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(Original Signature of Member)

108TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

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 HOUSE OF REPRESENTATIVES**

Mr. PICKERING introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**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; PURPOSE.**

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.**

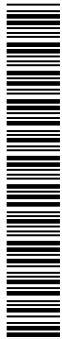
8 (a) INTERPROVIDER COMPENSATION.—

9 (1) RULEMAKING.—Within 180 days after the  
10 date of the enactment of this Act, the Commission  
11 shall complete a proceeding to establish a set of  
12 rules and standards to provide for appropriate ar-  
13 rangements to compensate providers of facilities and  
14 equipment used to transmit communications employ-  
15 ing a connected VoIP application.

16 (2) FACTORS.—In the proceeding the Commis-  
17 sion shall—

18 (A) provide for an appropriate transition  
19 period to allow providers of such facilities and  
20 equipment and providers of connected VoIP ap-  
21 plications to comply with any rules and stand-  
22 ards established; and

23 (B) consider the unique nature and cir-  
24 cumstances relating to the use of such facilities  
25 and equipment in varying geographic markets  
26 and rural areas.



1 (b) UNIVERSAL SERVICE.—Within 180 days after the  
2 date of the enactment of this Act, the Commission shall  
3 complete a proceeding to provide a contribution mecha-  
4 nism applicable to connected VoIP applications, which  
5 may include a collection methodology based on the assign-  
6 ment of telephone numbers to end users, other methodolo-  
7 gies, or any combination thereof. In the proceeding, the  
8 Commission shall seek to ensure the preservation, en-  
9 hancement, and long-term sustainability of universal serv-  
10 ice by maximizing participation in the support of universal  
11 service among the greatest number of providers of con-  
12 nected VoIP applications.

13 (c) LAW ENFORCEMENT ACCESS.—

14 (1) REQUIREMENTS REGARDING ASSISTANCE  
15 CAPABILITIES.—Effective as provided in paragraph  
16 (3)(D), each provider of a connected VoIP applica-  
17 tion shall ensure that its equipment, facilities, or  
18 services are capable of—

19 (A) enabling the government to intercept  
20 communications transmitted using such applica-  
21 tion and to access call-identifying information  
22 regarding communications so transmitted, and

23 (B) delivering such intercepted commu-  
24 nications and call-identifying information to the  
25 government,



1 for the same purposes, to a similar extent, and sub-  
2 ject to similar limitations and protections (including  
3 protections regarding privacy and security and pro-  
4 tectio ns ensuring access only pursuant to lawful au-  
5 thorization) that, under sections 103 and 105 of the  
6 Communications Assistance for Law Enforcement  
7 Act, are required of the capabilities of the equip-  
8 ment, facilities, or services of a telecommunications  
9 carrier.

10 (2) DETERMINATION REGARDING FEASI-  
11 BILITY.—Not later than 180 days after the date of  
12 the enactment of this Act, and not later than every  
13 180 days thereafter, the Commission shall conduct a  
14 proceeding to determine whether it is technologically  
15 feasible and reasonable to commence applicability of  
16 the assistance capability requirements established  
17 under paragraph (1).

18 (3) EFFECT OF DETERMINATION.—If the Com-  
19 mission, pursuant to a proceeding under paragraph  
20 (2), determines that it is technologically feasible and  
21 reasonable to commence applicability of the assist-  
22 ance capability requirements established under para-  
23 graph (1)—



1 (A) the requirement under paragraph (2)  
2 to conduct further semi-annual proceedings  
3 shall not apply after such determination;

4 (B) not later than 180 days after such de-  
5 termination, the Commission shall establish  
6 rules, technical requirements, and standards  
7 that—

8 (i) implement the requirements under  
9 paragraph (1);

10 (ii) protect the privacy and security of  
11 communications not authorized to be inter-  
12 cepted;

13 (iii) minimize the cost of such compli-  
14 ance on customers or subscribers;

15 (iv) serve the policy of the United  
16 States to encourage the provision of new  
17 technologies and services to the public; and

18 (v) provide a reasonable time and con-  
19 ditions for compliance with and the transi-  
20 tion to any new standard;

21 (C) in establishing such rules, technical re-  
22 quirement, and standards, the Commission con-  
23 sult with providers of connected VoIP applica-  
24 tions, manufacturers of equipment used by such  
25 applications, other appropriate parties providing



1 services used in such applications, the Attorney  
2 General of the United States, and State and  
3 local law enforcement agencies; and

4 (D) the requirement under paragraph (1)  
5 shall take effect upon the expiration of the 180-  
6 day period beginning upon such determination.

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

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

17 (1) providing comparable capabilities to 911  
18 and enhanced 911 services;

19 (2) improving use by the disabled community;

20 (3) improving reliability of voice over Internet  
21 protocol applications; and

22 (4) ensuring appropriate security for the appli-  
23 cation and voice communications.

24 (b) INFORMATION TO CUSTOMERS.—A provider of a  
25 connected VoIP application that does not provide for its



1 customers services that are comparable to 911 service and  
2 enhanced 911 service shall provide a clear and conspicuous  
3 notice of the failure to provide such services to each cus-  
4 tomer prior to the offering of the application to that cus-  
5 tomer.

6 (c) **TECHNICAL SUPPORT.**—The Commission shall  
7 provide technical support, as appropriate, to the organiza-  
8 tion selected pursuant to subsection (a).

9 **SEC. 6. COMMISSION REVIEW.**

10 Beginning in 2005, the Commission shall provide a  
11 report to the Congress not less than biennially indicating  
12 any regulatory obligations that it recommends be enacted  
13 on the offering or provision of a VoIP application, includ-  
14 ing nondiscriminatory treatment for processing or treat-  
15 ment of digital packets.

16 **SEC. 7. NO STATE OR LOCAL TAXATION OF VOIP APPLICA-**  
17 **TIONS.**

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

22 (b) **EXEMPTION.**—Subsection (a) shall not apply to  
23 a fee imposed for a specific privilege, service, or benefit  
24 conferred.





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

2 Nothing in this Act shall affect the authority of the  
3 Commission or any State commission to regulate the  
4 transmission facilities used to transmit a voice commu-  
5 nication of a VoIP application. This section may not be  
6 construed to authorize the Commission or any State to  
7 regulate the offering or provision of a VoIP application  
8 by regulating such transmission facilities.

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

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

14 (b) REGULATIONS EXCLUDED.—Subsection (a) does  
15 not authorize the Federal Trade Commission to issue any  
16 regulations to implement this Act.

17 **SEC. 10. DEFINITIONS.**

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

19 (1) COMMISSION.—The term “Commission”  
20 means the Federal Communications Commission.

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



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

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

10           (5) UNIVERSAL SERVICE.—The term “universal  
11 service” has the meaning given such term by section  
12 254(c) of such Act (47 U.S.C. 254(c)).

13           (6) VOICE-OVER-INTERNET-PROTOCOL APPLICA-  
14 TION; VOIP APPLICATION.—

15           (A) IN GENERAL.—The terms “Voice-over-  
16 Internet-protocol application” and “VoIP appli-  
17 cation” mean the use of software, hardware, or  
18 network equipment for real-time 2-way or  
19 multidirectional voice communications over the  
20 public Internet or a private network utilizing  
21 Internet protocol, or any successor protocol, in  
22 whole or part, to connect users  
23 notwithstanding—



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 oc-  
6 curs at the customer premise or network  
7 level; or

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

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

14 (b) COMMON TERMINOLOGY.—Except as otherwise  
15 provided in subsection (a), terms used in this Act shall  
16 have the meaning provided under section 3 of the Commu-  
17 nications Act of 1934.

