

**Comments of the National Consumers League to the Federal Trade Commission
regarding**

**“Competition and Consumer Protection in the 21st Century Hearings, Project
Number P181201”**

**Question #2: Competition and consumer protection issues in communication,
information, and media technology networks;**

August 20, 2018

I. Introduction

The National Consumers League (NCL) welcomes the opportunity to offer input to the Federal Trade Commission (FTC or Commission) in response to Topic #2, where the Commission asks commenters to discuss “[c]ompetition and consumer protection issues in communication, information, and media technology networks.”

As the nation’s oldest consumer organization, NCL has advocated for more than a century in favor of a fair and transparent marketplace. Our core belief is that competition serves as the bedrock of any fair market. Our comments for Topic 2 will address the issue of network effects and the negative outcomes on competition that stem from consumer “lock-in.” We will look at the need for the FTC to promote data portability as a way to increase competition and freedom of choice for consumers.

II. In order to prevent consumer lock-in, the FTC should monitor closely the issue of ‘network effects,’ and promote solutions such as data portability that encourage competition.

In question #2, the Commission asks commenters to discuss “[c]ompetition and consumer protection issues in communication, information, and media technology networks.” As the Commission’s *Broadband Connectivity Competition Policy* (BCCP) report found, significant consumer protection concerns arise when users interact with modern communication, information, and media technology networks, such as broadband internet access services.¹ We believe that similar concerns have emerged with digital platforms in the intervening eleven years since the publication of the BCCP report. Addressing these concerns falls directly within the broad authority granted to the Commission by the FTC Act to police unfair and deceptive acts and practices in the marketplace.

While network effect-enabled platforms provide consumer benefits, such as ease of use and increased convenience with daily tasks, their growth has created new risks to privacy, data security, and competition. To carry out its consumer protection mandate, we believe the FTC should assess both the advantages to consumers provided by modern digital platforms that benefit from “network effects,” as well as the negative outcomes their growth has had on competition.

As one expert has noted, a business benefits from network effects when “the product or service they provide become more valuable as usage increases.”² Modern examples of platforms familiar to most consumers that benefit from network effects include companies such as Apple, Google, Microsoft, Amazon, Airbnb, and Uber.³ Currently,

¹ FTC Staff Report, *Broadband Connectivity Competition Policy*, 38 (Gregory P. Luib et. al. eds., 2007) <https://www.ftc.gov/sites/default/files/documents/reports/broadband-connectivity-competition-policy/v070000report.pdf>

²James Carrier, *The Network Effects Manual: 13 Different Network Effects and Counting*. (Aug. 1, 2018), <https://medium.com/@nfx/the-network-effects-manual-13-different-network-effects-and-counting-a3e07b23017d>

³ James Carrier, *70% of Value in Tech is Driven by Network Effects*, Medium (Nov. 28, 2017), <https://medium.com/@nfx/70-of-value-in-tech-is-driven-by-network-effects-8c4788528e35>

internet users have accounts with an average of five such platforms.⁴ While network effects are not inherently harmful to consumers, there are factors associated with companies that rely on them that can be negative. For example, as consumers share ever greater amounts of personal data such as e-mail, images, video and other content with platforms, it can become more difficult to transfer that data to a competing platform service. In addition, many of these platforms have been cited for the complex processes necessary to completely delete users' data from these platforms.⁵

Data portability could address these issues and should, we believe, be an important consideration as the Commission examines the impact of the growth of digital platforms and how it will promote competition in this space. As companies continue to amass large amounts of user data, it is critical that consumers be able to easily transfer their data to potentially more innovative platforms that may provide them with services that better meet their needs and promote competition.

The benefit of government intervention to encourage data portability can be found by examining the Federal Communications Commission's (FCC's) efforts to mandate wireless local number portability. Starting in 1996, the FCC issued a *Notice of Proposed Rulemaking* discussing the benefits of wireless local number portability, stating:

“As indicated above, several studies show that customers are reluctant to switch carriers if they are required to change telephone numbers. To the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services provided by new entrants will be depressed. This

⁴ Jason Mander, Internet Users Have on Average 5.54 Social Media Accounts, GlobalWebindex (January 23, 2015), <https://blog.globalwebindex.com/chart-of-the-day/internet-users-have-average-of-5-54-social-media-accounts/>

⁵ Gordon Gottsegen & Josie Colt, How To Make a Clean Break with the Clingiest Social Networks, Wired (Mar. 12, 2018), <https://www.wired.com/story/how-to-delete-your-facebook-instagram-twitter-snapchat/>

could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act.”⁶

The FCC recognized that in order to maintain competition, the portability of a key piece of data -- a consumer’s telephone number - was vital to promoting competition on the dominant platform of the 1990’s -- the telephone network. While full implementation of the FCC’s goal of promoting number portability required more than seven years of rulemaking, the number portability policy ultimately had a positive effect on lowering wireless prices for customers, by reducing switching costs and improving competition⁷

We believe that the Commission should use its statutory authority to push for similar portability principles to help consumers take more control over their data and leverage their business to companies with stronger privacy and interoperability policies. Users’ personal data -- the emails, images, videos, “likes” and other personal data they share with platform companies -- should also be subject to data portability to promote competition and provide consumers with real choices without their having to be locked into one platform because portability is not easy or even possible.

III. Conclusion

Network effect-fueled data platforms have created new markets that benefit consumers, but those same network effects have allowed large technology firms to dominate many of those markets and in the process in some cases, stifle competition. Data portability would enhance competition and promote consumer choice. The Commission

⁶ In the Matter of Telephone Portability, CC Docket No. 8535, First Report And Order And Further Notice of Proposed Rulemaking, FCC 96-286, at para. 31 (rel. July 2, 1996), available at https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1996/fcc96286.txt (Telephone Number Portability NPRM)

⁷ Minjung Park, The Economic Impact of Wireless Number Portability (Haas School of Business, UC Berkeley) (November 8, 2010), <http://faculty.haas.berkeley.edu/mpark/wnp.pdf>

should exercise its statutory authority to promote data portability and the competitive benefits to consumers that flow from it.