

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET HEARING ENTITLED, "ISSUES IN TELECOMMUNICATIONS COMPETITION"

Today

we examine the state of competition in the telecommunications marketplace. Sound telecommunications policy should spur competition between providers, bringing lower prices, more innovative services, and better service quality to consumers. But ill-conceived or poorly executed policy represents a lost opportunity for such consumer gains.

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Section

10 of the Communications Act, which we will discuss today, was added by Congress to ensure that the statute kept pace with changes in technology and in the marketplace. It permits providers to request that the Federal Communications Commission (FCC) forbear from enforcing certain laws or regulations, when such laws or regulations are no longer necessary to protect the consumer. It further provides that if the FCC does not act on a forbearance petition by a date certain, then the provider's request that the FCC not enforce a particular law or regulation is automatically granted.

This provision

is dangerous and bad policy because it allows agency action to take effect without any formal vote or supporting record. Consumers and companies then have no right or recourse when the lack of enforcement harms consumers.

We are familiar with the episode in 2006 when a four-member Commission was evenly divided on the merits of a forbearance petition and was therefore unable to act. Because the deadline passed with no Commission action, the petition was deemed granted and a host of regulations were tossed aside. Making matters worse, the Commission failed to issue an Order explaining the scope of relief granted, which prevented Congress from conducting appropriate oversight and precluded meaningful judicial review.

This must not happen again. At any time we could find ourselves with just four commissioners having to address forbearance petitions under the "deemed granted" regime.

In an effort to remedy this problem, Chairman Markey and I introduced H.R. 3914, the "Protecting Consumers through Proper Forbearance Procedures Act." Our bill simply removes the "deemed granted" language from the statute to ensure that agency decisions are fully transparent and that affected parties — including consumers — have full legal recourse.

I am also concerned with the Commission's process for reviewing forbearance petitions. The Commission must ensure that the forbearance process is fair, open, and transparent. Too often, industry petitioners have rigged the process, by filing amended petitions late so that opposing parties have no meaningful opportunity to respond. I applaud the Commission for opening a proceeding to reform the process, and I urge that it be concluded in a manner that serves the public interest and protects consumers.

We will also consider several other issues today, and I am disappointed that some of the companies most interested in these issues declined our invitations to testify. For example, Verizon has spent considerable time discussing the issue of retention marketing, and Verizon and AT&T have lobbied the Commission about pole attachments. I am disappointed that we will not benefit from their expertise as we consider these important issues.

Furthermore, this is a legislative hearing on H.R. 3914, which I understand these two companies do not support. I am saddened they are not here to more fully explain their views and to answer polite questions I intended to ask them.

I thank the Chairman once again for considering these important matters. I hope that the panel will assist us in building a sound record so that we may thoughtfully move forward with carefully crafted legislation.

Prepared by the Committee on Energy and Commerce

2125 Rayburn House Office Building, Washington, DC 20515