Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Fostering Innovation and Investment in The Wireless Communications Market	)) WC Docket No. 09-157)
A National Broadband Plan For Our Future	) WC Docket No. 09-51)

Reply Comments

The AdHoc Telecommunications Users Committee ("AdHoc") hereby submits its Reply Comments in the above-captioned proceeding. Through this filing AdHoc suggests an approach that it believes will encourage the development and availability of innovative, market-responsive wireless devices and applications. Accordingly, these Reply Comments are limited in scope.

AT&T and Verizon argue that the marketplace already is providing consumers with access to devices and applications of their choice, and that any Commission action would be unnecessary.[1] To an extent, the market is providing more choice to consumers than historically has been the case. These providers, however, remain free to determine without any Commission policy control or regulation which devices and applications can be connected to their wireless networks. An open market place, not just a few companies, best

[1] AT&T Comments at 108, Verizon Wireless Comments at 155.

identifies and responds to consumer demand for new products and services. This statement is true as a general proposition and with respect to wireline and wireless services. Indeed, the Commission has a long history of enhancing competition and consumer choice in the telecommunications market. Wireless service provider arguments that Commission action to fully open the wireless market to devices and applications provided by entities unaffiliated with wireless service providers would constitute heavy-handed regulatory intervention are far wide of the mark. Instead, such Commission action would promote competition in the wireless telecommunications market and would be fully consistent with historic Commission policies.

In its Reply Comments supporting Skype's petition seeking a Commission ruling that consumers be free to connect devices of their choosing to wireless service, provided that the devices do not cause technical harm to wireless networks, AdHoc recommended to the Commission a market-based approach that (1) would allow carriers to bundle mobile devices and transmission services, (2) would minimize regulatory intervention and (3) would enhance the availability of innovative devices and applications.[2] AdHoc observed that while the carriers' business concerns are understandable, those concerns should not obstruct the adoption of Commission policies and rules that would increase innovation and thereby advance the broader public interest. AdHoc's Reply Comments in the Skype proceeding are attached hereto.

[2] AdHoc, Reply Comments, *Skype Communications S.A.R.L.*¸ RM-11361, May 15, 2007.

In view of the foregoing, AdHoc submits these Reply Comments and the Attachment hereto to aid the Commission in the development regulatory requirements to enhance innovation in the wireless services market.

Respectfully submitted

James S. Blaszak
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Ninth Floor
Washington, DC 20036
202-857-2550

Counsel for
The AdHoc Telecommunications Users Committee

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ATTACHMENT

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Skype Communications S.A.R.L.	)	RM-11361
	)	
Petition to Confirm a Consumer's Right	)	
To Use Internet Communications Software	)	
and Attach Devices to Wireless Networks	)	

Reply Comments

The AdHoc Telecommunications Users Committee ("AdHoc") hereby submits its reply comments in the above-captioned proceeding.[1]

I. Introduction

Contrary to the implications of some parties, the question presented by Skype's Petition is not whether the Commission should impose draconian regulation on wireless carriers; it is whether application of the Carterfone principle to wireless communications would enhance competition in the mobile devices market and thus better serve the public interest. After reviewing the comments on Skype's petition, AdHoc has concluded that the answer is clearly "yes." AdHoc further believes that the wireless carriers' articulated concerns about spectrum conservation and network integrity are at

[1] AdHoc is an unincorporated association that represents its members' interests in telecommunication matters pending before the FCC and the courts. Its members are among the nation's largest and most sophisticated corporate buyers of telecommunications services and products. Fifteen of AdHoc's twenty members are Fortune 500 companies, including eleven of the Fortune 100. They estimate their combined annual spend on telecommunication services at between two and three billion dollars per year. AdHoc admits no carriers as members and accepts no carrier funding. AdHoc's self-interest is served by avoiding the imposition of unnecessary regulatory constraints on wireless carriers. In an effectively competitive market, AdHoc's members do not need regulation to protect their interests. AdHoc believes that effectively competitive markets best serve consumers. Regulatory intervention may, however, be necessary when entry barriers exist and competition is not as vigorous as it should be.

least overstated. Instead, business considerations are likely to be at the heart of the carriers' concerns, but, not surprisingly, the carriers do not highlight those considerations.

Instead of giving wireless carriers unfettered discretion as to which mobile devices may connect to their networks, the Commission should require the wireless carriers to (1) publish their respective technical specifications, and (2) require that they apply those technical specifications to mobile devices without discrimination. Any mobile device that complies with a wireless carrier's technical specifications should have access to the wireless carrier's network, whether or not the wireless carrier is marketing that device. This market-based approach would not prevent carriers from continuing to bundle mobile devices and transmission service. It would be entirely consistent with minimizing regulatory intervention, and would enhance the availability of mobile devices and applications that may initially cater to niche demand. Ultimately, some of these devices (and applications) would likely gain broad acceptance and increase the efficiency and competitiveness of the country's economy. The carriers' private business concerns, while understandable, should not stand in the way of policies that would increase the chances of wireless service further advancing the broader public interest.

II. The Marketplace Should Determine the Availability of Mobile Devices

The Commission has repeatedly relied on markets to identify and serve niche demand. For example, in the *Above 890* decision the Commission allocated spectrum to private microwave users because it concluded that even where carrier services were available, private systems would allow users to customize their transmission capacity to

meet their particular needs.[2] A decade latter, the Commission granted Microwave Communications, Inc. (MCI) construction permits to build facilities to provide service to subscribers who could have bought service from incumbent carriers, reasoning that MCI's service would produce lower costs and greater flexibility for customers.[3] The Commission found that customers would obtain services not then available, services that would increase the efficiency of the customers' business.[4] Just two years later, the Commission extended its analysis and announced a general policy favoring competition as the best means of satisfying growing demand for new and specialized communications needs.[5] The Commission also concluded, after almost twenty years of carriers' resistance, that competition in the customer premise equipment market would lead to more choice and lower prices.[6]

History has proven the Commission right. Vigorous competition, not the carriers' private business objectives, best identifies and satisfies demand for innovative, efficiency enhancing services, equipment and applications. Skype is right; the time has come for the Commission to apply these historical lessons to mobile devices. As shown herein and in comments, there is no good reason to limit the competitiveness of the mobile device market.

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[2] *Allocation of Frequencies in the Bands Above 890 Mc,* 27 F.C.C. 359 (1959), *recon denied,* 29 F.C.C. 825 91960).

[3] *MCI,* 18 F.C.C. 2d 953 (1969), *recon denied,* 21 F.C.C. 190 (1970).

[4] *Id.* at 959.

[5] *Establishment of Policies and Procedures for Consideration of Application to Provide Specialized Common Carrier Services in the Domestic Public Point-to-Point Microwave Radio Service,* 29 F.C.C.2d 870 (1971), *aff'd,* 31 F.C.C.2d 1106 (1971), aff'd sub nom*., Washington Util. & Transp. Commission v. FCC,* 513 F.2d 1142 (9th Cir.), cert. denied*,* 423 U.S. 836 (1975).

[6] *Mebane Home Telephone Co. of North Carolina,* 53 F.C.C.2d 473 (1975); *see also Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service* (MTS) *and Wide Area Telephone Service* (WATS), 56 F.C.C. 593 (1975).

Each wireless carrier's decision regarding what devices to approve for use on its network is affected by the wireless carrier's business model. In comments to Skype's Petition, various wireless carriers argue that they are encouraged to market new mobile devices (with new applications) because doing so improves their positions in the wireless market vis-à-vis other wireless carriers.[7] This sounds like a reasonable proposition, but is closer to a half truth. The carriers, not surprisingly, fail to explain that while new mobile devices (with new applications) might make a wireless carrier more attractive to users, such mobile devices (and applications) also may lead to a reduction in the wireless carrier's average revenue per user ("ARPU").[8] At the very least, a wireless carrier will take a reduction in ARPU into consideration when deciding whether or not to approve of a new wireless device.[9] Wireless carriers will market mobile devices when they conclude that their revenue is likely to be higher with the devices in their respective portfolios than without them. Accordingly, wireless carriers will bring to market mobile devices that are likely to generate broad sales.[10] The carriers do not have the financial incentive to go through the process of certifying devices that might have a passionate, but small group of users. As set for above, and in Skype's petition,

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[7] Sprint, Comments at 5; AT&T, Comments at 17-18; Verizon, Comments at 23.

[8] "In the future, VoIP could tear at the whole underpinnings of the [wireless] industry." W. David Gardner, *T-Mobile And Apple Prepare For Wi-Fi Cell Phone Battle*, InformationWeek (May 3, 2007) (quoting Joe Nordgaard, Managing Director of Spectral Advantage, referring to the threat that VoIp over WiFi presents to wireless carriers' business models, because users' decisions to communicate via VoIp over WiFi instead of wireless carriers' cellular networks could cut into wireless carrier revenues).

[9] The wireless carriers' concern about a reduction in ARPU is particularly acute when wireless carriers' revenue for wireless transport is falling, as noted by AT&T in its comments opposing the Skype Petition: "[W]ireless rates have been steadily falling. Between 1994 and 2005, wireless revenue-per-minute fell a staggering 86%, including a 22% plunge in 2005 alone." AT&T, Comments at 7 – 8.

[10] Verizon Wireless supports the contention that wireless carriers should be able to decline support for a mobile device if such a device does not benefit a carrier's business: "[i]f an individual carrier determines, for whatever reason, that . . . a product would not provide a benefit to its business, it makes perfect sense for the carrier to decline to support such a device . . . ." Verizon, Comments at 21. Because wireless carriers decide what mobile devices can and cannot be used on their networks, a wireless carrier's decision to "decline to support . . . a device" is tantamount to blocking such a device from the US market.

the Commission has long favored policies, such as *Carterfone,* that support identification and satisfaction of telecommunications needs through market forces. This policy preference has resulted in Commission decisions that preclude carriers and licensees from using their market position to frustrate meeting those needs.[11] The Commission's reasoning has been consistent. Early niche demand often spreads and leads to a richer variety of equipment and applications that yield material improvements in efficiency and competitiveness, and that overall serve the public interest. Adoption of the approach suggested by AdHoc would yield similar benefits in the wireless service and mobile devices market. While a wireless carrier's ARPU, and the potential revenue available from the sale of a mobile device, may be reasonable considerations in light of a wireless carrier's business model, a wireless carrier's business model should not take priority over the public interest.[12] Within reasonable technical limits, users should decide what mobile devices are sold in the US.[13]

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[11] And the Commission's action in the current context would eliminate a similar environment that exists in the wireless communications area today. As noted, "four companies – Cingular Wireless LLC, Verizon Wireless, Sprint Nextel Corp. and T-Mobile USA Inc. – . . . determine what mobile technologies Americans will and won't use." Andrew D. Smith, *4 carriers have all the say on what's on cellphones*, The Dallas Morning News (April 1, 2007) ("*Smith"*) (writing about how at the CTIA Wireless 2007 conference hundreds of exhibitors were present, but only the four major wireless carriers ultimately decide what mobile technologies are actually made available in the US marketplace).

[12] As Chairman Martin has stated in a different context: "[T]he Commission must set the rules of the road so that players can compete on a level playing field. In other words, all providers of the same service should be treated in the same manner regardless of the technology that they employ." *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, FCC 07-30, at 26 (Rel. March 23, 2007) ("*Declaratory Ruling*"). AdHoc believes that Chairman Martin's thinking applies to mobile devices whether or not they've been adopted, and certified, by a wireless carrier. A level playing field will maximize choice and consumer welfare.

[13] AdHoc's recommendations would promote the Commission's principles that "[t]o encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice . . . consumers are entitled to connect their choice of legal devices that do not harm the network . . . [and] consumers are entitled to competition among network providers, application and service providers, and content providers." *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986, ¶ 4 (2005) ("*Broadband Access Policy Statement*"). In its comments opposing the Skype Petition, AT&T argued that ". . . carriers should be able to offer those products and

III. Wireless Carrier Technical Specifications Should be Published and Applied Without Discrimination

The mobile device market would become more robust by requiring wireless carriers to publish their respective technical specifications and to apply those technical specifications to mobile device manufacturers without discrimination. Instead of having the certification of a mobile device be within the unfettered discretion of wireless carriers, wireless carriers should publish their technical specifications. This requirement would enable mobile device manufacturers to build to the appropriate technical specifications if they wish to sell devices directly to the users of a particular wireless carrier.

This is not intended to be a "one size fits all" solution, i.e., one set of technical specifications will not apply to all wireless carriers. Nor is AdHoc suggesting that the Commission impose the technical specifications of its choosing upon wireless carriers. Each wireless carrier should publish its own technical specifications. Once a wireless carrier publishes its technical specifications, they should be applied without discrimination to every mobile device manufacturer that chooses to build to them – whether or not the wireless carrier has a resale contract with the mobile device manufacturer. To the extent that any mobile device complies with a wireless carrier's technical specifications, that device should have access to the wireless carrier's network.

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services that they believe their customers will value . . . ." AT&T, Comments at 31. AT&T is certainly entitled to choose what products and services it sells – based on what it believes its customers are interested in purchasing – but AT&T *should not* be entitled to preclude what its customers may otherwise purchase – that decision should be up to the customers.

IV. AdHoc's Proposal Will Not Result in Harm to Networks or Services

AdHoc's proposal would not harm wireless carriers' networks or services. According to various wireless carriers, wireless carriers must certify (or have control over) the mobile devices that have access to their networks, to ensure that such devices do not use too much bandwidth, adversely affect their networks, or lead to security risks or other harm.[14] These claims appear to be of questionable validity.

Today, wireless carrier networks successfully deal with similar circumstances. For example, wireless carriers' data card users may use far greater bandwidth than mobile phone users. Data card users are not limited in their use of, or access to, online applications or web sites; tellingly, they have greater access to content and applications than the most advanced mobile devices (and it is unlikely that in the future they will have less access to such content or applications than even the most advanced mobile devices). Furthermore, mobile devices that have not been certified by wireless carriers regularly use wireless carriers' networks when roaming – even non-US based mobile devices regularly roam on the networks of US wireless carriers.

If, as AdHoc proposes, mobile device manufacturers are required to comply with a wireless carrier's technical specifications, the likelihood of adverse consequences to the network, or the development of security risks or other harm, would seem no different than today. Wireless carriers could build non-discriminatory bandwidth usage constraints into their technical specifications. Wireless carriers may also be able to limit bandwidth used by a device based on what a user pays for (both at any given moment and in the aggregate over a billing period). Wireless carriers' technical specifications

[14] AT&T, Comments at 58–59; Verizon, Comments at 33–34; Sprint, Comments at iii and 15.

should incorporate necessary network management and security requirements. In addition to these network management and security requirements, Parts 22 and 24 of the Commission's Rules, which limit interference and other potential harm to wireless carriers' networks and services, would also apply.[15]

V. Regulation Should be Avoided; the Market Should be Allowed to Work Freely

AdHoc does not favor heavy-handed regulation. AdHoc seeks a market-based paradigm. Its focus is on making the current market more competitive, while not jeopardizing service quality or network safety.

AdHoc would not prohibit wireless carriers from having direct resale deals with mobile device manufacturers or from bundling mobile devices with wireless services. Nor does AdHoc suggest that the Commission set rates for unbundled wireless service. Instead, AdHoc urges the Commission to require only that wireless service carriers publish their technical requirements and apply those requirements on a nondiscriminatory basis. In short, AdHoc, like Skype, merely requests that the Commission apply well-settled free-market principles to the development and sale of mobile devices.

[15] 47 C.F.R. §§ 22 Subparts C and H, and 24 Subparts C and E.

VI. Conclusion

In view of the foregoing, AdHoc urges the Commission to grant Skype's petition in a manner consistent with these Reply Comments.

Respectfully submitted,

James S. Blaszak
Joaquin Gamboa
Levine, Blaszak, Block and Boothby, LLP
2001 L Street, NW
Suite 900
Washington, DC 20036
202-857-2550

Counsel for
The AdHoc Telecommunications Users Committee

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