Comments of AT&T Global Network Services Sweden AB: PTS Consultation Paper on *Draft Analysis of the Market for Mobile Call Termination* (Dnr: 15-4802)

11 May 2016

AT&T Global Network Services Sweden AB ("AT&T") respectfully submits these comments in the public consultation concerning *Draft Analysis of the Market for Mobile Call Termination (Market 2) According to Chapter 8, Sections 5 and 6 of the Law on Electronic Communications (2003:389)*, issued by PTS on 14 April 2016 ("the Consultation"). 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 Sweden and other EU 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 Sweden and all other EU Member States with the United States.

Through policies that have promoted private sector competition and investment, Sweden has made important progress in recent years in reducing termination rates for international calls to cost-oriented levels. AT&T commends PTS for this result and supports the further steps PTS has proposed in this consultation to promote this important objective. PTS also proposes, however, to allow Swedish operators to charge rates that are higher than cost-oriented levels to terminate international calls originating in countries that are not Members of the European Economic Area (EEA), based on considerations of "reciprocal pricing." AT&T does wish to share our public policy concerns with this latter aspect of the proposal.

Because this reciprocity-based approach is severed from any cost basis, it appears likely to drive calling prices upwards, reduce traffic, and constrain market growth, both on international routes serving Sweden and more broadly as the result of other countries

following the precedent of Sweden in taking such action. The proposal also raises potential concerns regarding compliance with World Trade Organization (WTO) obligations. Instead, PTS should apply a policy of promoting equally competitive termination rates for all international calls. Such a policy is in the longer run better suited to addressing concerns relating to high termination rates in non-EEA countries and will benefit consumers in Sweden and elsewhere by encouraging the continued growth of the global telecommunications market.

1. PTS Proposes to Allow Termination Rates for Non-EU Originated Calls Based on "Reciprocal Pricing"

In this Consultation, AT&T understands that PTS is seeking to update its pure Long Run Incremental Cost (LRIC) model for calculating cost-based termination rates for incoming calls to mobile operators that would continue the downward trend in price ceilings, from 0.0615 kronor today to (provisionally) 0.0496 kronor as of 1 July 2018. However, PTS proposes that these rates should apply only to traffic exchanged with operators in the countries of the EEA.[1] Notably, PTS proposes to allow Swedish operators to charge rates that are higher than cost-based levels for termination of calls from end-users outside the EEA.

In support of this proposal, PTS states that call termination rates charged by operators in countries outside the EEA can be significantly higher than those within Europe. PTS proposes to allow Swedish operators to charge higher rates for calls originating outside the EEA based on "reciprocal pricing".[2] AT&T understands "reciprocal pricing" in this context to mean that a Swedish operator would be authorized to charge the same rates to terminate international calls originating in a non-EU Member country that the Swedish operator is charged for termination of international calls in the non-EU Member country.

[1] *See* Consultation, Section 6.4.6

[2] *Id.*

2. These Concerns Should Be Addressed Through Pro-Competitive Policies That Benefit Consumers and Encourage Market Growth

AT&T welcomes the significant progress in recent years by Sweden and other EU Member States in reducing their termination rates for international calls terminated 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.[3]

The PTS proposed reciprocity policy for calls originating outside the EEA would not only endorse these discriminatory practices and encourage other operators in Sweden to adopt them, but also could be followed by other National Regulatory Authorities in the EU, and lead in turn to similar actions by countries outside Europe. Developing countries maintain many of the highest termination rates and so may be particularly adversely affected. The ultimate result could be the reversal of much of the hard-won progress in reducing global

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[3] *See, e.g.*, OECD, *International Traffic Termination*, OECD Digital Economy Paper No. 238, (2014) ("OECD Report"), at http://www.oecd-ilibrary.org/docserver/download/5jz2m5mnlvkc.pdf?expires=1412608238&id=id&accname=guest&checksum=8252522A9B9FA33244637A40CFA6BBED. The OECD Report describes the effects of lower termination rates in stimulating increased international traffic following the liberalization 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 decreasingly 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 32.

termination rates over the last 20 years that has led to a massive increase in global telecommunications availability and traffic benefiting consumers and businesses throughout the world. Rather than take this retrograde step, PTS should apply the same principles to termination rates for all international traffic, and consider alternative approaches to address the problem of high international termination rates, such as the deregulatory and pro-competitive policies adopted by the U.S. Federal Communications Commission (FCC) to address these concerns.

The PTS reciprocity proposal seems aimed at addressing the significant discrepancy between the termination rates paid and received by Swedish operators when they exchange international calling traffic with operators in some countries outside the EEA. This problem is shared by U.S. operators when they exchange international calling traffic with operators in all, or virtually all, countries. For many years, U.S. operators have paid higher rates to terminate outbound international calls on foreign operators' networks than they are able to charge foreign operators to terminate inbound international calls, due to the intensely competitive market for US call termination. Publicly-available FCC International Traffic data show that in 2013 U.S. operators were paid an average rate of $0.03 per minute in wholesale payments to terminate 15.9 billion inbound international calling minutes on their U.S. networks, while paying foreign operators a global average rate of $0.04 per minute to terminate 73.5 billion outbound international calling minutes on foreign networks – resulting in a significant net outpayment to foreign operators.[4]

[4] *See* FCC Section 43.61 International Traffic Report for 2013, Table A1, https://apps.fcc.gov/edocs_public/attachmatch/DOC-334395A2.pdf . The FCC data also show that U.S. operators terminated 70.4 million inbound international calling minutes from Sweden in 2013 at average rate of $0.01 per minute, but sent 85.5 million outbound international calling minutes to Sweden in 2013 and paid Swedish operators an average termination rate of $ 0.03 per minute for this outbound traffic resulting in a significant

This is partly because the highly competitive U.S. market constrains U.S. operators from offering inbound termination rates that are above the levels that reflect cost orientation, regardless of a particular bilateral route.[5]

Notwithstanding these continuing discrepancies between the termination rates that are paid and received by U.S. operators, since 1999 the FCC has loosened its former regulation of international traffic arrangements at an increasing pace, and recently completed the removal of this regulation with the full support of U.S. operators.[6] U.S. operators have consistently argued that they are better able to reduce the foreign termination rates they pay by negotiating commercially with their foreign correspondents in the increasingly competitive global telecom market. FCC data confirm this conclusion, by showing that average international termination rates paid by U.S. operators have reduced from $0.22 to $0.04 per minute since the FCC first began its move towards deregulation in 1999.[7] Moreover, these rate reductions have resulted in narrowing margins between the average

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outpayment to Swedish operators. *See, id.* Although traffic imbalances are a significant cause of the large net outpayments by U.S. operators, these rate discrepancies would still result in significant net outpayments by U.S. operators if there were equal volumes of U.S.-inbound and U.S.-outbound calls.

[5] Any U.S. international operator that sought to raise its termination rates for inbound traffic above competitive levels would quickly lose this traffic to its competitors.

[6] *See* FCC, *International Settlements Policy Reform*, 27 FCC Rcd. 15521 (2012). The FCC has supported these deregulatory measures with policies that directly address the ability of foreign carriers with market power to charge unreasonably high termination rates. *See, id.*, ¶¶ 3 & 6-9. These FCC policies are limited to foreign carriers with market power and have effect only where those carriers charge unreasonably high termination rates, or take unreasonable actions in support of efforts to increase, or prevent reductions in, termination rates.

[7] *See* FCC Section 43.61 International Traffic Reports for 1999-2012, Table A1, http://transition.fcc.gov/wcb/iatd/intl.html.

termination rates paid and received by U.S. operators, from $0.07 in 1999, and $0.03-0.04 in 2005-2010, to $0.02 in 2011-2012[8] and $0.03 in 2013.[9]

Instead of proposing a policy that inevitably will encourage Swedish operators to increase their termination rates for non-EEA originated traffic, PTS should address the concerns resulting from the rate discrepancies now being experienced by Swedish operators by maintaining similar deregulatory and pro-competitive policies that incentivize Swedish operators to negotiate lower termination rates with their foreign correspondents that would promote further growth in the global telecommunications market. As noted, the approach proposed by PTS would have the exact opposite result.

3. Other Potential Concerns

This reciprocity-based measure also seems to 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 Sweden and other EU Member States to provide to "services and service suppliers of any other member treatment no less favorable than it accords to like services and services suppliers of any other country." Requiring Swedish operators to charge cost-based rates for calls from end-users within the EEA, while also authorizing 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-favored-nation" (MFN) treatment required by this obligation.

The PTS proposed measure for non-EEA originated calls also appears to be inconsistent with the Additional Commitment by the European Communities and their

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[8] *Id.*

[9] *See* FCC Section 43.61 International Traffic Reports for 2013, Table A1, https://apps.fcc.gov/edocs_public/attachmatch/DOC-334395A2.pdf.

Member States under the GATS Reference Paper, which requires Sweden 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."[10] Finally, the measure proposed by PTS similarly appears to be inconsistent with the EU commitments under the GATS Annex on Telecommunications, which require Sweden 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."[11] 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.[12]

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[10] 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.

[11] 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.

[12] *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 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

4. Conclusion

PTS therefore should decline to adopt the proposed reciprocity-based approach to address concerns relating to high termination rates in non-EEA countries. Instead, PTS should apply the same policies regarding termination rates to all international calls, and encourage the negotiation of lower termination rates in non-EEA countries through pro-competitive and deregulatory policies that will benefit consumers and other users in Sweden and elsewhere by encouraging the continued growth of the global telecommunications market.

AT&T would be pleased to answer any questions concerning these comments.

Respectfully submitted,

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affordable, quality services to U.S. consumers calling Europe and may raise questions regarding these EU governments' treatment of U.S. suppliers."