutrality and confuses to whom the *Internet Policy Statement* applies. Openness rules are properly targeted at network operators because of the limited intermodal choices available to US consumers in a wireless market dominated by the top three operators. Conversely, there is nearly limitless choice in Internet applications, with fierce competition and few or no barriers to entry. Quite properly, therefore, the *Internet Policy Statement* applies to networks and not to applications. Its aim is to assure an open Internet so that consumers can choose from the limitless number of applications available to Internet users, absent discrimination by network operators. To apply it to Internet applications would flipt the *Internet Policy statement* on its head. What the network operators are doing is very different. They restrict consumer choice by blocking Skype and other applications to

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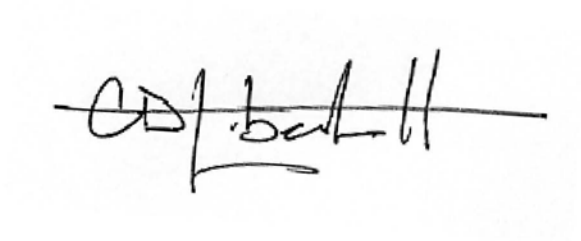
commenting on the iPhone's closed operating system, Steve Wozniak, co-founder of Apple Computer, said "Consumers aren't getting all they want when companies are very proprietary and lock their products down...I would like to write some more powerful apps than what you're allowed."/http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/3145691/Steve-Wozniak-interview-iconic-co-founder-on-the-iPod-iPhone-and-future-for-Apple.html. Oct 8, 2008

which consumers would like to have access. To apply the *Internet Policy Statement* to Internet applications would flip the *Policy Statement* on its head.

We greatly appreciate CTIA's invitation to attend the April show in Las Vegas. If CTIA members would like to prove their openness once and for all, Skype's top executives will be available to attend the conference. When a Skype user can legally call the Chairman of the FCC on the mobile broadband networks of each of the top three wireless networks, we will know that their conduct is consistent with the consumer empowerment principles of the Internet Policy Statement.

We look forward to working with the Commission and CTIA members to ensure that the whole Internet – including multimodal applications such as Skype – is available to consumers.

Respectfully submitted,



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