



SeaBoard Group

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21 December 2015

Mr. Kyle Masters
Interim Chief Executive
The Bermuda Regulatory Authority
Cumberland House – Third Floor South
1 Victoria Street
Hamilton, Bermuda

By Email: kmasters@RAB.bm

Re: *“Responses to Preliminary Report and Preliminary Decision and Order:
Email Mobility” |*
 Response and Comments by Mr. Iain Grant, SeaBoard Group, Montréal.

Dear Mr. Masters,

1. This letter is written in response to your call for comment on the proposed General Determination by the Bermuda Regulatory Authority to require IASPs, licensed by the Authority, to provide email subscribers an email-forwarding facility upon termination of their commercial relationship with the IASP. The proposed timeframe is 180 days.
2. I have some thoughts on the proceeding that I should like to share, and some general observations the you may find of some benefit in your deliberations — but first, perhaps, something about why I have elected to write to you to participate in the debate, a debate specific to Bermuda, where the views of a non-resident, a non-citizen, may, at least at first, seem peripheral to the issues under review.
3. I am the Managing Director of the SeaBoard Group, founded in 1986, a telecommunications policy-focussed consultancy, based in Montreal, Canada (and with offices in Toronto, Canada and Saint Vincent and the Grenadines, West Indies). SeaBoard is known in Canada for its support of Public Interest advocates and consumer groups in telecommunications policy and research, and has championed the fight for better pricing and consumer choice, especially in regard to wireless communication issues, for decades.

4. I am writing to you now as a frequent visitor to (and friend of) Bermuda, and as a sometime West Indian resident familiar with the commercial and social dynamics of smaller island societies/economies.

5. I have marshalled my thoughts under the following headings:

- General – Approach to Regulation;
- Choice;
- Responses to the Regulatory Authority of Bermuda's specific questions; and,
- Summary

6. General – Approach to Regulation

7. In Canada, and in most countries where we are engaged, the regulatory approach to the communications marketplace is to step-in where market forces have demonstrated clear evidence of failure. It is widely acknowledged that the use of a regulatory process and regulatory tools to shape market dynamics is a blunt instrument and as such ill-suited to micromanaging consumer choice and related protections. The general view (and preference) is that markets will find a way to resolve consumer problems. Regulatory intervention should not be undertaken lightly, as it can have unintended consequences and stand in the way of a preferred market outcome. Indeed the precept could be restated: that *regulatory intervention is necessary only if there is clear evidence of market failure and a clear need for consumer relief*.

8. In the case of concern about email portability and the seeming limit to consumer choice represented by the absence of IASP email portability; Bermuda is not unique.

9. In the earlier stages of the evolution of internet-based communications the citizens of every country received their first email addresses from the communications-service provider; it was simple, the apparent complexity of establishing private domains impeded the adoption thereof, and your ISP

handled all the housekeeping details. Almost a decade ago in the United States,¹ for example, there was some concern at the US federal telecommunications regulator, the Federal Communications Commission (FCC), about the very issues that Bermuda is considering now: There was concern that the email addresses that had been broadly adopted, offered by pioneering companies like America On-Line (AOL.com), @Home and AT&T, represented impediments to consumer choice. The addresses were not portable and were tied to a subscription model that required the addressee to maintain an account in good standing.

10. The concern expressed at the FCC was mitigated shortly thereafter in the U.S. marketplace, and in the rest of the world, by a number of companies offering internet services, and email accounts, not tied to a carrier-service subscription model. Companies like Google, Yahoo, Microsoft and Apple launched email services that were independent of any IASP (Gmail, Yahoo Mail, Hotmail and Apple Mail, respectively). These services leverage competitive advantage in devices, operating systems and web/cloud-based services, essentially turning email accounts into simple features of a broader ecosystem. In so doing, they offer free and easy alternatives to wean consumers from carrier-based email domains. Globally, the numbers of these independent-of-an-IASP accounts dwarf the numbers of IASP internet accounts².
11. In parallel, an entire industry developed to assist individuals and companies of all sizes to register their own domains, with their own independent-of-a-

¹ “Email Portability: ... A Remarkably Silly Idea” (CNet, 2007)
<http://www.cnet.com/news/fcc-asked-to-mandate-e-mail-address-portability/>

² Indeed, most of the growth in recent years in electronic inter-personal communications has been in non-email-based modalities; Facebook Messenger, Skype, Viber, WhatsApp, Twitter, Instagram, Google Chat, iMessage and the like have largely eclipsed email as a communications mode for millions upon millions of communications users. For most internet users, certainly any that have contact with the younger generations, ‘messaging’ of some kind has replaced email as the electronic messaging medium of choice. Wikipedia statistics on IM accounts suggests that there are over 3.8 billion registered users (48% of the planet’s population).

particular ISP email addresses, companies like Network Solutions, and as you cite in your Consideration Document, GoDaddy and Lunarpages, exist to assist their customers, individuals and corporate alike, to operate an independent internet presence irrespective of the choice of IASP.

12. When faced with the dilemma “to-regulate-or-not-regulate?” in this matter, the FCC elected to NOT intervene. Consumers did (and do) have options, the IASP email address did not represent a barrier to choice. Indeed, as part of their competitive differentiation, some IASPs explicitly positioned email-forwarding features as a reason to shift email identities to their platforms.
13. Similar thinking was adopted by other regulators in other jurisdictions³; given the fact of a range of emails modalities, from a wide range of sources, there was no compelling reason found to employ the hand of regulation to assure consumer choice of provider. The burden of regulation would not assist consumers to change providers because it is too late; consumers have already coped with the exigency and the marketplace has responded to the challenge.

14. Choice

15. Consumers have a broad choice of options for email service. These options include:
 - IASP-based email services (the focus of this proposed Determination). The email service provided by IASPs is typically part of the bundle that includes the IASP access service itself.
 - Public non-IASP-based email services (Hotmail, Gmail, Yahoo, iCloud ...); note that some of these non-IASP email services can be used to supply support to domain-based email (below). Public non-IASP-based email services are typically free of monetary for the user – advertising revenues are realized by the provider.

³ In our research we have not found **any other jurisdiction** that has proposed to try to mandate email portability.

- Domain-based email (RAB.bm, .org, .com, .tv, .co.uk), suitable for either individual use (example@jonesfamily23.com) or corporate use. Domain-based email services are typically free of charge, any costs associated therewith are covered by the hosting charges levied by the domain host service.
16. It is evident that a broad choice of email service provision exists – that consumers have many alternatives to from which to choose and a wide range of features offered by a host of competing providers using a broad spectrum of email clients. We note further that most of the email service options extant are free-of-charge (at least in terms of impact to the consumer’s pocketbook).
17. Moreover, in our research, and in our experience, there are not many email users who use a single email address; most users keep an inventory of identities and accounts with several providers. We would suggest that Bermudians are no different from Canadians, Vincentians, Bajans, or Europeans generally in this regard.
18. Changing from one address to another, from one provider to another, the focus of the proposed Determination, is **not** a major hurdle. While some Bermudian consumers may have considered it a problem as recently as 2013, the world (and Bermuda) has moved on. It may be a minor inconvenience, but it is difficult to grasp how that should trigger regulatory intervention and statutory action. An email sent to one’s list of friends and recipients will suffice to enable consumers to “move on” from their ex-IASP to their new IASP. There is no set-up cost: There is no transaction cost. It is not hard to do!

19. Responses to the Bermuda Regulatory Authority specific questions

20. 1: Are there any reasons why the Authority should not find Internet access services to be public electronic communications ?

21. >No Comment

22. 2: Should the proposed Email Mobility requirements apply only to IASPs or should these requirements also apply to other Email service providers? If so, describe the other Email service providers to which the Email Mobility requirements should apply?

23. >We do not believe that the proposed Email Mobility requirements should apply to any provider.

24. 3: Will the proposed Email forwarding requirement remove a barrier to a subscriber's ability to change IASPs? Is such a requirement necessary?

25. > We do not believe that a barrier exists, and therefore that the requirement is unnecessary.

26. 4: Is 180 days an appropriate period to require IASPs to forward a subscriber's Email to a new Email address?

27. >We believe that since there should be no requirement that the IASP be mandated to provide forwarding that the question is moot.

28. 5: Is it reasonable to require an IASP to forward a subscriber's Email at no cost to the subscriber?

29. >Insofar as many providers offer email forwarding at no cost, it would be reasonable to suggest that should forwarding be offered that 'no cost' would be an appropriate tariff. That said, should the client cease to have a commercial relationship with the IASP there should be no requirement to forward mail thereafter.

30. 6: Do you agree that an IASP should not be required to provide a subscriber with direct access to the subscriber's electronic mailbox hosted by the IASP during the 180-day forwarding period?

31. >Yes.

32. 7: Do you agree that a subscriber should be required to request forwarding service no later than the date on which the IASP terminates service?

33. >We don't accept the premise of the question – we do not agree that the subscriber should expect forwarding subsequent to the termination of service.

34. 8: Is 24 hours sufficient time to enable an IASP to comply with a subscriber's request for forwarding service?

35. >Forwarding is accomplished instantly using a web-based form in the marketplace. We don't see why email-forwarding in Bermuda would be at a lower standard.

36. 9: Should an automatic response message be an Email Mobility requirement and, if so, is the proposed language of the automatic response message appropriate?

37. > No Comment

38. 10: Should the ISAP be required to give a subscriber the option whether or not to include their new address in this automatic response?

39. >To not include a new address would negate the ostensible purpose of this initiative!

40. 11: Should a subscriber requesting forwarding service have the ability to request that its new Email Address not be included in the automatic response message?

41. >see para 39 (above)

42. 12: Is it necessary or desirable to require IASPs to provide forwarding service after the initial 180-day period? If so, should such an extended forwarding service be provided at the subscriber's expense?

43. >No.

44. 13: Are there other issues that the Authority should consider before adopting a requirement that IASPs provide forwarding service beyond the 180-day period?

45. The Authority might want to consider not adopting the requirement that IASP's provide a mandated forwarding service! This is an issue of the past that has been resolved by the highly competitive internet world. Bermudian consumers like everyone else have a myriad of solutions available to them.

46. 14: Is the proposed requirement that an IASP not reallocate the subscriber's email address reasonable? Should it be modified in any way?

47. >Subscriber email addresses are usually very personal, and unlikely to be reused within the timeframes under consideration. In our opinion there is no need for regulatory action.

48. 15: Are there any other issues raised by this Preliminary Report, Preliminary Decision and Order, and Proposed General Determination that the Authority should consider before making a final decision?

49. >It is the express intention of this submission to urge the Authority to forbear, to not make a decision to mandate email-portability through required email forwarding by IASPs who no-longer have a commercial relationship with a customer.

50. Summary

51. We believe that the Authority is attempting to grapple with an issue that is no longer an issue; that it is attempting to bring its regulatory toolkit to bear to solve a problem that does not exist for the vast majority of internet users, whether in the Bermuda, or elsewhere. Indeed, should the Authority proceed with its proposed initiative the world may draw a parallel to Britain's "red flag laws"⁴ instituted during the advent of the horseless carriage in that country – the departure from the parallel, of course, is that the Authority is contemplating introducing its 'solution' long after the marketplace has moved on.
52. We urge the Authority to re-consider its position on the need for regulatory action in this matter.

Respectfully Submitted,

Yours faithfully,

A handwritten signature in black ink that reads "Iain Grant". The signature is stylized, with the first name "Iain" and last name "Grant" clearly visible.

Iain Grant

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⁴ https://en.wikipedia.org/wiki/Locomotive_Acts