AT&T Comments on Ofcom Mobile Call Termination Market Review

5 September2017

Summary

1. AT&T Global Network Services UK B.V. ("AT&T") respectfully submits these comments in response to Ofcom's *Mobile Call Termination Market Review* consultation published on 27 June 2017 ("the Consultation").[1] AT&T is a wholly-owned subsidiary of AT&T Inc., which, through its affiliates, operates one of the world's most advanced global backbone networks, and provides services to virtually every country and territory in the world. In the UK and other EEA Member States, AT&T Inc., through its affiliates, is a competitive provider of business connectivity and managed network services, and a leading provider of bilateral connectivity services linking the UK and all other EEA Member States with the United States. AT&T's comments are limited to responding to Question 4.6 of the Consultation concerning the treatment of non-EEA originated calls in the proposed Mobile Call Termination (MCT) charge control. For the reasons described below, AT&T welcomes and fully supports Ofcom's provisional conclusion to apply the MCT charge control to all calls terminated in the UK irrespective of where individual calls may have originated.

Treatment of non-EEA Originated Calls in the MCT Charge Control

2. AT&T welcomes the significant progress in recent years by Ofcom and other EEA regulators in reducing termination rates for calls on fixed and mobile networks. Unfortunately, some operators in other EU countries are now seeking to charge higher rates to terminate calls originating outside the EU than those charged for calls originating inside the EU – sometimes by significant margins. These increases do not appear to reflect incremental costs for termination of such traffic. Such discriminatory rate practices harm consumer and business users at both ends of these international routes by encouraging higher calling prices that in turn reduce traffic volumes.[2]

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[1] https://www.ofcom.org.uk/consultations-and-statements/category-1/mobile-call-termination-market-review

[2] *See, e.g.*, OECD, *International Traffic Termination*, OECD Digital Economy Paper No. 238, (2014) ("OECD Report"), at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP(2013)9/FINAL&docLanguage=En The OECD Report describes the effects of lower termination rates in stimulating increased international traffic following the liberalisation of telecommunications markets around the world, and reviews policies implemented by some African countries to increase termination charges for inbound international traffic. The report finds that "policies seeking to raise payments received from foreign carriers may leave countries at best with the same level of revenues or indeed cause a slight reduction of revenues per access path. However, even if revenues remain unchanged, what is evident is that incoming traffic to those countries is decreasing significantly and much more than in those that have not imposed such measures. Thus, regardless of the effects on payments, other spill-over effects to the rest of the economy, given a reduction of international traffic, must also be considered." *Id.* at 33.

3. AT&T believes that a policy of allowing any form of "differential regulation"[3] based on the origin of calls would raise concerns regarding compliance with the commitments entered into by the European Communities and their Member States under the WTO General Agreement on Trade in Services (GATS). Article II of the WTO GATS Agreement requires the UK and other EU Member States to provide to "services and service suppliers of any other member treatment no less favourable than it accords to like services and services suppliers of any other country." Requiring UK operators to charge cost-based rates for calls from end-users within the EEA, while also authorising those operators to charge rates higher than cost-based levels to terminate calls from end-users outside the EEA, does not appear consistent with the "most-favoured-nation" (MFN) treatment required by this obligation.

4. Excluding non-EEA originated calls from the MCT charge control would also appear to be inconsistent with the Additional Commitment by the European Communities and their Member States under the GATS Reference Paper, which requires the UK and other EU Member States to ensure that interconnection with major supplier operators is provided "under non-discriminatory terms, conditions . . . and rates" and at "cost-oriented rates."[4] Allowing "differential regulation" would also appear to be inconsistent with the EU commitments under the GATS Annex on Telecommunications, which require the UK and other EU Member States to "ensure that any service supplier of any member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions."[5] Indeed, the Office of the United States Trade Representative (USTR) has expressed concerns that allowing differential termination rates that are not reflective of the incremental costs of terminating such traffic may be contrary to the EU's compliance with the GATS Annex on Telecommunications and a violation of the GATS Reference Paper.[6]

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[3] Ofcom defines "differential regulation" in this context as either allowing UK Communications Providers (CPs) freedom to commercially negotiate termination rates for traffic originated outside the EEA, or allowing UK CPs to charge non-EEA CPs higher rates, provided they are reciprocal. Consultation at 13.92

[4] WTO, European Communities and Their Member States, Schedule of Specific Commitments, Additional Commitment, Sect. 2.2. *See also, e.g.*, OECD Report at 19-21 (describing WTO commitments applicable to international telecom traffic). An operator incurs the same cost to terminate an international call on its domestic network regardless of the call origination point. Pursuant to this commitment, the cost-oriented termination rate required for EEA-originated calls should also apply to calls originating in other WTO Member countries.

[5] WTO GATS Annex on Telecommunications, Sect. 5. The WTO Dispute Settlement Body has found that the "reasonable" terms for access and use required by the GATS Annex on Telecommunications include "questions of pricing of that access and use." WTO, *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R, Apr. 2, 2002, ¶ 7.333.

[6] *See* USTR 2015 Section 1377 Report (https://ustr.gov/sites/default/files/2015-Section-1377-Report_FINAL.pdf) at 13: "Requiring, or even allowing, European operators to charge cost-oriented rates for calls from end-users within the EEA, while also authorizing those operators to charge rates higher than cost-oriented levels to terminate calls from end-users outside the EEA, raises concerns with respect to the EU's adherence to its obligations under GATS Article II and section 5 of the GATS Telecommunications Annex." *See also* USTR 2016 National Trade Estimate Report (https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf) at 165: "The

5. In addition to the GATS implications, AT&T believes that Ofcom has correctly identified[7] the technical and commercial issues that could arise from excluding non-EEA originated calls from the MCT charge control, including: the lack of commercial relationships between many UK fixed communications providers (CPs) and their non-EEA counterparts (which would be necessary if UK CPs were to have any opportunity to exercise countervailing bargaining power in negotiations with non-EEA CP; the potential system upgrade costs for CPs to be able to assess and bill based on CLI; and the possible incentive for inefficient traffic routing to present calls from outside the EEA as if they are EEA-originated (with the associated potential for arbitrage and artificial inflation of traffic). AT&T also agrees with Ofcom that monitoring compliance with a "differential regulation" model for fixed termination rates would be challenging, especially in view of Ofcom's estimate of over 160 potential international routes between the UK and non-EEA countries.[8]

Conclusion

6. For the reasons outlined above, AT&T urges Ofcom not to allow "differential regulation" of termination rates but rather to proceed with its proposal to apply the MCT charge control to all calls terminated in the UK irrespective of where the call was originated. In this context, AT&T wishes to highlight a recent decision[9] by the Swedish regulator PTS not to proceed with its earlier proposal to allow Swedish operators to charge rates that are higher than cost-oriented levels to terminate calls originating in non-EEA countries.[10] In adopting this change in position, PTS concluded that, because the actual termination cost for calls originating outside the EEA is not higher than for calls originating within the EEA, it is proportionate and reasonable to require operators with Significant Market Power in the relevant market to apply uniform pricing for call termination, irrespective of where the call originates. AT&T urges Ofcom to reach the same conclusion in both the Narrowband Market Review and the Mobile Call Termination Market Review.

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European Commission and EU Member States appear to endorse, explicitly or implicitly, a two-tier approach to the termination of international traffic. These actions adversely affect the ability of U.S. telecommunications operators to provide affordable, quality services to U.S. consumers calling Europe and may raise questions regarding these EU governments' treatment of U.S. suppliers."

[7] Consultation at Annex 11

[8] Consultation Annexes at footnote 119

[9] *Third Consultation on Draft Mobile Call Termination Market Analysis*, PTS, Page 70, Section 6.4.6, available in Swedish at http://www.pts.se/upload/Remisser/2016/Samtrafik%20o%20mobil%20lric/15-4802-beslutsutkast-mobil-terminering-160601.pdf,

[10] The earlier PTS proposal would only have allowed Swedish operators to apply reciprocal pricing to match but not exceed the termination rates applied by the non-EEA originating operators.