Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of | ) | |
| Petition for Declaratory Ruling Whether | ) | |
| Voice over Internet Protocol Services Are | ) | WC Docket No. 08-56 |
| Entitled to the Interconnection Rights of | ) | |
| Telecommunications Carriers | ) | |

COMMENTS OF SKYPE COMMUNICATIONS S.a.r.l.

## I. INTRODUCTION AND SUMMARY

Skype Communications S.a.r.l. ("Skype"), hereby offers it comments on the Petition for Declaratory Ruling filed by Vermont Telephone Company ("VTel") seeking clarification regarding whether Voice over Internet Protocol ("VoIP") providers are entitled to the interconnection rights of telecommunications carriers.[1] This proceeding is about the Title II interconnection rights of carriers who sell wholesale services to end-users such as Skype. The Commission should clarify that Title II carriers are entitled to terminate all forms of IP-originated traffic – without restriction - pursuant to section 251. Anything less, risks impairing the already anemic level of competitive voice alternatives available to consumers.

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[1] *See Petition of Vermont Telephone Company for Declaratory Ruling Whether Voice over Internet Protocol Services are Entitled to the Interconnection Rights of Telecommunications Carriers* (filed Apr. 11, 2008) ("*VT Telephone Petition*").

Skype's comments are focused on the issue of the rights and responsibilities of Internet software companies such as Skype. As more and more communications innovation moves to the applications layer of the network, the Commission should clearly distinguish the application layer from telecommunications carriers that provide the underlying physical layer of the network. So long as Skype's software and other similar Internet products remain free from Title II regulation, the Commission will continue to accomplish Congress's Title II goals of expanding consumer choice for voice communications and encouraging the deployment of broadband services to all consumers, including those in rural areas of the country.[2]

For the reasons discussed below, the Commission should firmly locate Title II interconnection rights with telecommunications carriers who sell wholesale services to VoIP providers. A corollary of this declaration is that application and software providers such as Skype are Title I entities and thus are afforded none of the rights or responsibilities of their II carrier partners. In confirming this regulatory structure, the Commission would act to clearly establish the limits of Title II and provide the Internet communications market a degree of regulatory certainty. It is not in the interest of either new

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[2] 47 U.S.C. § 157 nt.; *see also, e.g.*, 47 U.S.C. § 154(o) (requiring the Commission, "[f]or the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property," to investigate and study "methods of obtaining the cooperation and coordination of these systems"); 47 U.S.C. § 271(c)(2)(B)(vii) (requiring the Commission, in order to grant a Bell operating company (BOC) interLATA authority, to find that the BOC is providing nondiscriminatory access to 911 and E911 services).

entrants or established incumbents seeking to offer VoIP products and services for continued regulatory uncertainty to exist. As the VoIP industry has experienced over the past few years, the impact of regulation affects whether consumers will have access to innovative features and functionalities offered by VoIP providers at the edge, or if they will have access only to VoIP products that merely mimic the circuit switched offerings of the past.

Although the Commission has consistently adopted regulations over the past few years that apply to the category of providers designated as "Interconnected VoIP"[3], questions regarding the rights and obligations of VoIP providers that do not offer services intended as replacements for phone services and the carrier partners of these application providers will continue to exist until the Commission addresses the attendant rights and responsibilities in a holistic manner. This is not to suggest, as Vermont Telephone and others have proposed, that the FCC must here and now determine the regulatory classification of VoIP, i.e. information service or telecom service. Instead, the Commission can and should acknowledge that the existing regulatory structure does not adequately balance the interests of innovation and consumer rights with other legitimate regulatory needs. Uncertainty, as highlighted by the recent spate of petitions seeking Commission clarification of rights and responsibilities, delays investment in

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[3] *See, e.g. E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) ("*VoIP E911 Order*").

new applications and threatens to eliminate the benefits of competition and innovation for all consumers. Skype encourages the Commission to confirm that application and software providers of VoIP services are Title I providers and therefore not entitled to the rights or subject to the responsibilities of Title II providers.

## II. BACKGROUND

Skype offers free peer-to-peer ("P2P") communications software to consumers in just about every country on the planet. By downloading the company's software onto their computers, Skype users can make free voice calls to others who have Skype software on their computers. To date, over 300 million people around the world are using Skype's P2P software and at peak times, there are over 12 million concurrent users.

Consumers are attracted to Skype software because it is free, it is extremely easy to download and use, its quality and reliability are very high, it uses cryptography for both user authentication and confidentiality of users' communications, it can be used on any computer system connected to the Internet, it works with multiple popular operating systems (Windows, Mac OS X, Linux, and Pocket PC), and it can be used in conjunction with whatever broadband internet access the user has (*e.g.*, DSL, cable modem, wireless).

*Skype is a software application* that sits on top of, and depends upon, the user's computer hardware, operating system, and broadband Internet

access service. *Skype is not a network*. It has no routers or other transmission facilities of its own. It does not have any central facility for monitoring users' communications.

All the communications functions between Skype users are carried out by the users' software, resulting in a pure P2P, distributed, and disintermediated architecture.[4] The decentralized nature of the architecture allows the system to scale indefinitely, without the need for centralized resources.[5]

In addition to a range of video, instant-messaging, file-transfer and presence features, Skype offers two products that facilitate one-way Public Switched Telephone Network ("PSTN") connections. SkypeOut allows broadband users to terminate calls to the PSTN. Users can buy blocks of SkypeOut credit that they draw down as they make calls from Skype to regular phone numbers on the PSTN. Calls are connected to the PSTN through Skype's telecommunications carrier partners. When users make

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[4] *See In the Matter of IP-Enabled Services*, FCC 04-28, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, at ¶ 9 n.30 (2004) ("*IP-Enabled Services NPRM*") ("In the 'peer-to-peer' (P2P) model, each party to a communication has the same capabilities and either party can initiate a communication session. Applications residing on a user's PC (or other hardware) permit the user to connect directly to another user's hardware without the assistance of an Internet Service Provider.").

[5] Skype does maintain a "buddy list" of Skype users, so that when users log on, their presence can be announced to other users, enabling other Skype users on their contact lists to see that they are online. As the Commission has previously recognized, this sort of directory is not a transmission service. *See In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, FCC 04-27, Memorandum Opinion and Order, 19 FCC Rcd 3307, at ¶¶ 6, 9-12 (2004) ("*Pulver Order*").

SkypeOut calls, no numbering resources are used (meaning no telephone numbers are assigned to the calls). Because of the decentralized, disintermediated nature of Skype's basic architecture, Skype can offer consumers affordable prices for calls to the PSTN. At the time of this writing, for instance, in the United States, Skype offers unlimited landline and cell phone calls to the US and Canada - any time of the day, any day of the week for only $2.95/month.[6] Ordinary Skype users who purchase only SkypeOut cannot receive calls from the PSTN.

Separately, Skype also offers personal online numbers. This product allows Skype users to receive calls from the PSTN. Users can subscribe to regular phone numbers on a per number basis. Through the online number offering, one of Skype's traditional telecommunications carrier partners assigns phone numbers to the subscriber and completes calls to the subscriber from the PSTN. SkypeOut and online numbers are completely separate and independent offerings, with separate pricing schedules. Relatively few users purchase both offerings. Thus, neither offering alone allows the two-way interconnectivity with the PSTN that is a fundamental attribute of traditional telephony. Finally, as with the pure P2P, computer-to-computer offering, Skype does not maintain any centralized routing or transmission facility for SkypeOut or online numbers. Calls to or from the PSTN are routed by Skype's telecommunications carrier partners.

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[6] SkypeOut calls included in the monthly subscription are subject to a fair usage limit of 10,000 minutes per user per month.

Accordingly, as discussed in section IV below, Skype creates a market for facilities-based provider services as contemplated by the 1996 Act, and depends entirely upon the ability of carriers to terminate communications on the PSTN.

## III. SKYPE IS NOT SEEKING ANY OF THE RIGHTS THAT MAY BE NECESSARY FOR INTERCONNECTED VOIP PROVIDERS OR THEIR CARRIER PARTNERS

Vermont Telephone is incorrect in its assertion that whether or not an entity is certificated or otherwise authorized to operate as a CLEC is secondary to the question of whether a VoIP service is a telecommunications services.[7] The Commission can avoid the very real problems associated with attempting to categorize all VoIP providers as either information or telecom providers, but still work within the statutory framework provided by the Communications Act by clarifying that telecommunications service providers carry certain rights and responsibilities. Logically, applications that fall outside of this clear delineation will have none of the rights articulated in section 251 and 252 of the Communications Act of 1934, as amended (the "Act"), and in turn, are not subject to any of the attendant responsibilities of telecommunications carriers.

In 2004, the National Cable and Telecommunications Association (NCTA) made a similar proposal. In a White Paper entitled, *Balancing Responsibilities and Rights: A Regulatory Model for Facilities-Based VoIP*

[7] VT Telephone Pet at 3.

*Competition*, NCTA proposed that policymakers establish a baseline test to determine whether an IP-based voice service should be subject to traditional telecommunications regulation and afforded certain telecommunications provider rights.[8] This is similar to the decision making process the Commission went through when first establishing the definition of Interconnected VoIP provider in the context of 911 obligations, i.e. it first determined what IP-enabled services were the focus of concern, basing its decision in part on consumers expectations that certain VoIP services "will function in some ways like a 'regular telephone' service."[9] Skype suggests that the mirror of this proposal is equally rational. Specifically, application and software providers can offer innovative products and services that fall outside the baseline definitions, thereby accruing neither the rights nor responsibilities as defined in Title II.

The Commission's series of Interconnected VoIP decisions establish telecom-like obligations for providers that meet the definitional four-part test. Although these decisions have been appealed and hotly contested, the definitional category provides a clear and easily identifiable distinction between lightly regulated (interconnected VoIP) and unregulated VoIP

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[8] *See also P4P: Explicit Communications for Cooperative Control Between P2P and Network Providers*, proposing a network management framework that clearly separates the rights and responsibilities of applications such as P2P from those of network operators. "The P4P framework is a flexible and light-weight framework that allows network providers to explicitly provide more information, guidelines and capabilities to emerging applications, such as P2P content distribution." http://www.dcia.info/documents/P4P_Overview.pdf

[9] *VoIP E911 Order,* 20 FCC Rcd at 10264, para. 23.

services. Skype applauds the Commission's recognition that there are many flavors of VoIP service, and that only those that offer a telephone replacement service should be subject to VoIP regulation under Title II. For Skype, who is not a network operator and does not aspire to offer a replacement for traditional telephone service, it is critical that the Commission continue to act with restraint as it seeks to achieve the social and economic goals of the Communications Act through regulation. Confirming that Skype is not a Title II carrier and therefore not subject to telecom-like regulations nor entitled to Title II rights such as interconnection would increase investment in innovative edge applications and facilitate the rapid evolution of IP products and services for the benefit of U.S. consumers and ultimately, the economy as a whole.

## IV. THE COMMISSION'S VOIP POLICIES SHOULD ENCOURAGE COMPETITION IN THE WHOLESALE TELECOMMUNICATIONS MARKET

As the Commission recognized in the *VoIP 911 Order*[10] and the *Time Warner Cable Order*,[11] VoIP is often accessed over broadband facilities, and there is a nexus between the availability of VoIP services and the deployment

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[10] *VoIP E911 Order*, 20 FCC Rcd at 10264, para. 31 (stating that interconnected VoIP providers "often enlist a competitive LEC partner in order to obtain interconnection to the Wireline E911 Network").

[11] *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007) ("*Time Warner Cable Declaratory Ruling*").

and uptake of broadband services.[12] Enabling Title I VoIP providers to partner with Title II telecommunications carriers creates new market opportunities for Competitive Local Exchange Carriers ("CLECs"). As the Commission considers the questions of section 251 rights and responsibilities raised by VTel in this proceeding and by others in future petitions, Skype encourages the Commission to be mindful of the benefits to consumers and the economy of a regulatory regime that enables VoIP providers to focus on their strengths and take advantage of the strengths of network operators. By virtue of a regulatory environment free from unnecessary telecommunications regulation, VoIP providers will be able to continue investing in transformative software and applications and then partner with telecommunications carriers, who benefit from both the rights and obligations of Title II regulation, to bring these services to consumers. For instance, network operators are able to invest in and provide an economically efficient source for the key components required by application providers to deliver IP services to consumers. These components may include access to the PSTN, numbering resources, and other features of Title II. Focused and clearly defined regulation enables unregulated services to evolve rapidly thereby offering to consumers transformative VoIP products that may resemble telephone service only in the vaguest sense. Not only are such partnerships logical and efficient, they also enable more immediate consumer

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[12] *IP-Enabled Services*, WC Docket No. 04-36; *VoIP E911 Order,* 20 FCC Rcd at 10264.

access to broadband applications and services at lower costs, thus driving many of the FCC's broadband related goals.

## V. CONCLUSION

For the reasons discussed above, the Commission should not extend telecommunications-like rights or obligations to VoIP providers who fall outside Title II.

Respectfully submitted,

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