

forward e-mail to her new address, comparable to the ability of consumers to port their telephone numbers.³

The initial comments demonstrate overwhelming opposition to this proposal from a broad range of parties, including cable operators, telephone companies, VoIP providers, software companies, and ISPs of all sizes. These comments demonstrate that: (1) a mandatory forwarding rule is unnecessary given the options already available in the market;⁴ (2) a mandatory forwarding rule would impose significant costs on all ISPs;⁵ and (3) the Commission has no authority to adopt the requested rule in any event.⁶

NCTA fully agrees with all the concerns that have been raised. Given both the level of competition among ISPs and the ability of consumers to obtain e-mail addresses that are not tethered to a particular ISP, the limited benefit that might result from a mandatory forwarding rule would not outweigh its costs. Petitioner's analogy to local number portability is inapt because telephone numbers only are available from telecommunications carriers (or entities that contract with such carriers)⁷ while e-mail addresses are widely available from companies other than ISPs. Consequently, the notion that consumers are under the control of their ISPs is, in the words of one commenter, "patently untrue."⁸ Moreover, unlike local number portability, where the porting out of the number ends the customer/provider relationship, the requirement proposed

³ *Id.* at 4-5. As noted by a number of parties, the relief that the petition is seeking is more accurately described as "forwarding" rather than "portability" because control over the e-mail address would remain with the original provider. See AT&T Comments at 3; ITIC Comments at 2.

⁴ See, e.g., Time Warner Comments at 3-5; PCEZ Comments at 1; AT&T Comments at 4-7; ITAA Comments at 2; USISPA Comments at 2-3.

⁵ See, e.g., Time Warner Comments at 6-7; PCEZ Comments at 1.

⁶ See, e.g., Time Warner Comments at 8-9; AT&T Comments at 7-10; ITAA Comments at 1; USISPA Comments at 5; ITIC Comments at 3-5.

⁷ See, e.g., *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *et al.*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188, at ¶ 20 (rel. Nov. 8, 2007).

⁸ Eric Fisher Comments at 1.

here would place a continuing obligation on companies with respect to customers with whom the ISP no longer has any relationship.⁹

Not only is the requested rule unnecessary, it is fundamentally at odds with the “hands off” approach that Congress has established for the Internet and Internet-based services¹⁰ and that the Commission has followed as a matter of course for decades.¹¹ The Commission always has treated e-mail as an information service, rather than a telecommunications service.¹² Consequently, e-mail services have never been subject to Title II regulation. In addition, as numerous parties explain, the Commission’s ancillary jurisdiction under Title I does not stretch so far as to cover the type of intrusive regulation of e-mail services that is proposed in the Petition.¹³

For all the reasons explained above, the Commission should not initiate the requested rulemaking.

Respectfully submitted,

/s/ Daniel L. Brenner

Daniel L. Brenner
Steven F. Morris
Counsel for the National Cable &
Telecommunications Association
25 Massachusetts Avenue, N.W.
Suite 100
Washington, D.C. 20001-1431

November 26, 2007

⁹ See, e.g., Time Warner Comments at 7-8.

¹⁰ 47 U.S.C. § 230(b).

¹¹ See, e.g., *The FCC and the Unregulation of the Internet*, Jason Oxman, FCC OPP Working Paper No. 31 (July 1999) (examining history of Commission decisions not to regulate computer services).

¹² See *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶¶ 78, 79-80 (1998).

¹³ See, e.g., Time Warner Comments at 9-10; Verizon Comments at 3-4.