

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

COMMENTS OF THE VON COALITION

The Voice on the Net Coalition ("VON Coalition"),¹ the nation's leading advocacy organization promoting policies that facilitate access to Internet Protocol ("IP")-enabled services, files these comments in response to the above-captioned Petition filed by Skype Communications S.A.R.L. ("Skype").²

In recent years, VoIP services have harnessed the power of the Internet to transform voice communications. VoIP innovations deliver new competition, lower prices, and improved ways to communicate. While VoIP services

¹ The following members of the VON Coalition are signatories to these comments: AccessLine, BMX, BT Americas, CallSmart, Cisco, Convedia, Covad, Google, iBasis, i3 Voice and Data, New Global Telecom, Openwave, Pandora Networks, PointOne, Pulver.com, Skype, Switch Business Solutions, United Online, USA Datanet, VocalData, and Veraz Networks.

² Although AT&T and T-Mobile are members of the VON Coalition, the two companies are not signatories to these comments. AT&T and T-Mobile fully concur with the VON Coalition's ultimate conclusion that the Commission need not and should not adopt any regulation of wireless broadband services at this time. Nonetheless, the two companies believe that the instant comments could be read to advocate regulatory intrusion into wireless practices beyond that warranted in the highly competitive and unique wireless marketplace. AT&T and T-Mobile are separately filing their own comments in this proceeding, which provide a more detailed discussion of their positions.

primarily have used wireline networks to this point, one of the major benefits of IP-based applications and services is that they can be designed to be access-technology agnostic. Thus, as wireless broadband networks become increasingly popular, VoIP is likely to bring significant innovations to mobile voice communications just as it has already done for wireline communications. In particular, as wireless handset devices become “smarter,” VoIP innovations will promote the convergence of wireless communications with the computing power of the new devices.

In keeping with its longstanding support of a light-touch regulatory approach to marketplace activities, the VON Coalition does not believe the Commission should adopt regulation of broadband wireless networks at this time. However, the VON Coalition believes that the Commission’s broadband principles, including the right of consumers to attach nonharmful devices to the network and run applications of their choice on the network, should be found to apply to wireless broadband networks. To the extent that this is in doubt, the Commission should make it clear, as requested by Skype.

The VON Coalition believes that a broadband consumer’s basic rights to run applications (subject to reasonable network management policies) and attach nonharmful devices should not depend upon the technology used to provide the broadband service. By clarifying that these principles apply to all broadband networks regardless of technology, the Commission will further its policy of regulatory parity and will establish a framework within which consumers will

benefit more fully from innovative VoIP applications and services.

I. THE VON COALITION SUPPORTS A LIGHT-TOUCH REGULATORY APPROACH IN EVOLVING MARKETS WHILE FOSTERING CONNECTIVITY PRINCIPLES TO PROTECT BROADBAND CONSUMER INTERESTS

From its inception, the VON Coalition has relied upon the bedrock principle of using a regulatory light touch, particularly toward new technologies such as VoIP. The VON Coalition does not believe that detailed and intrusive regulation is appropriate in markets characterized by new technologies. A light-touch regulatory policy is particularly appropriate in situations in which the market in question is competitive and in which consumers have a wide array of choices. Said differently, absent a showing of market failure the Commission should not impose economic regulation, particularly on dynamic technologies or markets.

Nonetheless, the VON Coalition believes that certain policy principles are essential to enabling the full promise and potential of innovative technologies and services such as VoIP. Thus, the VON Coalition's members have long supported connectivity principles designed to protect broadband consumer interests, including, in particular, a "no blocking" principle. Such principles, or consumer freedoms, establish a framework in which consumers are able to use new applications and services without the risk of being artificially limited in their choices. The "no blocking" principle is particularly vital to the continued success of the VoIP industry, which continues to thrive after of the Commission's

affirmation of this principle in the *Madison River Order*.³

These consumer-focused broadband connectivity principles, such as the right to attach nonharmful devices and the right to run applications of one's choice, have long been supported by the VON Coalition, as well as other high tech and consumer electronics trade associations comprised of many of the same companies as the VON Coalition. For example, the High Tech Broadband Coalition listed four principles for broadband consumer connectivity in September 2003, including a "no blocking" principle designed to ensure that consumers were able to run lawful applications of their choice and an attachment principle designed to ensure that consumers could attach nonharmful devices to the network:

- "Broadband consumers should be able to run applications of their choice, within the bandwidth limits and quality of service of their service plans, as long as they do not harm the provider's network."
- "Consumers should be permitted to attach any devices they choose to their broadband connection at the consumer's premises, so long as they operate within the bandwidth limits and quality of service of their service plans and do not harm the provider's network or enable theft of services."⁴

The Commission has, of course, adopted these essential principles – that

³ *Madison River LLC and Affiliated Companies*, File No. EB-05-IH-0110, Order, 20 FCC Rcd 4295 (Enf. Bur. 2005). See also, *VOIP Leaders Praise Swift FCC Action to Stop VoIP Call Blocking*, Press Release by The VON Coalition, Mar. 3, 2005 ("We continue to believe that ensuring consumers can obtain and use the content, applications, and devices they choose is critical to unlocking the vast potential of the Internet" (quoting VON Coalition President Staci Pies)); Comments of The VON Coalition, CC Docket No. 01-92, at 8 (Dec. 7, 2006) ("[T]he Commission should never tolerate or permit blocking of any calls under any circumstances.").

⁴ *Ex Parte* Written Submission by the High Tech Broadband Coalition, CC Docket No. 02-33, CS Docket No. 02-52 (Sep. 25, 2003).

consumers are entitled to run applications of their choice (“no blocking”) and attach nonharmful devices to the network – as part of its Broadband Policy Statement.⁵ The Commission expressed the “no blocking” and attachment principles as follows:

- “To 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, subject to the needs of law enforcement.”⁶
- “To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.”⁷

The VON Coalition has hailed these consumer freedoms, noting that the connectivity principles “help[] to ensure that network operators and owners are not able to unreasonably or unlawfully restrict consumer choice by blocking or impairing services accessed over broadband connections.”⁸ The VON Coalition noted that “[b]y establishing a set of safeguards to protect the rights of consumers to use any device, service, or application they choose over their broadband connection, the Commission is making a commitment that is critical

⁵ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Policy Statement, FCC 05-151, at 3 (rel. Sep. 23, 2005) (“Broadband Policy Statement”).

⁶ *Id.* at 3.

⁷ *Id.* at 3 (citing *Hush-A-Phone Corp. v. United States*, 238 F.2d 266, 269 (D.C. Cir. 1956); *Use of the Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968)).

⁸ *VOIP Leaders Hail Recognition of Consumer Internet Freedoms, Say Internet Freedoms are Essential to Unlocking VoIP’s Full Promise and Potential*, Press Release by The VON Coalition, Aug. 5, 2005.

to unlocking the vast potential of VoIP.”⁹ The Commission’s broadband connectivity principles establish a framework that fosters consumer choice and helps accelerate widespread access to new services and applications.¹⁰

II. THE VON COALITION BELIEVES THAT THE COMMISSION’S BROADBAND POLICY STATEMENT APPLIES TO ALL BROADBAND PLATFORMS, INCLUDING WIRELESS NETWORKS

The VON Coalition supports Commission policies that are technologically neutral and consistent across all broadband platforms and technologies. Such neutral policies avoid artificially biasing the market in favor of one technology or platform over another. Last month, the Commission declared that wireless broadband service is a Title I information service, placing it for regulatory purposes in the same classification as other broadband delivery methods such as DSL, cable modem, and broadband over power line.¹¹ In doing so, the Commission noted that such a classification “furthers [the Commission’s] efforts to establish a consistent regulatory framework across broadband platforms by

⁹ *Id.* (citing VON Coalition Executive Director Jim Kohlenberger).

¹⁰ See Letter from the VON Coalition to President George W. Bush, Jan. 10, 2005, at 2 (“[C]onsumers must be allowed certain basic Internet freedoms to use any device, application, or service over the Internet. As FCC Chairman Michael Powell has said, ‘[t]o realize the innovation dream that IP communications promises’ ... the Administration ‘must ensure that a willing provider can reach a willing consumer over the broadband connection.’”). See also Letter from the VON Coalition to President George W. Bush, Jan. 16, 2006, at 1-2 (“[C]onsumers should be allowed to use any device, application, or service on the Internet that they choose. These basic Internet freedoms positively shaped the development of the Internet and should be carried forward to the broadband future. Indeed, the openness of the Internet has been its defining hallmark, and such openness is critical to unlocking the vast future potential of Internet communications. At the same time, consumers should not be prevented from lawfully using the bandwidth for which they pay.”).

¹¹ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53, FCC 07-30, 2, ¶ 2 (rel. Mar. 23, 2007) (“Wireless Broadband Order”).

regulating like services in a similar manner.”¹²

Accordingly, the VON Coalition believes that the four principles enumerated in the Commission’s broadband policy statement, including the right to attach nonharmful devices and the right to run applications of one’s choice, apply to wireless networks. As a result, under the “no blocking” principle, applications that do not harm the network should not be blocked, whether by technical or contractual means. Furthermore, under the right to attach principle, the VON Coalition believes that consumers have the right to purchase unlocked phones and use them with the wireless carrier of their choice.¹³ The right to attach nonharmful devices and run applications is of particular importance when such devices and applications offer consumer benefits and foster new sources of competition.¹⁴

The VON Coalition recognizes that such consumer rights are affected by the need of carriers to manage and prevent harm to their networks, and that such network management and technological concerns may be very different for wireless networks compared to wireline networks. For example, wireless carriers may use different air interface technologies, which may limit the right to attach devices and the ability of consumers to use [unlocked] phones on different

¹² *Id.*

¹³ *Cf. Bundling of Cellular Customer Premises Equipment and Cellular Service*, Report and Order, CC Docket No. 91-34, FCC 92-207, 7 FCC Rcd 4028, 4028 (1992).

¹⁴ Importantly, these rights can be protected sufficiently through consumer choice, rather than unilateral mandates. In other words, providers should offer consumers the option of selecting unlocked handsets and the ability to download applications, but still retain the flexibility to continue to offer services and devices that may include locked handsets and blocked features.

networks.¹⁵ In addition, wireless networks share spectrum and bandwidth among customers, which make more acute the need for network management. Furthermore, wireless carriers are subject to E911 and hearing aid compatibility requirements; therefore, any unlocked device that is used with the network should not prevent carriers from meeting their regulatory obligations. The VON Coalition believes that such concerns should be part of the consideration of “harm to the network” – *e.g.*, an unlocked device that prevents a wireless carrier from fulfilling its regulatory obligations should be viewed as causing “harm to the network” and would therefore not meet the definition of a “nonharmful device.”

III. THE COMMISSION SHOULD NOT ADOPT DETAILED REGULATION AT THIS TIME BUT SHOULD INSTEAD CLOSELY MONITOR THE DEVELOPMENT OF WIRELESS BROADBAND NETWORKS TO ENSURE THAT THE PRINCIPLES OF THE BROADBAND POLICY STATEMENT ARE BEING ADVANCED.

On balance, the VON Coalition does not believe that detailed or intrusive regulation is needed at this time to enforce the consumer opportunities that are fostered by the principles of the Broadband Policy Statement. However, the VON Coalition urges the Commission to consider the state of the wireless broadband marketplace carefully. If the Commission ultimately determines that market failure exists, the agency then should consider and implement the most effective regulatory response to correct such a failure, and thus promote innovation and consumer welfare.

In taking this market-oriented approach, the Commission may wish to

¹⁵ For example, a consumer may not be able to use a CDMA phone on a GSM network.

establish a forum in which interested parties – such as wireless carriers, handset device manufacturers, mobile operating system developers, and application software developers – can share information that would enable manufacturers and software developers to develop devices and applications that do not cause harm to the carriers’ networks. With the “right to attach” and “no blocking” principles reaffirmed by the Commission, and with the Commission providing a forum and maintaining an oversight role, the wireless industry and interested third parties can develop best practices,¹⁶ thereby obviating the need for detailed regulations that might unnecessarily constrain technological development and innovation.

In the end, confirming that the Commission’s Policy Statement applies to wireless networks will balance two of the Commission’s most important goals: encouraging the deployment of broadband networks while paving the way for increased investment in innovative applications. VON respectfully submits that such confirmation, as requested by Skype, will increase the value of wireless networks and maximize the number of choices available to consumers in the United States – thereby creating a virtuous cycle of investment, innovation and lower prices.

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¹⁶ In essence, the goal of the best practices would be to distinguish between legitimate carrier network management and security concerns and those that are used as a pretext for anti-competitive purposes.

Respectfully submitted,

THE VON COALITION

/s/ Staci L. Pies _____
Staci L. Pies
President

Dated: April 30, 2007