

# Calendar No. 812

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

NOVEMBER 19, 2004

Reported by Mr. MCCAIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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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~~”.

1       (b) **PURPOSE.**—The purpose of this Act is to prevent  
2 the imposition of harmful obligations or a patchwork of  
3 multiple and discriminatory regulations on the providers  
4 of applications that utilize the Internet protocol or any  
5 successor protocol to offer 2-way or multidirectional voice  
6 communications.

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

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

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

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

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

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

6 **SEC. 4. FCC AUTHORITY REGARDING CONNECTED VOIP AP-**  
 7 **PLICATIONS.**

8 (a) INTERPROVIDER COMPENSATION.—

9 (1) EXPLICIT BAN ON ACCESS CHARGES.—The  
 10 offering or provision of a VOIP application shall not  
 11 be subject to part 69 of the Commission's rules (47  
 12 C.F.R. 69) or successor charges.

13 (2) ALTERNATE MECHANISM.—Paragraph (1)  
 14 shall not be construed to prevent the Commission  
 15 from establishing a compensation mechanism for  
 16 providers of VOIP applications based on—

17 (A) the mutual recovery of costs through  
 18 reciprocal obligations; or

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

21 (3) SINGLE REGIME REQUIRED.—The Commis-  
 22 sion may not impose a compensation mechanism  
 23 based on the mutual recovery of costs through recip-  
 24 rocal obligations, pursuant to paragraph (2)(B), un-  
 25 less or until the Commission has established a single

1 unified regime for the sending and receiving of all  
2 data and voice communications.

3 (4) PRIVATE NEGOTIATIONS.—Nothing in para-  
4 graph (2) shall be construed to prevent connected  
5 VOIP application providers from negotiating accept-  
6 able arrangements for mutual recovery of costs for  
7 the sending or receiving of voice communications of  
8 a connected VOIP application.

9 (b) UNIVERSAL SERVICE.—

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

17 (2) EXEMPTION.—The Commission may exempt  
18 from contributing, pursuant to paragraph (1), any  
19 use or category of uses of connected VOIP applica-  
20 tion.

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

1 (d) IMPLEMENTATION OF RULES.—Not later than  
 2 180 days after the date of enactment of this Act, the Com-  
 3 mission shall take all necessary action to implement this  
 4 section.

5 **SEC. 5. VOLUNTARY INDUSTRY CONSENSUS PROCESS RE-**  
 6 **GARDING OTHER CONNECTED VOIP OBLIGA-**  
 7 **TIONS.**

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

15 (1) providing comparable capabilities to 911  
 16 and enhanced 911 services;

17 (2) improving use by the disabled community;

18 (3) improving reliability of voice over Internet  
 19 protocol applications; and

20 (4) ensuring appropriate security for the appli-  
 21 cation and voice communications.

22 (b) INFORMATION TO CUSTOMERS.—A provider of a  
 23 connected VOIP application that does not provide for its  
 24 customers services that are comparable to 911 service and  
 25 enhanced 911 service shall provide a clear and conspicuous

1 notice of the failure to provide such services to each cus-  
2 tomer prior to the offering of the application to that cus-  
3 tomer.

4 (e) TECHNICAL SUPPORT.—The Commission shall  
5 provide technical support, as appropriate, to the organiza-  
6 tion selected pursuant to subsection (a).

7 **SEC. 6. COMMISSION REVIEW.**

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

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

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

19 (b) EXEMPTION.—Subsection (a) shall not apply to  
20 a fee imposed for a specific privilege, service, or benefit  
21 conferred.

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

23 Nothing in this Act shall affect the authority of the  
24 Commission or any State commission to regulate the  
25 transmission facilities used to transmit a voice commu-

1 nication of a VOIP application. This section may not be  
 2 construed to authorize the Commission or any State to  
 3 regulate the offering or provision of a VOIP application  
 4 by regulating such transmission facilities.

5 **SEC. 9. FTC AUTHORITY.**

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

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

13 **SEC. 10. DEFINITIONS.**

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

15 (1) COMMISSION.—The term “Commission”  
 16 means the Federal Communications Commission.

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

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

1           (4) ~~REGULATE.~~—The term “regulate” includes  
 2 taking any governmental action that restricts, pro-  
 3 hibits, limits, or burdens, or imposes any obstacle,  
 4 obligation, or duty, or interferes with, an applica-  
 5 tion.

6           (5) ~~UNIVERSAL SERVICE.~~—The term “universal  
 7 service” has the meaning given such term by section  
 8 254(e) of such Act (47 U.S.C. 254(e)).

9           (6) ~~VOICE-OVER-INTERNET-PROTOCOL APPLICA-~~  
 10 ~~TION; VOIP APPLICATION.~~—

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

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

23           (ii) whether the packetizing and  
 24 depacketizing of the communications oc-

1                    curs at the customer premise or network  
2                    level; or

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

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

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

13                  **SECTION 1. SHORT TITLE.**

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

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

17                  (a) IN GENERAL.—*Notwithstanding any other provi-*  
18                  *sion of law, authority to regulate the offering or provision*  
19                  *of a voice-over-Internet-protocol application is reserved sole-*  
20                  *ly to the Federal Government.*

21                  (b) PROHIBITION OF STATE REGULATION.—*No State*  
22                  *or political subdivision thereof may enact or enforce any*  
23                  *law, rule, regulation, standard, or other provision having*  
24                  *the force or effect of law that regulates, or has the effect*

1 *of regulating, the offering or provision of a VOIP applica-*  
2 *tion.*

3 (c) *PRESERVATION OF CONSUMER PROTECTION.—*  
4 *Nothing in this Act shall be construed to affect the authority*  
5 *of a State to enact or enforce criminal laws or regulations*  
6 *of general applicability regarding doing business in that*  
7 *State, consumer protection, or unfair or deceptive trade*  
8 *practices.*

9 (d) *911 AND ENHANCED-911 SERVICES JURISDIC-*  
10 *TION.—Notwithstanding any other provision of law, noth-*  
11 *ing in this Act limits—*

12 (1) *State jurisdiction of 9–1–1 or enhanced 9–1–*  
13 *1 services, including State jurisdiction over connected*  
14 *VOIP applications with respect to 9–1–1 and en-*  
15 *hanced 9–1–1 services; or*

16 (2) *the ability of State and local governments to*  
17 *require providers of all connected VOIP applications*  
18 *to collect fees to support the provision of 9–1–1 or en-*  
19 *hanced 9–1–1 services.*

20 (e) *PRESERVATION OF UNIVERSAL SERVICE AND*  
21 *INTERPROVIDER COMPENSATION.—Nothing in this Act*  
22 *shall be construed to exempt providers of a VOIP applica-*  
23 *tion from requirements imposed by a State commission on*  
24 *all providers of telecommunications services—*

1           (1) to pay appropriate compensation for the  
2           transmission of a VOIP application over the facilities  
3           and equipment of another provider; or

4           (2) to contribute on an equitable and non-  
5           discriminatory basis to the preservation and advance-  
6           ment of universal service.

7   **SEC. 3. NO IMPACT ON TRANSMISSION FACILITIES.**

8           Nothing in this Act shall affect the authority of the  
9           Federal Communications Commission or any State to regu-  
10          late the transmission facilities used to transmit a voice  
11          communication of a VOIP application. This section may  
12          not be construed to authorize the Federal Communications  
13          Commission or any State to regulate the offering or provi-  
14          sion of a VOIP application by regulating such transmission  
15          facilities.

16   **SEC. 4. 9-1-1 AND ENHANCED 9-1-1 SERVICES.**

17          (a) *COMMISSION AUTHORITY.*—Not later than 180  
18          days after the date of enactment of this Act, the Commission  
19          shall conclude a proceeding establishing rules to ensure that  
20          all providers of connected VOIP applications provide, to the  
21          extent technically feasible and not economically unreason-  
22          able, 9-1-1 and enhanced 9-1-1 services comparable to  
23          those provided by other telecommunications carriers.

24          (b) *REPORTS TO CONGRESS.*—No later than the first  
25          day of October, 2005, and each year thereafter, the Commis-

1 sion shall transmit a report to the Senate Committee on  
2 Commerce, Science, and Transportation and the House of  
3 Representatives Committee on Energy and Commerce on  
4 the progress of enhanced 9–1–1 implementation for con-  
5 nected VOIP applications. In its report, the Commission  
6 shall include summaries of comments it has received from  
7 the public regarding the performance of connected VOIP ap-  
8 plication providers in providing 9–1–1 and enhanced 9–  
9 1–1 services and examine issues related to non-discrimina-  
10 tory access between connected VOIP applications and in-  
11 cumbent 911 networks and data systems.

12 **SEC. 5. LAW ENFORCEMENT.**

13 (a) *IN GENERAL.*—Nothing in this Act shall be con-  
14 strued to modify, impair, or supersede the Communications  
15 Assistance for Law Enforcement Act (47 U.S.C. 1001 et  
16 seq.) or the authority of the Commission thereunder, nor  
17 shall anything in this Act alter the obligation of a provider  
18 of a VOIP application to furnish to an authorized law en-  
19 forcement agency, pursuant to a court order under chapter  
20 119 or 206 of title 18, United States Code (or comparable  
21 provisions of State law), or under the Foreign Intelligence  
22 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), all infor-  
23 mation, facilities, and technical assistance necessary to ac-  
24 complish an interception or the installation of a pen reg-  
25 ister or trap and trace device.

1       **(b) GAO REPORT.**—*Not later than 6 months after the*  
2 *date of the enactment of this Act, the Comptroller General*  
3 *shall submit a report to the Senate Committee on Com-*  
4 *merce, Science, and Transportation, the Senate Committee*  
5 *on the Judiciary, the House of Representatives Committee*  
6 *on Energy and Commerce, and the House of Representatives*  
7 *Committee on the Judiciary that includes—*

8           (1) *an assessment of law enforcement’s current*  
9 *technical capability to intercept and analyze commu-*  
10 *nications over the public Internet or using the Inter-*  
11 *net protocol;*

12           (2) *an assessment of problems, if any, law en-*  
13 *forcement has encountered in intercepting or ana-*  
14 *lyzing communications over the public Internet or*  
15 *using the Internet protocol;*

16           (3) *a description of options for addressing any*  
17 *such problems, including such options as capability*  
18 *requirements or providing additional resources for*  
19 *law enforcement agencies to acquire the skills and*  
20 *equipment to analyze Internet communications;*

21           (4) *an evaluation of such options for different*  
22 *configurations of broadband access, connected VOIP*  
23 *service, and VOIP applications in terms of effective-*  
24 *ness, effect on innovation, effect on privacy, and the*  
25 *cost to consumers; and*

1           (5) *an assessment of the first 10 years of imple-*  
2           *mentation of the Communications Assistance for Law*  
3           *Enforcement Act (47 U.S.C. 1001 et seq.), includ-*  
4           *ing—*

5                   (A) *an assessment of the level of compliance*  
6                   *with that Act within different segments of the*  
7                   *communications industry and an identification*  
8                   *of the reasons for less-than-full compliance in*  
9                   *particular segments of the industry;*

10                   (B) *a cost-benefit analysis of the impact of*  
11                   *that Act on the communications industry, in-*  
12                   *cluding the costs expended by industry to imple-*  
13                   *ment specific capabilities, the frequency of use by*  
14                   *law enforcement of those features and the impact*  
15                   *on privacy, including the changes, if any, in the*  
16                   *nature or frequency of law enforcement's inter-*  
17                   *ception of transactional information; and*

18                   (C) *an assessment of the degree of represen-*  
19                   *tation and involvement of consumer or user or-*  
20                   *ganizations in the standards development proc-*  
21                   *ess.*

22           (c) *FCC STUDY.*—*Not later than 6 months after the*  
23           *date of the enactment of this Act, the Federal Communica-*  
24           *tions Commission shall submit a report to the Committees*  
25           *to which reference is made in subsection (b) that includes*

1 *an assessment of the first 10 years of implementation of*  
2 *the Communications Assistance for Law Enforcement Act*  
3 *(47 U.S.C. 1001 et seq.) in terms of the technical standards*  
4 *development process as it related to that Act; the impact*  
5 *of that Act's procedures on the telecommunications indus-*  
6 *try, on law enforcement, and on privacy; and the Commis-*  
7 *sion's views as to what the definitions and requirements*  
8 *of that Act would mean if applied to Internet communica-*  
9 *tions.*

10 **SEC. 6. EXPIRATION.**

11 *This Act shall cease to be effective 3 years after the*  
12 *date of enactment.*

13 **SEC. 7. DEFINITIONS.**

14 *In this Act:*

15 (1) *VOICE-OVER-INTERNET-PROTOCOL APPLICATION; VOIP APPLICATION.—The terms “voice-over-*  
16 *Internet-protocol application” and “VOIP applica-*  
17 *tion”—*

18 (A) *mean the use of software, hardware, or*  
19 *network equipment for real-time 2-way or multi-*  
20 *directional voice communications over the public*  
21 *Internet or a private network utilizing Internet*  
22 *protocol, or any successor protocol, in whole or*  
23 *part, to connect users notwithstanding—*  
24

1                   (i) *the underlying transmission tech-*  
2                   *nology used to transmit the communica-*  
3                   *tions;*

4                   (ii) *whether the packetizing and*  
5                   *depacketizing of the communications occurs*  
6                   *at the customer premise or network level; or*

7                   (iii) *the software, hardware, or net-*  
8                   *work equipment used to connect users; but*

9                   (B) *do not include an application that is*  
10                  *used solely for voice communications that both*  
11                  *originate and terminate on the public switched*  
12                  *telephone network.*

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



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