

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
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E-mail Address Portability) Docket No. RM-11391
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COMMENTS OF THE INTERNET COMMERCE COALITION

The Internet Commerce Coalition (“ICC”)¹ respectfully submits these comments regarding the above-referenced Petition for Rulemaking (“Petition”). The Petition asks the Commission to require Internet Service Providers (“ISPs”) to provide their customers with “e-mail address portability” after a customer terminates service with the ISP. Because the proposed rules could simply result in additional burdens upon ISPs without any attendant benefits to the public, the FCC should dismiss the Petition.

Grant of the Petition could result in higher costs without resulting in any real benefits to consumers. The Commission’s number portability mandates required years to implement, due to the complexity of the technical and operational issues involved. An e-mail address portability mandate could also prove to be costly to providers and consumers. For example, numerous ISPs offer free e-mail addresses, which take mere minutes to obtain through a web site and do not result in a formal contract. Indeed, some of the largest companies in the United States – including Google, Microsoft and AOL – offer free web-based e-mail to consumers, regardless of

¹ The ICC is a coalition of leading Internet Service Providers (“ISPs”), e-commerce companies, and trade associations in the United States. The ICC works to promote policies that allow service providers, their customers, and other users to do business on the global Internet under reasonable rules governing liability and use of technology, and are concerned with maintaining and upgrading the reliability, security and robustness of Internet infrastructure.

whether those consumers utilize a broadband or dial-up connection. Because each of these offerings is a web-based service, they are ubiquitously available throughout the United States, meaning consumers can utilize any or all of these services. Under these circumstances, it is unclear how an ISP could verify that a “forwarding” request is genuine, since many e-mail providers allow users to sign up for an account simply by choosing an e-mail address and password without submitting other personal identifying information. Even if an ISP required a user to provide contact information, it could not guarantee that the information is not false or inaccurate. The additional administrative and technical costs arising from an e-mail address portability requirement could discourage ISPs from offering this valuable service to the public.

There is also no relationship between the harm alleged by Petitioner (*i.e.*, the sudden termination of her account) and the relief sought (*i.e.*, e-mail portability). Because a portability mandate would in all likelihood decrease consumer choice in a robustly competitive market (as demonstrated by the ease of obtaining multiple, free e-mail accounts) without attendant benefits, it is contrary to the pro-competitive goals of the Act. In contrast, number portability was intended to increase nascent competition in the wireline and wireless telephony markets.

The FCC’s jurisdiction over e-mail addresses is also unclear. As the Commission has stated on numerous occasions, e-mail is an “information service”² subject to a “pro-competitive, deregulatory regime.”³ While it is true that the Commission chose to impose wireless number portability requirements on the basis of its Title I ancillary authority, the agency made it clear that its ancillary authority was directly derived from its express statutory authority over

² See, e.g., *Federal-State Joint Board On Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) (¶ 444); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999) (¶ 107); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report and Order, 16 FCC Rcd 7418 (2001) (¶ 2).

³ See, e.g., *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 (2007) (¶ 4).

telephone number portability and numbering administration.⁴ See 47 U.S.C. § 251(b)(2) (granting the FCC authority to prescribe requirements concerning telephone number portability obligations of wireline local exchange carriers (“LECs”)); 47 U.S.C. § 153(26) (allowing FCC to apply number portability and other LEC requirements to Commercial Mobile Radio Service (“CMRS”) providers); 47 U.S.C. § 251(e)(1) (granting the FCC authority to regulate the administration of numbering resources). Although the Commission may assert ancillary jurisdiction if “reasonably required to perform an express statutory obligation” under the Act,⁵ the Act does not appear to impose any obligation upon the agency with respect to e-mail addresses.⁶

For the above reasons, the ICC respectfully requests that the Commission dismiss the Petition.

Respectfully submitted,

/s/ James J. Halpert
James J. Halpert
Chin Kyung Yoo

DLA PIPER US LLP
500 8th Street, NW
Washington, DC 20004
(202) 799-4000

Counsel to the Internet Commerce
Coalition

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⁴ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (¶¶ 152-153).

⁵ *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999) (¶ 95); see generally *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1958).

⁶ In contrast, each of the obligations imposed on ISPs cited in the Petition have a specific statutory basis. See 47 U.S.C. §§ 229 (CALEA); 251(e)(3) (E-911); 255 (access to persons with disability); 254 (universal service fund).

CERTIFICATE OF SERVICE

I certify that on October 26, 2007, I caused the foregoing Comments of the Internet Commerce Coalition to be served via first-class U.S. mail to the Petitioner at the following address:

Gail M. Mortenson
4300 Lowell Street, N.W.
Washington, D.C. 20016-2755

/s/ Chin Kyung Yoo

Chin Kyung Yoo