
Selected FCC Docket Summaries, 2009

In re Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability, Report and Order and Further Notice of Proposed Rulemaking, FCC 09-41, WC Docket No. 07-244, CC Docket No. 95-116 (May 13, 2009).

On May 13, 2009, the Federal Communications Commission (“Commission”) adopted a *Report and Order and Further Notice of Proposed Rulemaking* (“*Order*”) to decrease the mandatory local number portability (“LNP”) porting interval from four business days to one business day. The *Order* applies to all carriers subject to LNP rules, including interconnected VoIP providers, and requires the completion of port requests for simple wireline-to-wireline and simple intermodal ports within one business day. In adopting the *Order*, the Commission sought to ensure efficient number portability for consumers and improve competition among carriers. Finally, the Commission sought comments on further steps to improve consumer opportunity to change carriers as well as input regarding the new one-business day porting interval.

The Commission found the LNP process critical in eliminating the disincentive for unsatisfied customers to stay with their carrier solely to maintain their phone number. In turn, LNP rules improve the marketplace for new entrants and further consumer choice and carrier competition. Furthermore, the Commission believed that reducing the four-day business day interval to one business day would not significantly burden most carriers. The *Order* cited advances in technology that have relieved the burden of LNP on carriers, including the “two and one-half hour LNP wireless interval standard” voluntarily adopted by the wireless industry.

The Commission recognized, however, that some of the smaller carriers may find themselves burdened by the new LNP porting interval. Small and rural providers sought to maintain the four business day interval, arguing that the new porting interval would be unduly burdensome and fiscally harmful to such entities. The Commission dismissed this charge, stating that the consumer benefits of the new porting interval outweigh its costs. However, the Commission did grant an extension that, combined with available cost recovery mechanisms, would sufficiently relieve the burden on smaller carriers. The Commission extended the implementation period for smaller carriers to fifteen months, defining smaller carriers for purposes of the *Order* as “providers with fewer than 2 percent of the nation’s subscriber lines installed in the aggregate nationwide and Tier III wireless carriers, as defined in the *E911 Stay Order*. . . .”

To implement the *Order*, the Commission ordered the North American

Numbering Council (“NANC”) to develop new implementation recommendations within ninety days of the effective date of the *Order*. Once the NANC submits its implementation recommendations, carriers have nine months from that date to achieve the one-business day porting interval. The Commission also directed the NANC to develop provisioning flows for carriers to comply with the one-business day interval, as well as to determine a proper definition of “business day” and an appropriate way to measure porting time.

Finally, the Commission asked parties to submit proposals on further steps the Commission should implement to improve the LNP porting interval. For instance, the Commission requested proposals to streamline the porting process of not just simple, but non-simple ports. Moreover, the Commission requested comments on the need to modify the components of the porting process, such as the definition of simple ports or the efficacy of the information fields currently utilized in porting.

Summarized by Nicole Rementer

In re Matter of Preserving the Open Internet Broadband Industry Practices, Notice of Proposed Rulemaking, FCC 09-93, GN Docket No. 09-191, WC Docket No. 07-52 (October 22, 2009).

On October 22, 2009, the Federal Communications Commission (“Commission” or “FCC”) issued a *Notice of Proposed Rulemaking* (“Notice”) seeking public comment on prospective rules to preserve the openness of the Internet. In the *Notice*, the Commission set forth various reasons why the preservation of an open Internet is a worthwhile goal, including its significant role in the commerce and entrepreneurship. The FCC noted the Internet’s open architecture has allowed individuals and corporations new and expanded opportunities to develop new services, business models, and contribute to the public discourse. However, as Internet usage continues to increase, broadband providers have developed new network management techniques to address congestion concerns that may affect the Internet’s open nature.

In order to continue the open model of the Internet, the Commission sought to codify the four principles contained in the 2005 *Internet Policy Statement*, and also add two new principles that would apply only to broadband Internet access. When first released in 2005, these principles were meant to aid in the interpretation of the Communications Act of 1934. However, as the Internet has continued to grow in size and importance, the FCC believes the cornerstones are worthy of codification. The four principles in the 2005 *Internet Policy Statement* declare that consumers are entitled: (1) to access the lawful

Internet content of their choice; (2) to run applications and use services of their choice, subject to the needs of law enforcement; (3) to connect their choice of legal devices that do not harm the network; and (4) to have competition among network providers, application and service providers, and content providers. The Commission noted that each of these principles would be subject to “reasonable network management.”

In addition, the Commission stated that principles of nondiscrimination and transparency in broadband Internet access should be added. The nondiscrimination principle would forbid providers of broadband Internet service from engaging in the preferential treatment of content, applications, and services as long as their lawful integrity is maintained. The Commission supported its claim by citing the ability of network operators to discriminate in pricing or quality between various types of traffic of different providers, which can inflict sizeable costs on the public. However, this principle would still allow a measure of flexibility of the providers to reasonably manage their networks.

Regarding the transparency principle, the FCC sought comment on how broadband Internet access service providers should disclose relevant network management principles to consumers, as well as content, application, and service providers to government. The transparency required by such a principle would benefit a wide-range of groups by requiring each entity to make decisions based upon full disclosure of relevant information.

The Commission sought comment on broadband Internet access, which the FCC has tentatively defined as “any communication service by wire or radio that provides broadband Internet access directly the public, or to such classes of user as to be effectively available directly to the public.” Regarding non-wireline forms of Internet access, including terrestrial mobile wireless, unlicensed wireless, licensed fixed wireless, and satellite, the Commission requested comment on how the forgoing principles should be applied.

The Commission recognized that under some circumstances, such as spam and virus activity, or critical emergency communications, a strict application of the openness principles will be in tension with the fundamental goal of promoting the Internet’s use. In order to help balance these tensions, the Commission proposed that each of the aforementioned principles be subject to (1) reasonable network management, (2) the needs of law enforcement, and (3) the needs of public safety and homeland and national security. While the Commission provided only a general explanation of the law enforcement, public safety and homeland and national security caveats, it did propose for comment a proposed definition of reasonable network management. The proposed definition consisted of: (a) reasonable practices employed by a providers of broadband Internet access service to (i) reduce or mitigate the effects of congestion on its network or to address quality-of-service concerns; (ii) address traffic that is un-

wanted by users or harmful; (iii) prevent the transfer of unlawful content; or (iv) prevent the unlawful transfer of content; and (b) other reasonable network management practices. On this issue, the Commission reiterated that unlawful content is not protected by the Internet principles, and proposed a pair of new rules acknowledging that nothing in the Internet rules supersedes or limits an ISP's obligation or ability to address the needs of law enforcement, homeland security, or emergency services, consistent with applicable law.

Acknowledging the growth of alternative broadband access platforms, particularly wireless, the Commission sought comment on the proper application of the principles to these networks. In particular, the Commission sought comment on how the "any device" rule should apply to mobile wireless broadband providers and how the "any content" rule should apply to different types of mobile wireless broadband providers.

Lastly, the Commission noted it maintains its authority to enforce these rules on a case-by-case basis through adjudication, on its own motion or in response to an informal complaint. Additionally, the FCC sought comment on whether the Commission should adopt procedural rules specifically governing complaints involving supposed infractions of any of the codified principles.

Summarized by Carolyn Coda