

Wireless *Carterfone*: A Long Overdue Policy Promoting Consumer Choice and Competition

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to Ensure Consumer Choice?**

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Carterfone Policy Separates Telephone Service From Handset Sales

- Almost 40 years ago the Federal Communications Commission established its *Carterfone* policy that requires all telephone companies to allow subscribers to attach any technically compatible device.
- *Carterfone* addresses subscriber device freedom and limits service providers from using device limitations to thwart access to content and services.
- This simple policy has saved consumers money, promoted innovation and stimulated more diversified and expanded network use without any financial or operational harm to network operators.
- *Carterfone* decoupled telephone service from the sale or lease of the handset. The FCC initially refused to do this, but later enthusiastically embraced a court mandate to support the rights of consumers to attach any device to a network that is “privately beneficial without being publicly harmful.”
- The FCC has never explicitly applied *Carterfone* to wireless services, but the Commission does regulate telecommunications services provided by cellphone carriers and requires them to accept and process 911 calls originated over any handset, not just ones sold by the carrier.

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My paper identifies instances where the FCC has applied *Carterfone* to promote consumer freedom and economy particularly by preventing network operators from requiring equipment upgrades or replacements that subscribers do not need, because less expensive options exist.

These policies include:

The right of cable television subscribers to use a CableCard to perform digital rights management and other security functions in lieu of a more costly and limiting leased set top box;

The right of wireline and wireless telephone subscribers to keep their existing telephone numbers when shifting carriers;

Cellphone carriers' obligation to continue providing analog service during a transition to complete digital service to prevent immediate, "flash cut" termination of service to older handsets. Broadcasters have a similar duty to continue providing analog service until Feb. 2009 and the federal government has established a subsidy program to enable continued use of retrofitted analog television sets; and

The right of cable television subscribers to access preferred content without having to buy undesired content tiers.

Why Do Wireless Carriers Object to the *Carterfone* Policy?

- Increased subscriber freedom to attach devices to wireless networks would reinforce the FCC's ongoing statutory obligation to enforce conventional telecommunications service rules on carriers that successfully have avoided the rules.
- Wireless carriers have determined that the financial benefits of locking subscribers into two year service commitments exceed the cost of subsidizing handset sales.
- Locking and limiting subsidized handsets helps carriers foreclose subscriber access to services, content and applications available from third parties that make no financial contribution to the wireless carrier and possibly compete with services offered by the carrier.

How Do Wireless Carriers Violate the *Carterfone* Policy?

- Locking handsets so that subscribers cannot access competitor networks (by frequency, transmission format, firmware or software); in the U.S. carriers even lock handsets designed to allow multiple carrier access by changing an easily inserted Subscriber Identity Module (“SIM”);
- Using firmware “upgrades” to “brick,” i.e., render inoperative, the handset or alternatively disable third party firmware and software;
- Disabling handset functions, e.g., bluetooth, Wi-Fi access, Internet browsers, GPS services, and email clients;
- Specifying formats for accessing memory, e.g., music, ringtones, and photos;
- Creating “walled garden” access to favored video content of affiliates and partners; and
- Using proprietary, non-standard interfaces making it difficult for third parties to develop compatible applications and content.

Responding to Wireless *Carterfone* Opponents

Critics allege that *Carterfone* applied only under monopoly conditions. These critics ignore the fact that the FCC has applied *Carterfone* in instances where competition provides no remedy.

No cellphone company currently offers discounted rates to subscribers who do not trigger a handset subsidy where a subscriber already has a phone, or wants to extend service using an existing and no longer subsidized handset.

Cellular subscribers do contractually relinquish some freedom in exchange for a subsidized handset. But *Carterfone* would provide subscribers with the option of attaching an unsubsidized handset free of any carrier imposed attachment restrictions.

Many consumers now recognize the scope of restrictions wireless operators impose in exchange for a handset subsidy. Many Apple iPhone owners risk “bricking” their handset in self help efforts to eliminate these restrictions.

Conclusions and Recommendations

The public interest requires wireless carriers to abandon subscriber handset restrictions that violate the *Carterfone* policy.

Wireless carriers remain regulated common carriers regardless whether they also provide less regulated Internet access and other information services. The duties of common carriage do not evaporate simply because wireless carriers enjoy some regulatory forbearance.

Wireless subscribers should have the right to attach any handset that complies with standards designed to protect networks from technical harm. Wireless operators should bear the burden of proving that a particular handset would cause technical harm and therefore should not receive FCC certification.

Wireless subscribers should have the right to use their handsets to access any service, software, application and content available by subscriber imputed commands or instructions. The FCC should expressly state that wireless operators have a duty to receive, switch, route and transmit such subscriber keyed commands or instructions.

Suppliers of software, applications, services and content accessible via wireless networks should have the right to offer them to subscribers subject to a reasonable determination by wireless carriers that such access will not cause technical harm to the carriers' networks. The FCC should reserve the right to mediate and resolve disputes over technical compatibility of any software, applications, services, and ⁷ content accessible via a wireless carrier network.