

July 15, 2009

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

RE: *Ex Parte* Presentation RM-11361, WT Dkt. No. 09-66

Dear Ms. Dortch:

CTIA – The Wireless Association® (“CTIA”) submits the following *ex parte* in response to the June 29, 2009 filing by Skype in the above-referenced docket.<sup>1</sup> Skype’s latest submission consists of a 200-plus page montage largely consisting of self-serving press clippings that only underscore Skype’s primary objective throughout this proceeding – to promote its own business model – even when the core premise of its Petition is fatally flawed. While paying lip service to the importance of “competition” and “innovation” in the wireless market, Skype ignores them both in seeking the application of monopoly-era regulation to the wireless market. This filing demonstrates why Skype’s regulatory version of the wireless industry is not necessary, and highlights how the industry has evolved over the last two years since the Skype filing, without the need for intervention. As Blair Levin recently described in his presentation on the development of the National Broadband Plan, the Commission will analyze what would happen if the Commission does not act. This filing demonstrates the benefits of being cautious before regulating a competitive industry.

The *Carterfone* regime that Skype wants to foist upon competing wireless carriers was designed for a telecommunications environment in which a single, monopoly provider was sole owner of the only existing network and the monopoly device manufacturer. In today’s wireless industry, by contrast, no carrier has more than 32% of the market nor does any carrier have an ownership interest in any of the 33 handset manufacturers currently serving the market.

In evaluating Skype’s filing, CTIA believes it is useful for the Commission to consider what has occurred in the wireless market since Skype filed its *Carterfone* Petition and to compare Skype’s dire predictions about the evolution of the wireless ecosystem without government intervention versus what CTIA said at the time:

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<sup>1</sup> See *Ex Parte* Presentation of Skype Communications S.A.R.L., RM-11361, WT Dkt. No. 09-66 (filed June 29, 2009) (“*Skype Ex Parte*”).

## WHAT WAS SAID IN THE PAST

- In its Petition for Rulemaking in February 2007, **Skype** argued that wireless carriers were limiting the ability of subscribers to operate wireless devices and run software applications of their choosing.<sup>2</sup> **CTIA**, by contrast, asserted that the wireless industry was robustly competitive, with multiple wireless providers competing in every market and numerous equipment manufacturers providing devices to those providers.<sup>3</sup>
- **Skype** pointed to purported examples of wireless carriers' disabling access to Wi-Fi functionality,<sup>4</sup> locking handsets to a particular operator,<sup>5</sup> favoring a proprietary network model over open development platforms,<sup>6</sup> and adopting allegedly restrictive terms of service limitations on connections to the wireless network.<sup>7</sup> Skype argued that, without Commission regulation, consumers would be unable to attach non-harmful devices to wireless networks.<sup>8</sup> **CTIA** noted that there were any number of Wi-Fi enabled handsets at the time – contrary to Skype's assertion that Wi-Fi had been "crippled" by the wireless industry.<sup>9</sup> CTIA also demonstrated that carriers' customer service agreements vary significantly with respect to the terms and conditions governing the connection of devices to their networks.<sup>10</sup>
- **Skype** argued that, without Commission regulation, consumers would be unable to run the applications of their choosing.<sup>11</sup> According to Skype, regulation was essential in order to "liberate software innovation and free equipment manufacturers from unreasonable control by carriers...."<sup>12</sup> **CTIA** provided evidence of the vibrant, open and evolving market for software applications on wireless devices.<sup>13</sup>

In sum, in sharp contrast to Skype's missive to the Commission predicting vast consumer harms, CTIA urged the Commission to reject the Skype Petition as it presented solutions to problems that do not exist in the wireless market and suggested remedies that would not benefit consumers. *CTIA predicted that the competitive*

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<sup>2</sup> See *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*").

<sup>3</sup> See *Opposition of CTIA – The Wireless Association @*, RM-11361 (filed April 30, 2007) ("*CTIA Opposition*").

<sup>4</sup> See *Skype Petition* at 14-15.

<sup>5</sup> *Id.* at 16-17.

<sup>6</sup> *Id.* at 19-20.

<sup>7</sup> *Id.* at 18-19.

<sup>8</sup> See *CTIA Opposition* at 2.

<sup>9</sup> *Id.* at 18-19.

<sup>10</sup> *Id.* at 21-22.

<sup>11</sup> See *Skype Petition* at 2.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> See *CTIA Opposition* at 21-22.

*wireless marketplace would continue to evolve to provide consumers with even greater choice, without the need for Commission intervention.*<sup>14</sup>

Two years later, which of these competing visions of the future of the wireless marketplace has been borne out? In short, time has validated CTIA's assessment of the wireless market and discredited Skype's gloomy competing view. As Mr. Levin has proposed, the Commission can now analyze what has happened without FCC intervention.

### **WHAT HAS HAPPENED**

- No dire results have occurred. Since February 2007, the wireless industry has continued to experience explosive subscriber growth (adding more than 40 million subscribers) while the price per minute for wireless service in the United States is the lowest of any of the 26 OECD countries measured. The level of consumer satisfaction also continues to improve. Consumer Reports, the magazine that is the flagship property of the wireless industry's harshest critic, Consumers' Union, said in its January 2009 issue that "[o]verall, wireless service has become significantly better," and that "[s]ixty percent of readers were either completely or very satisfied with their service."<sup>15</sup>
- In addition, mobile broadband offerings have expanded greatly, including in rural areas, and numerous carriers have announced plans to deploy next generation wireless broadband networks greatly surpassing the capabilities of existing networks.<sup>16</sup> Wireless carriers have established new calling plans, expanding the voice and data capabilities available to wireless subscribers at ever lower prices.<sup>17</sup> More than 630 unique wireless devices are manufactured

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<sup>14</sup> See e.g., *CTIA Opposition* at 49-50.

<sup>15</sup> "Best Cell Phone Service", Consumer Reports, Jan. 2009 available at <http://www.consumerreports.org/cro/electronics-computers/phones-mobile-devices/phones/cell-phone-service-providers/cell-phone-service/overview/cell-phone-service-ov.htm> (last accessed July 15, 2009).

<sup>16</sup> See e.g., "Bluegrass Cellular Announces New 3G Coverage In Cumberland County,"

Press Release, Apr. 22, 2009, available at

[http://www.bluegrasscellular.com/about/news/bluegrass\\_cellular\\_announces\\_enhanced\\_voice\\_and\\_3g\\_coverage\\_in\\_grayson\\_coun](http://www.bluegrasscellular.com/about/news/bluegrass_cellular_announces_enhanced_voice_and_3g_coverage_in_grayson_coun) (publicizing Bluegrass Cellular's decision to add 3G high speed data service coverage to Burkesville, KY); "Cellular South to Expand Availability of Advanced 3G Mobile Broadband Services Throughout Much of Mississippi; Next Generation Wireless Gives Customers

Faster Internet Connections, New High-Speed Data Services and Multimedia Applications," Cellular South Press Release, Mar. 10, 2009, available at

<https://www.cellularsouth.com/news/2009/20090310.html> (noting plan to introduce 3G service in 78 cities in the second and third quarters of 2009); "Stelera Wireless Launches Wireless Broadband Network; Cutting Edge Internet Services Launched In South Texas," Press Release, Mar. 23, 2009, available at

<http://dev.stelerawireless.com/Portals/0/docs/National%20STX%20Press%20Release.docx> (touting its use of HSPA to build "a network optimized for the broadband experience").

<sup>17</sup> See e.g., "Verizon Wireless Introduces New Unlimited Plans That Are as Worry Free as the Guarantee," Press Release, Feb. 19, 2008, available at

for the U.S. market. Contrary to what Skype predicted, there are now 29 devices with integrated Wi-Fi capability with many more on the way.<sup>18</sup> Further, counter to Skype's prediction, at least 54 unlocked handsets are currently available through third-party and manufacturer websites.<sup>19</sup>

- Counter to Skype's prediction about the lack of innovation in the application space, growth of wireless software applications has been even more pronounced. Apple iPhone, the Android system, Palm, Blackberry, Nokia and, shortly, Windows Mobile offer applications stores for wireless devices, which consumers have enthusiastically embraced.<sup>20</sup> There are now more than 70,000 applications available to wireless consumers that were not available when Skype made its dire prediction.
- Even the Skype application, whose availability and adoption Skype argued would languish in the absence of regulatory intervention, is now available for more than 100 wireless devices according to Skype's own website.<sup>21</sup> And Skype recently released a version of its application compatible with Windows Mobile 5.0 that should greatly expand the number of wireless devices on which the application is accessible.<sup>22</sup>

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<http://news.vzw.com/news/2008/02/pr2008-02-19.html> (announcing \$99.99 Nationwide Unlimited Anytime Minute Plans, and enhanced Broadband Access Plans offering 50 MB a month for \$39.99 or 5 GB a month for \$59.99); "Cricket Wireless Offers Unlimited Data for \$35 a Month, Look Ma, No Cap," Engadget Mobile, Mar. 3, 2008, *available at* <http://www.engadgetmobile.com/2008/03/23/cricket-wireless-offers-unlimited-data-for-35-a-month-look-ma/>; Phil Goldstein, "AT&T unveils \$3 per day unlimited GoPhone calling plan," Fierce Wireless, May 8, 2009, *available at* [http://www.fiercewireless.com/story/tunveils-3-day-unlimited-gophone-calling-plan/2009-05-08?utm\\_medium=nl&utm\\_source=internal](http://www.fiercewireless.com/story/tunveils-3-day-unlimited-gophone-calling-plan/2009-05-08?utm_medium=nl&utm_source=internal) (announcing AT&T Mobility's decision to launch a new calling plan through its prepaid GoPhone service, which will "give users unlimited calling with no roaming or long distance fees for \$3 per day...customers using this new plan will also be able to get text messaging and data service at the same pay-per-use rates as all other GoPhone 'Pay As You Go' plans").

<sup>18</sup> CTIA Research as of April 6, 2009 and includes devices with Wi-Fi and/or UMA capability; *see also* "Sprint's Blackberry Tour to sprout WiFi Next Year", FierceWireless *available at* <http://www.fiercewireless.com/story/sprints-blackberry-tour-sprout-wifi-next-year/2009-07-09> (last accessed July 10, 2009).

<sup>19</sup> CTIA Comments at 34.

<sup>20</sup> *See e.g.*, "Android | Market" at <http://www.android.com/market/> (providing an overview of the available applications for Android phones); Palm Software, [http://software.palm.com/us/html/top\\_products\\_treo.jsp?device=10035300025](http://software.palm.com/us/html/top_products_treo.jsp?device=10035300025) (detailing the kind of software that can run on a Palm phone); Blackberry App World, <http://na.blackberry.com/eng/services/appworld/> (listing all available applications for BlackBerry devices); "Skype 2.5 for Windows Mobile" at <http://www.skype.com/download/skype/windowsmobile/> (demonstrating Skype's ability to utilize the Windows Mobile platform).

<sup>21</sup> *See* Skype, <http://www.skype.com/download/skype/mobile/> (last accessed July 15, 2009).

<sup>22</sup> *See* <http://www.skype.com/intl/en/download/skype/windowsmobile/> (last accessed July 6, 2009). The explosive growth in wireless applications belies claims made in 2007 by Skype and its supporters

- Further, contrary to Skype’s prediction, carriers continue to evolve their service offerings, and their terms and conditions, to match consumer demands and to take advantage of new network and handset capabilities.

In short, the regulatory requirements that Skype seeks to impose on the wireless industry are no more necessary today than they were when Skype filed its *Carterfone* Petition in 2007. Since the time of Skype’s filing, the demand for wireless services, the diversity of wireless devices, and the availability of wireless software applications have grown exponentially. As the past two years have vividly illustrated, in this dynamic environment when consumers demand additional software, hardware capabilities and services, the wireless industry will meet those demands. The industry will continue to be responsive to consumers’ needs without the unnecessary regulations sought by Skype.

CTIA believes that this constantly-evolving, financially-healthy, consumer-driven industry is exactly the place where the government should analyze what would happen without government intervention, before it moves down the path of regulation proposed by Skype. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Christopher Guttman-McCabe

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that mandating the *Carterfone* regime on the wireless market was necessary because carriers “have imposed excessive burdens and conditions on application entry in the wireless application market, stalling what might otherwise be a powerful input into the U.S. economy.” Tim Wu, “Wireless Net Neutrality: Cellular *Carterfone* on Mobile Networks,” New America Foundation, Working Paper #17, at 2 (Feb. 2007). As Chairman Genachowski correctly observed last week, today’s marketplace is “brimming with thousands of apps that have unleashed new waves of creativity and innovation ....” Remarks of Chairman Julius Genachowski to the Staff of the Federal Communications Commission, at 2 (June 30, 2009).