

108TH CONGRESS  
2D SESSION

# S. 2281

To provide a clear and unambiguous structure for the jurisdictional and regulatory treatment for the offering or provision of voice-over-Internet-protocol applications, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 5, 2004

Mr. SUNUNU introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To provide a clear and unambiguous structure for the jurisdictional and regulatory treatment for the offering or provision of voice-over-Internet-protocol applications, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       (a) **SHORT TITLE.**—This Act may be referred to as  
5       the “VOIP Regulatory Freedom Act of 2004”.

6       (b) **PURPOSE.**—The purpose of this Act is to prevent  
7       the imposition of harmful obligations or a patchwork of  
8       multiple and discriminatory regulations on the providers

1 of applications that utilize the Internet protocol or any  
2 successor protocol to offer 2-way or multidirectional voice  
3 communications.

4 **SEC. 2. ASSERTION OF FEDERAL JURISDICTION.**

5 (a) IN GENERAL.—Notwithstanding any other provi-  
6 sion of law, responsibility and authority to regulate the  
7 offering or provision of a voice-over-Internet-protocol ap-  
8 plication is reserved solely to the Federal Government.

9 (b) PROHIBITION OF STATE REGULATION.—No  
10 State or political subdivision thereof may enact or enforce  
11 any law, rule, regulation, standard, or other provision hav-  
12 ing the force or effect of law that regulates, or has the  
13 effect of regulating, the offering or provision of a VOIP  
14 application.

15 (c) PROHIBITION OF DELEGATION TO STATES.—Any  
16 responsibility or authority to regulate the offering or pro-  
17 vision of a VOIP application that, pursuant to subsection  
18 (a), is reserved by the Federal Government may not be  
19 delegated, by any Federal agency or officer, to any State  
20 or political subdivision thereof.

21 **SEC. 3. PREEMPTION OF BROAD FCC AUTHORITY.**

22 Except as specifically provided in this Act and not-  
23 withstanding any other provision of law, the Commission  
24 shall not impose any rule or regulation on, or otherwise  
25 regulate, the offering or provision of a VOIP application.

1 **SEC. 4. FCC AUTHORITY REGARDING CONNECTED VOIP AP-**  
2 **PLICATIONS.**

3 (a) INTERPROVIDER COMPENSATION.—

4 (1) EXPLICIT BAN ON ACCESS CHARGES.—The  
5 offering or provision of a VOIP application shall not  
6 be subject to part 69 of the Commission’s rules (47  
7 C.F.R. 69) or successor charges.

8 (2) ALTERNATE MECHANISM.—Paragraph (1)  
9 shall not be construed to prevent the Commission  
10 from establishing a compensation mechanism for  
11 providers of VOIP applications based on—

12 (A) the mutual recovery of costs through  
13 reciprocal obligations; or

14 (B) arrangements that waive mutual recov-  
15 ery (such as bill-and-keep arrangements).

16 (3) SINGLE REGIME REQUIRED.—The Commis-  
17 sion may not impose a compensation mechanism  
18 based on the mutual recovery of costs through recip-  
19 rocal obligations, pursuant to paragraph (2)(B), un-  
20 less or until the Commission has established a single  
21 unified regime for the sending and receiving of all  
22 data and voice communications.

23 (4) PRIVATE NEGOTIATIONS.—Nothing in para-  
24 graph (2) shall be construed to prevent connected  
25 VOIP application providers from negotiating accept-  
26 able arrangements for mutual recovery of costs for

1 the sending or receiving of voice communications of  
2 a connected VOIP application.

3 (b) UNIVERSAL SERVICE.—

4 (1) COMMISSION AUTHORITY.—The Commission  
5 shall ensure that all providers of a connected VOIP  
6 application contribute, directly or indirectly, to the  
7 preservation and advancement of Federal universal  
8 service programs based on a flat fee, which could in-  
9 clude a collection methodology based on the assign-  
10 ment of telephone numbers to end users.

11 (2) EXEMPTION.—The Commission may exempt  
12 from contributing, pursuant to paragraph (1), any  
13 use or category of uses of connected VOIP applica-  
14 tion.

15 (c) ACCESS TO INFORMATION BY LAW ENFORCE-  
16 MENT.—The Commission shall require a provider of a con-  
17 nected VOIP application to provide access to necessary in-  
18 formation to law enforcement agencies not less than that  
19 required of information service providers.

20 (d) IMPLEMENTATION OF RULES.—Not later than  
21 180 days after the date of enactment of this Act, the Com-  
22 mission shall take all necessary action to implement this  
23 section.

1 **SEC. 5. VOLUNTARY INDUSTRY CONSENSUS PROCESS RE-**  
2 **GARDING OTHER CONNECTED VOIP OBLIGA-**  
3 **TIONS.**

4 (a) VOLUNTARY PROCESS.—The Commission shall  
5 appoint an appropriate representative industry organiza-  
6 tion or organizations which shall, within 180 days after  
7 the date of the enactment of this Act, develop, as applica-  
8 ble, consensus guidelines, protocols, or performance re-  
9 quirements pertaining to the offering or provision of con-  
10 nected VOIP applications for—

11 (1) providing comparable capabilities to 911  
12 and enhanced 911 services;

13 (2) improving use by the disabled community;

14 (3) improving reliability of voice over Internet  
15 protocol applications; and

16 (4) ensuring appropriate security for the appli-  
17 cation and voice communications.

18 (b) INFORMATION TO CUSTOMERS.—A provider of a  
19 connected VOIP application that does not provide for its  
20 customers services that are comparable to 911 service and  
21 enhanced 911 service shall provide a clear and conspicuous  
22 notice of the failure to provide such services to each cus-  
23 tomer prior to the offering of the application to that cus-  
24 tomer.

1 (c) TECHNICAL SUPPORT.—The Commission shall  
2 provide technical support, as appropriate, to the organiza-  
3 tion selected pursuant to subsection (a).

4 **SEC. 6. COMMISSION REVIEW.**

5 Beginning in 2005, the Commission shall provide a  
6 report to Congress not less than biennially indicating any  
7 regulatory obligations that it recommends be enacted on  
8 the offering or provision of a VOIP application, including  
9 nondiscriminatory treatment for processing or treatment  
10 of digital packets.

11 **SEC. 7. NO TAXATION OF VOIP APPLICATIONS.**

12 (a) IN GENERAL.—No State or political subdivision  
13 shall impose any tax, fee, surcharge, or other charge for  
14 the purpose of generating revenues for governmental pur-  
15 poses on the offering or provision of a VOIP application.

16 (b) EXEMPTION.—Subsection (a) shall not apply to  
17 a fee imposed for a specific privilege, service, or benefit  
18 conferred.

19 **SEC. 8. NO IMPACT ON TRANSMISSION FACILITIES.**

20 Nothing in this Act shall affect the authority of the  
21 Commission or any State commission to regulate the  
22 transmission facilities used to transmit a voice commu-  
23 nication of a VOIP application. This section may not be  
24 construed to authorize the Commission or any State to

1 regulate the offering or provision of a VOIP application  
2 by regulating such transmission facilities.

3 **SEC. 9. FTC AUTHORITY.**

4 (a) IN GENERAL.—Except as provided in subsection  
5 (b), nothing in this Act shall be constructed to affect the  
6 authority of the Federal Trade Commission to prevent un-  
7 fair or deceptive acts or practices.

8 (b) REGULATIONS EXCLUDED.—Subsection (a) does  
9 not authorize the Federal Trade Commission to issue any  
10 regulations to implement this Act.

11 **SEC. 10. DEFINITIONS.**

12 (a) IN GENERAL.—For purposes of this Act:

13 (1) COMMISSION.—The term “Commission”  
14 means the Federal Communications Commission.

15 (2) CONNECTED VOIP APPLICATION.—The term  
16 “connected VOIP application” means a VOIP appli-  
17 cation that is capable of receiving voice communica-  
18 tions from or sending voice communications to the  
19 public switched telephone network, or both.

20 (3) CUSTOMER.—The term “customer” includes  
21 a consumer of goods or services whether for a fee,  
22 in exchange for an explicit benefit, or provided for  
23 free.

24 (4) REGULATE.—The term “regulate” includes  
25 taking any governmental action that restricts, pro-

1       hibits, limits, or burdens, or imposes any obstacle,  
2       obligation, or duty, or interferes with, an applica-  
3       tion.

4               (5) UNIVERSAL SERVICE.—The term “universal  
5       service” has the meaning given such term by section  
6       254(c) of such Act (47 U.S.C. 254(c)).

7               (6) VOICE-OVER-INTERNET-PROTOCOL APPLICA-  
8       TION; VOIP APPLICATION.—

9                       (A) IN GENERAL.—The terms “Voice-over-  
10       Internet-protocol application” and “VOIP appli-  
11       cation” mean the use of software, hardware, or  
12       network equipment for real-time 2-way or  
13       multidirectional voice communications over the  
14       public Internet or a private network utilizing  
15       Internet protocol, or any successor protocol, in  
16       whole or part, to connect users notwith-  
17       standing—

18                               (i) the underlying transmission tech-  
19       nology used to transmit the communica-  
20       tions;

21                               (ii) whether the packetizing and  
22       depacketizing of the communications oc-  
23       curs at the customer premise or network  
24       level; or

1 (iii) the software, hardware, or net-  
2 work equipment used to connect users.

3 (B) EXCLUSION.—The term does not in-  
4 clude an application that is used for voice com-  
5 munications that both originate and terminate  
6 on the public switched telephone network.

7 (b) COMMON TERMINOLOGY.—Except as otherwise  
8 provided in subsection (a), terms used in this Act shall  
9 have the meaning provided under section 3 of the Commu-  
10 nications Act of 1934.

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