



4 July 2017

To

**Body of European Regulators
for Electronic Communications**

via email:

NN-Methodology-Consultation@berec.europa.eu

AT&T comments re: BEREC draft report on Public Consultation on Net- Neutrality Regulatory Assessment Methodology, Document number: BoR (17) 132

We welcome the opportunity to share our comments with BEREC regarding “*The draft report on Public Consultation on Net-Neutrality Assessment Methodology*” (“Consultation”) recently issued for the stated objective of guiding National Regulatory Authorities (“NRAs”) on the implementation of the net neutrality provisions of the Regulation 2015/2120 (“Regulation”).

AT&T has been a long-time proponent of the policy of maintaining an Open Internet that promotes an entire Internet ecosystem where users are able to freely exchange ideas and communicate, to access the applications and legal content that they wish to use, to have meaningful transparency about their Internet service, and to select the service packages that best satisfy their needs.¹

Consistent with this, a key factor for promoting the growth and availability of the Internet consists in avoiding unnecessarily prescriptive regulations that discourage investments in infrastructure and services, distort competition among service providers, impede reasonable network management, and limit the possibility for the users to choose offers that meet their needs and ability to pay.²

¹See, e.g., Jim Cicconi, AT&T Senior Executive Vice President of External and Legislative Affairs, delivered a statement to the US Congress in 2011, stating: “Let me first stress that AT&T has long supported the ‘broadband principles’ laid out by the FCC six years ago. We support an open Internet, and have promised to abide by that concept.” (<https://www.attpublicpolicy.com/broadband/atts-cicconi-on-net-neutrality-before-congressional-hearing/>)

² AT&T Comments – GN Docket No. 09-191 and WC Docket No. 07-52 (Jan. 14, 2010): “...success is reason enough to stick with what has worked under the status quo: continued application of the four principles of the *Internet Policy Statement* to the wired broadband Internet and, perhaps, adoption of a new, fifth principle to encourage greater consumer-oriented transparency about network-management practices. AT&T supports that approach because it strikes the right balance. It preserves the openness of the Internet, while maintaining incentives for broadband providers to make the massive investments necessary to achieve this country’s ambitious broadband deployment goals. It also encourages those providers to invest in the next-generation “smart” networks that are needed to support the innumerable new applications that will not only enrich our daily lives, but make us healthier, safer, more energy efficient, and more prosperous.”



AT&T is concerned that the present Consultation does not optimize all of the important policy goals of *ex ante* regulation and the need to ensure sufficient freedom and flexibility for all market players to innovate in a highly dynamic and competitive internet environment.

NRAs' detailed involvement in ISPs' engineering and traffic management practices would hurt the efficient management of Internet Access Service ("IAS") traffic, stifle competition between providers and ultimately harm end-users. Setting an intrusive and unpredictable standard would put unprecedented pressure on NRAs to keep pace with fast-moving, dynamic technology and a rapidly evolving industry.

As recognized by the Federal Communications Commission in 2010, regulators would need to revisit and update a minimum level of service frequently.³ And given the high cadence of innovation in the marketplace as well as differences among providers, it would be difficult, if not impossible, for the NRAs to keep up with industry changes,⁴ and equally untenable for the market players to manage their inherently cross-border networks to varying NRA standards across a fragmented single market.

We urge BERC to provide Guidelines to the NRAs that support, not undermine, operators' investment decisions.

These Guidelines should also recognize that specialized Enterprise services should have the flexibility to be managed differently than IAS. Enterprise users necessarily require that their traffic is managed in a specific way according to their business needs.

Telecom operators have been offering managed data services to Enterprise customers for years, over their data connections and private IP-VPN infrastructure. It may be noted that, in the same way that reasonable network management has been recognized by regulatory authorities in other countries, so too have Enterprise services largely been exempted from Open Internet guidelines.

We attach for BERC's consideration the declaration of Dr. Hany Fahmy submitted by AT&T in the Matter of Protection and Promoting the Open Internet, GN Docket No 1-28.

Although the declaration was submitted as part of the Paperwork Reduction Act review of the Office of Management and Budget, Dr. Fahmy details in his declaration the challenges of implementing, maintaining and making sense of many measuring tools similar to those proposed by BERC is this proceeding.

We have also provided a link to our Broadband Information page which includes information about our network practices, performance characteristics and commercial terms for AT&T's mass market broadband internet access services (<https://www.att.com/broadbandinfo>) and a link to our Global

³ *NPRM* ¶ 103 ("[A] specific technical definition of minimum access could become outdated as available broadband network technologies change and available broadband speeds improve.").

⁴ *Id.*; see also Chairman Wheeler Remarks, American Enterprise Institute (June 12, 2014) ("The pace of innovation on the Internet is much, much faster than the pace of a notice-and-comment rulemaking. . . . We cannot hope to keep up if we adopt a prescriptive regulatory approach."), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0612/DOC-327591A1.txt.



Public Policy website library of our statements on the importance of an open internet (<https://www.attpublicpolicy.com/top-issues/open-internet/>).

AT&T would welcome the opportunity to meet with BEREC to discuss some of the technical concerns raised by this Consultation. We remain available to be engaged in further discussions.

Best regards

A handwritten signature in black ink, appearing to read "Antonio Amendola".

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Attachment: Decl. of Dr. Hany Fahmy, redacted.