

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of
E-mail Address Portability

To: The Commission

PETITION FOR RULEMAKING

Gail M. Mortenson, hereby petitions the Commission to initiate a rulemaking at the earliest possible date to require Internet Service Providers (ISPs) to provide their customers with e-mail address portability for at least six months after a customer terminates service with an ISP.

The genesis for this petition arose from an experience which I had recently with America Online, one of the largest national ISPs. I had been a customer of AOL for many years. My son had originally opened the account when he got a new computer as a young teen, but the monthly charges had been paid from my personal credit card, as AOL well knew. (I had a number of occasions to talk to them over the years about changes to, or questions about, the account.) Several months ago, I contacted AOL to direct them to stop charging me for monthly service since AOL had adopted a new policy several months earlier of not charging its customers for service. Although I had numerous discussions with them over the years and my name appeared on the credit card which had paid the monthly charges, AOL

suddenly declared that they could not take any instructions from me (because the account was not in my name). Moreover, because the account had been opened by a minor, they announced that they were closing the account immediately. This despite the fact that my son was no longer a minor, so the pretext for closing the account was no longer even valid. The account was closed on the following business day, and I could no longer access any of the material (e-mails, saved documents, stored websites, etc.) which had been associated with my AOL screen name.

This was a disaster. Over the years, my children and I had all come to rely on the AOL account, which permitted up to seven screen names. Of particular concern here was my business account. I am a free lance copy editor, and I relied heavily on e-mail as a means of communicating with existing and potential clients. My AOL e-mail address had been distributed widely to prospective users of my services. No prospective clients could reach me since the account was suddenly non-functional, nor did I have any time to transition my promotional materials to reference a new e-mail address. I have since discovered that several prospective clients did in fact try to reach me but were unable to do so since they only had my AOL e-mail address and were unable to reach me. At the same time, I lost access to my folder of historical e-mails which had been saved on-line, so I lost the e-mail addresses of professional and personal contacts.

It is unclear why AOL felt that it had to terminate this account so abruptly with no notice whatsoever. Yet that is what they did, regardless of the very predictable adverse consequences to a long-time customer. While I am

contemplating legal action against AOL in civil courts, the fact remains that millions of similarly situated ISP customers are subject to termination at any time by their service providers with (i) no right to retain their e-mail address and (ii) no right to adequate notice that would permit them to download and preserve material which has been saved on the ISP's website. AOL is not unique in this policy. Yahoo, for example, permits itself to terminate customers' accounts without notice for a wide variety of causes, some of which are not specified. See Yahoo Terms of Service at <http://info.yahoo.com/legal/us/yahoo/utos/utos-173.html>. AOL allows itself to terminate service at anytime with or without *any* cause. AOL Terms of Use at http://about.aol.com/aolnetwork/aolcom_terms. The bottom line is that ISP customers are entirely at the mercy of their providers for preservation of their entire on-line identity.

I. LOCAL NUMBER PORTABILITY

In a series of orders starting in 1996, the Commission has established very strict requirements for telecommunications carriers to enable and implement portability of local numbers. These orders recognized that a person or a company's telephone number is a critical component of the person or business's public identity; so valuable an asset should not be held hostage by the phone company who happens to initially issue it, but should be portable at the customer's request to other carriers. Indeed, a Gallup Survey referenced by the Commission found that 83% of business customers and 80% of residential customers would be reluctant to change

service provider if a change in their phone number was required.¹ The Commission recognized that LNP would significantly enhance competition because it would make it considerably easier for customers to change carriers based on a comparison of rates and service offerings without suffering the loss of the considerable good will embodied in their phone numbers.² The LNP program has been a success story. Customers have been freed from the chain which bound them to their original carrier (whether LEC or wireless) and have thus been able to choose their carrier based on quality and price. This has had a dampening effect on rates and also incentivizes carriers to improve service in order to keep their customers. All of the benefits of free competition are realized.

II. E-MAIL ADDRESS PORTABILITY

Most of the same consumer considerations described above apply equally to e-mail address portability. In today's world, many individuals and businesses depend just as heavily on their e-mail addresses as on their phone numbers as public points of contact with the larger world. One's e-mail address is a key component of the small matrix of characteristics which forms our public identity: one's name, one's address, one's phone number, and one's e-mail address. This is how the world knows who we are and how to contact us. E-mail addresses are now customarily included on letterheads, resumes, and websites. The loss of an e-mail address is therefore a crushing blow to any business since not only does all the collateral

¹ Final Report & Order and Further Notice of Proposed Rulemaking, 3 CR 60 (1996) at Paragraph 29

² *Id.* at Paragraph 30.

material have to be discarded, but all the good will that has been generated over the years with that address can be lost in a second if the address is terminated.

It is for these reasons that the Post Office forwards mail for six months after one changes address. This gives the addressee time to alert customers, friends and family to the new address and generally permits a smooth transition to the new address. Similarly, when one changes phone numbers, the phone company forwards calls from the old number to the new one for some weeks. Of course, local number portability now permits one to take his phone number with him permanently. By contrast, ISPs have the power to simply cut off one's service without any cause whatsoever, without any prior notice whatsoever, and without any obligation to forward e-mail to a new e-mail address. This situation not only puts Americans at serious risk of loss of good will, but also impairs their ability change service providers. As in the pre-LNP days, consumers and businesses are effectively held hostage by their ISPs.

III. THE SOLUTION

The solution to this problem is clear: require ISPs to port e-mail traffic to new e-mail addresses designated by customers. There is no technical reason at all why an e-mail sent to "customer@aol.com" could not be automatically forwarded by AOL to "customer'snewaddress@yahoo.com." This would require none of the technical re-tooling which LNP entailed and could be implemented almost immediately. This simple measure would provide the American public – both

consumers and the business community – with the basic confidence that their personal or business identity cannot be destroyed at the whim of their ISP.

To be sure, the Commission’s authority to regulate “information service providers” is less clear than its authority to regulate telecommunications carriers. The 1996 Act specifically directed the Commission to impose number portability obligations on telecommunications service providers. However, the Commission has recognized that when information service providers provide critical telecommunications-like services such as VoIP, it must exercise its broad ancillary authority over communications to ensure that the public interest does not fall through the regulatory gap. To that end, it has ruled that its ancillary authority over communications in this country is ample to permit the imposition on ISPs of carrier-like obligations with respect to CALEA, E-911, access to persons with disabilities, certain USF contributions, and other key elements of the nationwide communications regime. Indeed, the Commission has no express statutory authority to impose local number portability on wireless carriers, yet it did so based on its general Title I authority.³ There is no reason to treat e-mail address portability any differently.

Moreover, the Commission recognized an ongoing obligation to consumers in this regard in *Consumer Protection in the Broadband Era, Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853 at Para. 146 (2005):

We have a duty to ensure that consumer protection objectives in the Act are met as the industry shifts from narrowband to broadband services. Through this *Notice*, we thus seek to develop a framework for

³ First Report and Order, supra, at Paragraph 153

consumer protection in the broadband age – a framework that ensures that consumer protection needs are met by *all* providers of broadband Internet access service, regardless of the underlying technology. This framework necessarily will be built on our ancillary jurisdiction under Title I; as we explain in the Order, this jurisdiction is ample to accomplish the consumer protection goals we identify below, and we will not hesitate to exercise it. (Footnotes omitted) ⁴

The time is ripe for the Commission to step forward and impose a regulatory obligation on ISPs which is sorely needed and long overdue. I therefore petition the Commission to initiate a rulemaking immediately in order to prevent other Americans from experiencing the cavalier and crushing loss which I suffered at the hands of America Online.

Respectfully submitted,

_____/s/_____

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⁴ The Petitioner is filing a copy of this petition as an *ex parte* comment in the Consumer Protection Docket, although it does not appear that portability of e-mail addresses was something the Commission recognized as a consumer or business issue when that NPRM was adopted.