

December 21, 2007

ELECTRONIC FILING

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

Ex Parte Filing: Skype Communications S.A.R.L. Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attach Devices to Wireless Networks, RM-11361.

Dear Ms. Dortch:

The undersigned members of the Public Interest Spectrum Coalition (PISC) renew their support for the Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attach Devices to Wireless Networks ("Skype Petition") and respectfully ask the Federal Communications Commission to gather additional information concerning several recent developments in the marketplace regarding the openness of the wireless communications marketplace.

The wireless marketplace continues to be dominated by carriers that refuse to open their networks to competing telephones and software. None of the developments over the last few weeks have altered the fact that in the actual marketplace, a consumer cannot use a mobile phone of his or her choosing with his or her preferred mobile service. Therefore, a rule to require carriers to open their networks to any non-harmful devices and software provided by independent providers of equipment and software remains an important national policy.

Nevertheless, some commenters in this proceeding, including most recently, Sprint-Nextel, have proffered a variety of erroneous reasons for dismissing or rejecting the Skype petition. As is explained below, these reasons are without merit.

The recent announcements by Verizon and AT&T do not, in and of themselves, ensure that the wireless handset market is open and competitive.

The Verizon announcement, while a positive first step, is just that: an announcement. Verizon has not released the technical standards, has not developed a process for certifying independent handsets, and has not set forth whether or not consumers who use their own handsets will be able to purchase wireless service at a lower (unbundled) price than those consumers who purchase the equipment bundled with the service. Furthermore, Verizon's announcement, even if acceptable, would only apply to one of the four major carriers. While AT&T stated that its network is open to any GSM phone, it is not clear what features of that phone AT&T will allow the consumer to use, and AT&T remains the only U.S. carrier on which you are officially allowed to use an iPhone. Further, there is no guarantee that other carriers will follow suit; in fact, the stunning silence of the remaining carriers concerning openness is testament to their reluctance to open their networks as requested by the Skype petition. There is insufficient evidence that the

carriers in the wireless marketplace will unlock and unblock wireless handsets without government action.

Similarly, the announcement that several providers are developing an open standard, named Android, for wireless handsets provides no assurance that this open platform will be adopted in the marketplace.

Android was built by the Open Handset Alliance, a coalition of 30 firms, including mobile operators, handset manufacturers, semiconductor companies, software companies, and commercialization companies. It is an open platform for all mobile devices. While this development appears to be consistent with the goals the PISC has set forth in our previous pleadings, there are many questions surrounding the announcement. For example, the technology is not scheduled for commercial application until the second half of 2008. Will it truly be available on its scheduled launch in the second half of 2008? Will the mobile operators adopt Android into their systems? Why are AT&T and Verizon, the two largest U.S. mobile carriers, not a part of the Open Handset Alliance? How will Android interface with existing telephone handsets? These and other questions about the announcement require further investigation before knowing whether or not the marketplace will satisfy the consumer's need for an open handset.

The studies submitted in the record by the wireless industry do not rebut, and actually confirm, that the wireless handset market in Europe is more open to portable devices than in the U.S.

Some commenters have submitted studies in the record that purport to show that the wireless market in the U.S. is more innovative and competitive than the market in Europe and that there is no need to grant the Skype petition. In fact, these studies demonstrate the opposite – that the European market is more open than in the U.S. For instance, the study submitted by Verizon Wireless by Mark Lowenstein admits that “a greater percentage of customers have an unlocked phone in Europe than in the U.S. And phones are, in general, more ‘portable’ from one operator to another.”¹ The study goes on to explain some of the technical differences between GSM and CDMA technologies, but it does not refute the core argument of the Skype petition: that handsets can be unbundled from the wireless service regardless of the particular technology adopted.

These studies of the innovativeness of the American wireless market largely miss the point. The studies focus on the alleged benefits of allowing mobile carriers to differentiate themselves using different features or functionality in their wireless devices. Whether or not there are benefits of bundling handsets and service is not the point of the Skype petition. The Skype Petition does not require that mobile carriers stop bundling wireless handsets with their service offerings. It simply requires that carriers also permit consumers to use any non-harmful device of their choosing, and to run any applications of their choice. Consumers who choose to purchase a handset bundled with the service should still be able to do so, as long as consumers *also* have the option to purchase their own phone and run their own applications separate from the service, and

¹ “Comparisons between U.S. and European Markets for Wireless Services and Devices: Myth vs. Reality,” by Mark Lowenstein, July 2007, submitted in an ex parte by Verizon Wireless on August 28, 2007, at 1-2, available at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519708296.

may purchase service under comparable terms and conditions as consumers who purchase the bundled package. This regime would maximize the benefits and choices for consumers, in contrast to the current market in which the carriers make these choices for the consumer.

The undersigned organizations believe that consumers should have the same opportunity to purchase wireless handsets that landline telephone consumers have today to purchase their own telephone. It remains the case that consumers do not have this opportunity. This policy of choice, embodied in the *Carterfone* line of cases, should be enforced for wireless consumers as well.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office.

Respectfully submitted,

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Consumer Federation of America
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New America Foundation
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