Statement of

Jonathan Banks
Senior Vice President, Law & Policy
United States Telecom Association

To The
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Committee on Energy and Commerce
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Chairman Markey, Ranking Member Stearns, members of the subcommittee: Thank you for this opportunity to appear before you to discuss competition issues and comment on H.R. 3914, the "Protecting Consumers through Proper Forbearance Procedures Act."

Consumers are clearly benefiting from the accelerating convergence of technologies that allows for vibrant, cross-platform competition in voice, video and broadband. This progress also creates the urgent need for regulatory parity to ensure that consumer choices, rather than uneven policies, shape the future of this vibrant and innovative marketplace and drive the investments needed to expand and enhance the nation's communications infrastructure.

The United States Telecom Association represents broadband service providers in urban and rural areas, as well as manufacturers and suppliers. Our member companies provide broadband on a fixed and mobile basis, and offer an array of voice, data, and video services. Put simply, we design, build, and manage the advanced networks that bring broadband's many possibilities into communities across this country.

The last several years have brought the once separate worlds of telecom, media, and technology together, where the health of each segment—its ability to innovate and invest—has a ripple effect on the health of the others and their capacity to deliver new choices to consumers and to our economy—advancements ranging from entertainment to education, health care to jobs.

Telecom, media, and technology—the TMT sector—is a linchpin of our economy. TMT is the fourth largest contributor to our GDP, and it is <u>the</u> leading driver of growth and productivity in our economy. About one-half of our economy's productivity growth comes from this sector. In addition, the TMT sector generates over 10 million jobs, providing 8% or more of non-farm employment. Many of these jobs are high-wage jobs in high-growth areas. Within TMT, the two biggest employers are the wireline and semiconductor segments, each generating half a million jobs.

The key to the vitality of this sector, and the jobs, economic growth, and innovation it creates, is ongoing and robust investment. Over the last five years, investment in this sector has returned to the levels reached during the heights of the Internet boom. Today, the TMT industry is investing about $400 billion in software and equipment on an annual basis accounting for about 40% of total U.S. non-structural investment. That is, leaving out investment in things like buildings and bridges, the technology, media, and telecom industries are responsible for 40 cents of every dollar invested in our economy.

Investment in communications equipment also has returned to levels not seen since the heyday of the 1990s Internet boom. These investments are no longer driven by speculation and the hope of getting rich quick. Instead, responding to a pro-investment climate and competitive forces, firms are deploying fiber in the last mile of the network and a broad array of network upgrades to bring consumers improved broadband and video services. The Yankee Group recently analyzed investment trends in our sector. That analysis clearly demonstrates the breadth and depth of communications provider investments and the competitive pressures driving them. Key investors include the AT&T, Verizon, T-Mobile and Sprint, XO and Century Tel, Sprint and Clearwire, and cable companies. The Yankee Group is now forecasting $60 billion worth of U.S. communications infrastructure investment this year and more than $70 billion next year.

If you take the annual investment made by the U.S. government to put a man on the moon…add the annual taxpayer investment in building the interstate highway system across our nation…and convert the sum into today's dollars…it's about <u>half</u> what private broadband companies will invest this year in our nation's communications infrastructure—and hence, in the choices and service available to consumers across this country.

When we examine policy issues, we look to see that this healthy trend in investment and competition will, at a minimum, not be harmed. Our economy's health, growth and global competitiveness depend on continued investment and innovation. Regulatory parity is essential to this outcome, and the efforts both here in Congress and at the FCC to achieve regulatory parity among competing providers have been extremely important to creating the climate that has supported today's levels of investment. The FCC's 2005 order removing regulatory handicaps on telecom-provided broadband in order to level the playing field with cable-provided broadband is a case study on the public benefits of parity. Following that Order, consumers began choosing telecom broadband at increasing rates, service offerings increased, and prices fell.

There are number of telecom competition issues you have asked us to address, including the appropriate role of forbearance, and I would like to offer some comments on each.

<u>H.R. 3914, Protecting Consumers through Proper Forbearance Procedures Act.</u>
Mr. Chairman, we appreciate the opportunity to comment on H.R. 3914, the "Protecting Consumers through Proper Forbearance Procedures Act." Our members support the goal of this proposed legislation to improve the forbearance process at the FCC. Congress created the forbearance process in the 1996 Act in recognition of the fact that the communications industry was entering a period of rapid change in which FCC rules and regulations could quickly become obsolete. The forbearance process created a route for

companies to bring to the FCC's attention regulatory burdens that no longer serve consumers and competition. The statute provides a clear set of public interest criteria for the FCC to use in evaluating petitions as well as a deadline for decision. The one year statutory deadline, which provides ample time for resolution, is routinely extended by the FCC for an additional 90 days, and rulings on forbearance petitions are generally issued only at the end of this extended 15 month period.

There are currently 12 forbearance petitions pending at the FCC – six filed by what were traditionally Bell companies and six by smaller wireline and wireless carriers and a VoIP provider. Since 1996, the FCC has issued orders addressing 87 petitions, acting on about seven petitions per year. The FCC has granted 20 petitions, or 23%, denied 32, or 37%, and granted in part and denied in part the remaining 35 petitions. Since 1996, only four petitions have been deemed granted. One was unopposed, two involved service for the disabled, and the remaining one concerned a petition for broadband relief that was deemed granted based on a tied vote.

Our member companies view forbearance as one of the important tools created by Congress in the 1996 Act to ensure that outdated regulations that are no longer in the public interest are removed from the FCC's regulatory playbook. Section 11 of the Act shares a similar aim of removing outdated regulations, requiring the FCC to conduct a biennial review of communications regulations and to jettison those that no longer serve the public interest. Unfortunately, section 11 has been all but read out of the statute, increasing the importance of maintaining a viable and speedy forbearance process.

There has been controversy over the FCC's processes for evaluating forbearance petitions. In response to a petition from a number of CLECs, in November of last year, the FCC began a rulemaking proceeding to consider changes in its forbearance procedures. In addition, the deemed granted status of the Verizon broadband petition – a single petition out of 87 that the FCC has acted on – has also occasioned controversy. That controversy is due in large part to the absence of an accompanying written order, making it more difficult for Congress or the courts to ascertain the exact scope of relief granted or the legal rationale supporting the agency action.

The controversy over that one unusual outlier, however, should not obscure the fact that the forbearance process for removing rules and regulations that are no longer in the public interest is important to keeping communications regulation in synch with a rapidly changing market. As the pace of change in communications continues to accelerate in our broadband world, there must be some means for obtaining relatively quick review and elimination of rules and regulations that stand in the way of competition and the public interest. We look forward to working with the Committee to ensure that the forbearance process achieves its goals in a way that also provides competitors and the public with the clarity and transparency they deserve.

<u>Pole Attachments</u>

The current methodology for regulating pole attachments is in dire need of reform. Today, companies can pay wildly different rates for attaching to poles to provide directly competing broadband services. A broad survey of our members covering millions of poles corroborates the general consensus that incumbent local exchange carriers companies generally pay the highest rates, and on average, those carriers pay roughly four times what cable companies pay, and double what competitive local exchange carriers pay, despite the fact that all of these companies are competing for the same broadband customers. From a policy perspective, this lack of parity is indefensible as it imposes higher costs on one set of competitors, skews broadband deployment, and denies consumers the benefits of a level competitive playing field.

The FCC has recognized that its current silo approach to pole attachment pricing is not in the best interests of consumers or competition, and has issued a proposed notice of rulemaking that tentatively concludes that all broadband pole attachments should be treated on a parity basis. USTelecom strongly supports this conclusion and the Commission's legal authority to implement it. Section 224 requires the Commission to ensure that "the rates, terms and conditions for pole attachments" are just and reasonable. This is a broad mandate that applies to pole attachments by "cable television systems" and all providers of "telecommunications services." Using this authority to advance broadband parity, deployment and competition is fully consistent with the Commission's overall mandate and its responsibility to serve the public interest.

Pole attachment rates should be based on a methodology applicable regardless of the attacher's historical status as a telephone company, cable television system, or competitive carrier, or the type of service it once delivered. In today's broadband world, this means a methodology for broadband services that ensures competitive parity. Of course, any methodology must ensure that pole owners, including electric utilities that own the decided majority of poles, are adequately compensated for their facilities. USTelecom believes that the Commission can put competing broadband providers on a parity footing for pole attachments within a framework that maintains current revenue levels for pole owners and, importantly, helps drive broadband investment and build-out in those regions of the country most in need of it – namely, rural America.

Retention Marketing

Retention marketing is also about competition and parity. This marketing benefits the consumer and spurs competition by allowing a customer's current service provider to reach out to its customer and make its best offer to keep that customer. The customer is in the driver's seat to make the best deal. It is the essence of free market competition and consumer choice.

A recent FCC order has tilted the playing field away from the consumer and towards cable companies. Cable companies are ramping up their retention marketing techniques to keep their customers, but voice providers have been barred from doing the same when their customers decide to take their phone numbers to cable.

The Commission's order greatly restricts the ability of communications providers to make consumers better offers during this time period. The Commission ruled that the customer information used in the number porting process is the proprietary information of the new service provider. This is not the case when consumers are undertaking to transfer their business from cable television providers to competitive providers. Number porting is a consumer service, in which the carrier is acting as the customer's agent. But because cable companies force their video customer to contact them directly to make a switch, they have a retention marketing advantage that the Commission's recent order denies to other communications companies. If the company learns about the customer's decision to switch providers through the number porting process rather than from the customer directly, it means the company cannot engage in truthful speech to its own customer during that critical time between when the customer decides to switch to a new carrier and when the switch takes place. The lack of regulatory parity created by this ruling distorts competition and means consumers lose opportunities to get better value from their communications companies.

Number Porting

USTelecom and its member companies have been instrumental in bringing number portability to American consumers and have made significant contributions toward making portability more efficient. For over a decade, our members have seen number portability become an increasingly important facet of a competitive telecommunications service marketplace. However, the introduction of new communications platforms has made the process more complex. Our members have a strong interest in improving the efficiency of the number porting process, and we agree that intermodal porting is an important component of porting in general.

As long ago as 2003, USTelecom formed a joint working group with CTIA to address wireline-wireless porting issues. The group made a number of improvements to the intermodal porting process. The industry continues to work through the North American Numbering Council and the Ordering and Billing Forum to further improve and streamline the porting process. The FCC's recent order reducing the number of mandatory fields of information for porting has further reduced the burdens of submitting a porting request.

The FCC is currently considering a rulemaking to shorten the interval for simple wireline ports from four days to 48 hours, the current standard for ports between wireless carriers. Two issues in particular deserve careful consideration when evaluating a mandate for shorter porting intervals. The first is consumer benefit. Currently, the vast majority of porting requests received by our members set port dates that are longer than the current four day interval. Second, the costs of mandating quicker ports are worth careful consideration. Currently, many of our members do not have mechanized systems in place to handle port requests. The North American Numbering Council has determined that in order to meet a 48 hour deadline, these companies would have to install computerized systems to handle porting requests. The costs of these forced upgrades will be disproportionate to the relatively small number of requests these carriers receive.   It is inappropriate to burden these carriers and their customers with costs of this magnitude. At a minimum, a means should be provided for these companies to recover the costs of creating new computerized systems without burdening their retail customers.

Phantom Traffic

Comprehensive reform of the system under which carriers compensate each other for carrying traffic is long overdue. The Commission continues to consider comprehensive reform, and the broadly-supported Missoula Plan continues to provide the best model for that reform. While we are hopeful that the Commission will address comprehensive reform this November, the particular problem posed by phantom traffic must be dealt with this year.

When a customer makes a call, it travels over the facilities of the company to which the customer subscribes, and often over the facilities of one or more other companies. A system of intercarrier compensation is used to compensate the companies whose network facilities are used to complete the call. Currently, a significant amount of telephone (voice) traffic that is originated by the customers of one company and terminated to the customers of another company is not adequately identified, making appropriate billing for that traffic difficult or impossible.

The rapid growth in this unbillable or “phantom” traffic was first brought to the Commission’s attention nearly three years ago. In the absence of Commission action, many carriers report that the amount of traffic being received without calling party identifying information has continued to grow. USTelecom members report the percentage of traffic received without calling party number information ranges from a low of 10% to a high of 39.75%. Moreover, some USTelecom members report that they receive higher levels of phantom traffic in areas with higher rates—suggesting that some companies are intentionally stripping signaling information in order to avoid paying these charges.

In proceedings before the FCC, it has been estimated that phantom traffic is costing telecom companies that terminate calls anywhere from $600 million to $2 billion annually in uncollectible charges. Because unidentified traffic has continued to grow, and because small and mid-size carriers are particularly hard-hit by these revenue losses, this problem presents an increasing risk to broadband deployment for consumers in those areas of the country most in need of new capital investment – namely, unserved and underserved communities, particularly in rural America.

Though there are differences in some details, a broad array of communications associations support improved call-signaling rules including: USTelecom, NECA, ITTA, CTIA, NCTA, COMPTEL, and the VON Coalition, as well as a broad cross-section of companies. USTelecom has put before the Commission a detailed proposal on phantom traffic that enjoys very broad support. The proposal applies six straightforward obligations on all traffic originating on or terminating to the public switched telephone network (PSTN). In broad summary form, the proposal consists of the following elements:

• Every originating provider must transmit in its signaling, where feasible, the telephone number received from or assigned to the calling party.

• Every provider must transmit without alteration, except where not feasible, or where PSTN industry standards would dictate otherwise, the telephone number information that it receives from another provider in signaling.

• It should be deemed an unreasonable practice for a provider to route traffic for the purpose of disguising the identity of the financially responsible provider or the traffic's originating jurisdiction.

• The carrier passing traffic to the terminating carrier is responsible for performing a local number portability query before passing the call to the local network of the terminating carrier.

• The Commission should provide incumbent local exchange carriers the ability to invoke the 251/252 negotiation/arbitration process with other carriers with which they exchange traffic.

• The Commission should commit to aggressively enforce these rules and obligations.

I am pleased to report the USTelecom proposal has received a very positive response from other segments of the telecommunications industry. ITTA, representing a number of mid-sized carriers (including Qwest, Embarq and CenturyTel) who have been very active advocates of Commission action to address phantom traffic, has filed in unqualified support. Additionally, CTIA has filed in support of USTelecom's proposal with what we believe to be very minimal qualifications. NuVox Communications, One Communications Corp. and XO Communications, some of the most prominent facilities-based competitive LECs, have also filed jointly in support of nearly all of USTelecom's phantom traffic proposal, noting the rules in USTelecom's proposal are consistent with previous filings they have made on this issue.

We thank and commend the eight bipartisan Members of the Energy and Commerce Committee, led by Representatives Baldwin and Terry, who in March 2007 recognized the importance of this issue and wrote to the FCC urging quick action to address the phantom traffic problem.

To that end, in the Senate, S.2919, "The Signaling Modernization Act of 2008," creates an obligation that voice communications service providers ensure that calls contain sufficient information to facilitate intercarrier billing. It requires the FCC to establish rules implementing these requirements within 12 months of enactment. USTelecom supports enactment of this legislation, which has seven bipartisan cosponsors on the Senate Commerce Committee. While there is no House companion bill, we hope that upon Senate approval this Committee will act quickly and favorably on the bill.

Mr. Chairman, I thank you for the invitation to join you and to share our perspective. We look forward to working with you and the members of the Committee on policies aimed at bringing the full promise of broadband to all Americans.