

**FHH Telecom Law**  
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**Skype to FCC: Don't Let 3G Nets Bar  
Consumers From Tweaking Software**

*By Ron Whitworth, Law Clerk*  
*whitworth@fhhlaw.com*  
*703-812-0478*

A recent Petition filed with the FCC has established a whole new battleground over access to communications networks. Skype, an internet telephony division of eBay, asked the Commission to commence a rulemaking proceeding addressing whether the Commission's *Carterfone* principles should be applied to wireless systems.

In the landmark 1968 *Carterfone* case, the Commission threw out the phone companies' stranglehold on customer equipment, enabling consumers for the first time to attach devices of their own choosing to the public switched telephone network, provided only that they did not damage the network. This principle promoted innovation, competition and consumer choice in customer premises equipment. Skype argues that the same policy should be applied to wireless services, asserting that the same rationale and principles apply.

The Skype Petition alleges that wireless carriers are engaging in restrictive practices that are harming consumers. For example, Skype contends that wireless companies disable certain products and features, lock handsets to prevent their use on additional networks, prevent users from installing third-party applications, and impose terms of service limitations which make it impossible for consumers to take advantage of advanced features.

Skype argues that the principle of *Carterfone*, derived from Sections 201 and 202 of the Communications Act, is applicable to wireless technologies and should be applied as such. The Petition endorses the creation of an "industry-led forum" established by the Commission to ensure that the *Carterfone* principle is applied to 3G Internet access networks so that "no entity can enforce techniques such as blocking, locking, or certification requirements that have the intention of preventing consumers from modifying or installing software unless it is reasonably proven that such software harms the network." Not surprisingly, the requested ruling would also be of enormous benefit to Skype and other VoIP providers since it would enable them to offer their services over wireless networks without being blocked by the spectrum owners.

The Skype Petition has already aroused heated opposition from some in the wireless community. CTIA President Steve Largent has declared that the application of "monopoly-era *Carterfone* rules" to wireless technologies would stifle innovation and consumer choice. "Skype's self-interested filing contains glaring legal flaws and a complete disregard for the vast consumer benefits provided by the competitive

marketplace,” Largent said. FCC Commissioner Copps has expressed some sympathy for Skype’s position, observing that if wireless broadband access is an information service, as the Commission recently concluded, the existing informal “guidelines” adopted by the Commission already preclude restrictions on the equipment used for such access. (Query whether the conditions imposed on AT&T/Bell South in connection with their merger require them to allow unfettered interconnection to their networks – Copps’s reasoning would suggest they do.) Clearly, this is a high stakes battle and one which has a high profile at the Commission. Interested parties have until April 30 to file comments. Replies are due by May 15.