

108TH CONGRESS
2D SESSION

S. 2281

[Report No. 108-]

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.

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

AUGUST —, 2004

Reported by Mr. MCCAIN, with an amendment in the nature of a substitute
[Strike all after the enacting clause and insert the part printed in italic]

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 (a), terms used in this Act shall have the meaning pro-
2 vided under section 3 of the Communications Act of 1934.

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

17 (c) *PRESERVATION OF CONSUMER PROTECTION.*—
18 Nothing in this Act shall be construed to affect the authority
19 of a State to enact or enforce criminal laws or regulations
20 of general applicability regarding doing business in that
21 State, consumer protection, or unfair or deceptive trade
22 practices.

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

1 (1) *State jurisdiction of 9-1-1 or enhanced 9-1-*
2 *1 services, including State jurisdiction over connected*
3 *VOIP applications with respect to 9-1-1 and en-*
4 *hanced 9-1-1 services; or*

5 (2) *the ability of State and local governments to*
6 *require providers of all connected VOIP applications*
7 *to collect fees to support the provision of 9-1-1 or en-*
8 *hanced 9-1-1 services.*

9 (e) *PRESERVATION OF UNIVERSAL SERVICE AND*
10 *INTERPROVIDER COMPENSATION.—Nothing in this Act shall*
11 *be construed to exempt providers of a VOIP application*
12 *from requirements imposed by a State commission on all*
13 *providers of telecommunications services—*

14 (1) *to pay appropriate compensation for the*
15 *transmission of a VOIP application over the facilities*
16 *and equipment of another provider; or*

17 (2) *to contribute on an equitable and non-*
18 *discriminatory basis to the preservation and advance-*
19 *ment of universal service.*

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

21 *Nothing in this Act shall affect the authority of the*
22 *Federal Communications Commission or any State to regu-*
23 *late the transmission facilities used to transmit a voice*
24 *communication of a VOIP application. This section may*
25 *not be construed to authorize the Federal Communications*

1 *Commission or any State to regulate the offering or provi-*
2 *sion of a VOIP application by regulating such transmission*
3 *facilities.*

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

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

12 (b) *REPORTS TO CONGRESS.*—*No later than the first*
13 *day of October, 2005, and each year thereafter, the Commis-*
14 *sion shall transmit a report to the Senate Committee on*
15 *Commerce, Science, and Transportation and the House of*
16 *Representatives Committee on Energy and Commerce on*
17 *the progress of enhanced 9-1-1 implementation for con-*
18 *nected VOIP applications. In its report, the Commission*
19 *shall include summaries of comments it has received from*
20 *the public regarding the performance of connected VOIP ap-*
21 *plication providers in providing 9-1-1 and enhanced 9-1-*
22 *1 services and examine issues related to non-discriminatory*
23 *access between connected VOIP applications and incumbent*
24 *911 networks and data systems.*

1 **SEC. 5. LAW ENFORCEMENT.**

2 (a) *IN GENERAL.*—Nothing in this Act shall be con-
3 strued to modify, impair, or supersede the Communications
4 Assistance for Law Enforcement Act (47 U.S.C. 1001 et
5 seq.) or the authority of the Commission thereunder, nor
6 shall anything in this Act alter the obligation of a provider
7 of a VOIP application to furnish to an authorized law en-
8 forcement agency, pursuant to a court order under chapter
9 119 or 206 of title 18, United States Code (or comparable
10 provisions of State law), or under the Foreign Intelligence
11 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), all infor-
12 mation, facilities, and technical assistance necessary to ac-
13 complish an interception or the installation of a pen reg-
14 ister or trap and trace device.

15 (b) *GAO REPORT.*—Not later than 6 months after the
16 date of the enactment of this Act, the Comptroller General
17 shall submit a report to the Senate Committee on Com-
18 merce, Science, and Transportation, the Senate Committee
19 on the Judiciary, the House of Representatives Committee
20 on Energy and Commerce, and the House of Representatives
21 Committee on the Judiciary that includes—

22 (1) *an assessment of law enforcement's current*
23 *technical capability to intercept and analyze commu-*
24 *nications over the public Internet or using the Inter-*
25 *net protocol;*

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

5 (3) *a description of options for addressing any*
6 *such problems, including such options as capability*
7 *requirements or providing additional resources for*
8 *law enforcement agencies to acquire the skills and*
9 *equipment to analyze Internet communications;*

10 (4) *an evaluation of such options for different*
11 *configurations of broadband access, connected VOIP*
12 *service, and VOIP applications in terms of effective-*
13 *ness, effect on innovation, effect on privacy, and the*
14 *cost to consumers; and*

15 (5) *an assessment of the first 10 years of imple-*
16 *mentation of the Communications Assistance for Law*
17 *Enforcement Act (47 U.S.C. 1001 et seq.),*
18 *including—*

19 (A) *an assessment of the level of compliance*
20 *with that Act within different segments of the*
21 *communications industry and an identification*
22 *of the reasons for less-than-full compliance in*
23 *particular segments of the industry;*

24 (B) *a cost-benefit analysis of the impact of*
25 *that Act on the communications industry, in-*

1 *cluding the costs expended by industry to imple-*
2 *ment specific capabilities, the frequency of use by*
3 *law enforcement of those features and the impact*
4 *on privacy, including the changes, if any, in the*
5 *nature or frequency of law enforcement's inter-*
6 *ception of transactional information; and*

7 *(C) an assessment of the degree of represen-*
8 *tation and involvement of consumer or user or-*
9 *ganizations in the standards development proc-*
10 *ess.*

11 *(c) FCC STUDY.—Not later than 6 months after the*
12 *date of the enactment of this Act, the Federal Communica-*
13 *tions Commission shall submit a report to the Committees*
14 *to which reference is made in subsection (b) that includes*
15 *an assessment of the first 10 years of implementation of*
16 *the Communications Assistance for Law Enforcement Act*
17 *(47 U.S.C. 1001 et seq.) in terms of the technical standards*
18 *development process as it related to that Act; the impact*
19 *of that Act's procedures on the telecommunications indus-*
20 *try, on law enforcement, and on privacy; and the Commis-*
21 *sion's views as to what the definitions and requirements*
22 *of that Act would mean if applied to Internet communica-*
23 *tions.*

1 **SEC. 6. EXPIRATION.**

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

4 **SEC. 7. DEFINITIONS.**

5 *In this Act:*

6 (1) *VOICE-OVER-INTERNET-PROTOCOL APPLICATION;* *VOIP APPLICATION.*—*The terms “voice-over-*
7 *Internet-protocol application” and “VOIP*
8 *application”—*

10 (A) *mean the use of software, hardware, or*
11 *network equipment for real-time 2-way or multi-*
12 *directional voice communications over the public*
13 *Internet or a private network utilizing Internet*
14 *protocol, or any successor protocol, in whole or*
15 *part, to connect users notwithstanding—*

16 (i) *the underlying transmission tech-*
17 *nology used to transmit the communica-*
18 *tions;*

19 (ii) *whether the packetizing and*
20 *depacketizing of the communications occurs*
21 *at the customer premise or network level; or*

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

24 (B) *do not include an application that is*
25 *used solely for voice communications that both*

1 *originate and terminate on the public switched*
2 *telephone network.*

3 (2) *CONNECTED VOIP APPLICATION.*—*The term*
4 *“connected VOIP application” means a VOIP appli-*
5 *cation that is capable of receiving voice communica-*
6 *tions from, or sending voice communications to, the*
7 *public switched telephone network.*

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