

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To enact a 3-year moratorium on State and local regulation of VOIP applications.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

**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.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed AMENDMENT intended to be proposed by Mr. Sununu, Mr. Stevens, and Ms. Cantwell

Viz:

Strike all after enacting clause and insert the following:

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

(a) IN GENERAL.—Notwithstanding any other provision of law, authority to regulate the offering or provision of a voice-over-Internet-protocol application is reserved solely to the Federal Government.

(b) PROHIBITION OF STATE REGULATION.—No State or political subdivision thereof may enact or enforce any law, rule, regulation, standard, or other provision having the force or effect of law that regulates, or has the effect of regulating, the offering or provision of a VOIP application.

(c) Preservation of Consumer Protection -- Nothing in this Act shall be construed to affect the authority of a State to enact or enforce criminal laws or regulations of general applicability regarding doing business in that State, consumer protection, or unfair or deceptive trade practices.

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

Nothing in this Act shall affect the authority of the Federal Communications Commission or any State to regulate the transmission facilities used to transmit a voice communication of a VOIP application. This section may not be construed to authorize the Federal Communications Commission or any State to regulate the offering or provision of a VOIP application by regulating such transmission facilities.

**SEC. 4. FCC NOT IMPACTED** – Nothing in this Act shall be construed to expand, modify, or impair the existing authority of the Federal Communications Commission.

**SEC. 5. LAW ENFORCEMENT** –

(a) **IN GENERAL.**—Nothing in this Act shall be construed to modify, impair, or supersede the Communications Assistance for Law Enforcement Act (47 U.S.C. 1001 et seq.) or the authority of the Commission thereunder, nor shall anything in this Act alter the obligation of a provider of a VOIP application to furnish to an authorized law enforcement agency, pursuant to a court order under chapter 119 or 206 of title 18, United States Code (or comparable provisions of State law), or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), all information, facilities, and technical assistance necessary to accomplish an interception or the installation of a pen register or trap and trace device.

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

- (1) an assessment of law enforcement’s current technical capability to intercept and analyze communications over the public Internet or using the Internet protocol;
- (2) an assessment of problems, if any, law enforcement has encountered in intercepting or analyzing communications over the public Internet or using the Internet protocol;
- (3) a description of options for addressing any such problems, including such options as capability requirements or providing additional resources for law enforcement agencies to acquire the skills and equipment to analyze Internet communications;
- (4) an evaluation of such options for different configurations of broadband access, connected VOIP service, and VOIP applications in terms of effectiveness, effect on innovation, effect on privacy, and the cost to consumers; and
- (5) an assessment of the first 10 years of implementation of the Communications Assistance for Law Enforcement Act (47 U.S.C. 1001 et seq.), including—
  - (A) an assessment of the level of compliance with that Act within different segments of the communications industry and an identification of the reasons for less-than-full compliance in particular segments of the industry;
  - (B) a cost-benefit analysis of the impact of that Act on the communications industry, including the costs expended by industry to implement specific capabilities, the frequency of use by law

enforcement of those features and the impact on privacy, including the changes, if any, in the nature or frequency of law enforcement's interception of transactional information; and (C) an assessment of the degree of representation and involvement of consumer or user organizations in the standards development process.

(c) FCC STUDY.—Not later than 6 months after the date of the enactment of this Act, the Federal Communications Commission shall submit a report to the Committees to which reference is made in subsection (b) that includes an assessment of the first 10 years of implementation of the Communications Assistance for Law Enforcement Act (47 U.S.C. 1001 et seq.) in terms of the technical standards development process as it related to that Act; the impact of that Act's procedures on the telecommunications industry, on law enforcement, and on privacy; and the Commission's views as to what the definitions and requirements of that Act would mean if applied to Internet communications.

#### **SEC. 6. EXPIRATION.**

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

#### **SEC. 7. DEFINITION.**

(a) IN GENERAL.—For purposes of this Act, the terms “voice-over-Internet-protocol application” and “VOIP application” mean the use of software, hardware, or network equipment for real-time 2-way or multidirectional voice communications over the public Internet or a private network utilizing Internet protocol, or any successor protocol, in whole or part, to connect users notwithstanding—

- (1) the underlying transmission technology used to transmit the communications;
- (2) whether the packetizing and depacketizing of the communications occurs at the customer premise or network level; or
- (3) the software, hardware, or network equipment used to connect users.

(b) EXCLUSION.—Such terms do not include an application that is used solely for voice communications that both originate and terminate on the public switched telephone network.