2 September 2005

Mr. Andrew Haire
Senior Director (Policy and Competition Development)
IDA
8 Temasek Boulevard
#14-00 Suntec Tower Three
Singapore 038 988

BY EMAIL AND HAND

RE: **APPLICATION UNDER SECTION 26(5) OF THE TELECOMMUNICATIONS ACT, SUBSECTION 1.7(a) OF THE TELECOM COMPETITION CODE OF 2005 AND SUBSECTION 3.5 OF THE TELECOM CONSOLIDATION GUIDELINES, WHICH INCLUDES THE FOLLOWING:**

(1) REQUEST FOR CONSENT TO FILE SHORT FORM CONSOLIDATION APPLICATION;

(2) REQUEST FOR EXEMPTION FROM FILING LONG FORM CONSOLIDATION APPLICATION; AND,

(3) REQUEST FOR APPROVAL OF CONSOLIDATION APPLICATION.

Dear Mr. Haire:

This submission is filed by MCI WorldCom Asia Pte Ltd ("MCI Singapore") on behalf of itself and MCI, Inc. ("MCI") and Verizon Communications Inc. ("Verizon") (collectively, the "Applicants") in relation to the proposed merger between Verizon and MCI and in response to the IDA's letter dated August 31, 2005.

The Applicants are very grateful for the opportunity to respond to the comments about the transaction that IDA received from British Telecommunications ("BT") and Singapore Telecommunications Limited ("SingTel"). The Applicants trust that this submission will assist the IDA in achieving a balanced and objective assessment of the Applicants' original submission. In the end, the Applicants submit that the consolidation will not substantially lessen competition in any telecommunication market in Singapore and will be in the public interest for Singapore because it will make MCI Singapore a better competitor in the Singapore telecommunications market.

<u>The Filing of a Short Form Consolidation Application is Appropriate</u>

In its recent decision approving the Short Form Consolidation Application related to SBC Communication Inc.'s ("SBC") acquisition of AT&T Corp ("AT&T"), the IDA concluded "that submission of the Long Form Consolidation Application is not necessary because it is unlikely to lead to the submission of evidence that would cause IDA to modify its conclusions." IDA Explanatory Memorandum on AT&T-Singapore's Ownership Change ("*SBC-AT&T Decision*"), ¶50 (18 August 2005). The same conclusion is justified here.

As noted in the *SBC-AT&T Decision*, the IDA has the authority to grant an exemption from filing a Long Form Consolidation Application. *SBC-AT&T Decision*, ¶29. In its Consolidation Guidelines, the IDA states that it will grant an exemption if the parties make a specific and compelling submission that the filing of a Long Form Consolidation Application "is not necessary to ensure that a Consolidation would not substantially lessen competition in the Singapore telecommunication market." *Id.*; Telecom Consolidation Guidelines ("Consolidation Guidelines") at ¶3.5.

In their initial Consolidation Application and accompanying Abbreviated Statement, the Applicants submitted substantial data regarding the transaction, the Applicants and their affiliates, potential relevant product markets, and relevant regulatory regimes.[1] These data, along with information provided in this submission, provide the IDA with ample information to evaluate the consolidation. As in the *SBC-AT&T Decision*, the "submission of the Long Form Consolidation Application is not necessary because it is unlikely to lead to the submission of evidence that would cause IDA to modify its conclusions." *SBC-AT&T Decision*, ¶50.

Indeed, BT and SingTel do not seem to disagree with the proposition that the Applicants have provided the IDA with sufficient data. Instead, both simply urge the IDA to ignore its authority to grant an exemption from filing a Long Form Consolidation Application under certain circumstances. Noticeably missing, however, is any support for why the IDA should not exercise its statutory authority to grant an exemption and instead rigidly apply the requirements of Section 10.5.2.1 of the Telecom Competition Code of 2005 ("Telecom Code") in this case, where the Applicants have shown that an exemption is entirely appropriate. This consolidation has only a tangential relationship to Singapore, and the Applicants have provided ample data in a Short Form Consolidation Application. That data is consistent with the data provided by the applicants in the *SBC-AT&T Decision* and any additional data that might be afforded by the Long Form Consolidation Application is unnecessary for the IDA to evaluate the consolidation.. Accordingly, the Applicants submit that the granting of an exemption in this case is appropriate, especially in light of the IDA's recent *SBC-AT&T Decision*.

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[1] In its Opposition, BT states that the "MCI/Verizon Request does not discuss the regulatory safeguards that are in place or will be put in place to address potential discriminatory behaviour between its upstream and downstream businesses." BT Opposition at p.2. The Applicants refer the IDA to pages 9-13 of the Abbreviated Statement where they provided extensive discussion of the United States Federal Communications Commission's ("FCC") regulatory regime as it relates to international voice telephony and special access, including the relevant nondiscrimination requirements.

The Consolidation Will Not Substantially Lessen Competition in Any Telecommunications Market in Singapore

Although BT and SingTel describe their concerns differently, both seem to complain that the transaction will affect competition in two sectors: Global Telecommunications Services ("GTS")[2] and Internet services. Contrary to the commenters' assertions, however, the consolidation will not have an adverse impact on any telecommunications market in Singapore or any telecommunications market elsewhere which might affect a market in Singapore.

GTS

Some have defined GTS as customized telecommunications services provided to multinational corporations ("MNCs") with trans-continental service requirements.[3] MCI currently offers GTS to MNCs in competition with vertically-integrated telecommunications providers like BT/Infonet, France Telecom/Equant, SingTel, and NTT; Verizon does not.[4] Therefore, there is no horizontal overlap between MCI and

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[2] GTS packages can include services such as Terrestrial International Private Leased Circuits ("Terrestrial IPLC") and International Managed Data Services ("IMDS"). The arguments proposed by the commenters for Terrestrial IPLC and IMDS are essentially the same as those related to GTS, *i.e.*, that the merged entity will harm competition in Singapore by abusing Verizon's purported market power over some local exchange facilities in the U.S. and the FCC's regulatory regime is ineffective at preventing such abuse. Rather than reiterate the responses to these arguments in a separate section, the Applicants respond to these arguments by incorporating the response in the GTS Section.

[3] In *BT/Infonet*, the European Commission defined GTS as: "telecommunications services linking a number of different customer locations, generally in a least two different continents and across a larger number of different countries. They are generally purchased by multinationals with presence in many countries and a number of continents. The services provided are enhanced services – going beyond the provision of simple services such as basic voice and fax – to provide customers with package solutions including virtual private networks for both voice and data services and advanced functionalities." *BT/Infonet*, Case No. COMP/M. 3641, at ¶8.

[4] For completeness, Verizon notes that in the context of providing U.S. domestic telecommunications services to certain multinational business customers, it occasionally provisions certain "foreign-to-foreign" circuits (*e.g.*, Paris to Brussels) for such customers. These services are ancillary to the U.S. domestic services supplied, are provided only at the customer's specific request, and generate *de minimis* revenues. Verizon leases approximately 60 "foreign-to-foreign" circuits from other operators for use by some of its large business customers. Verizon estimates that revenues generated through the use of these circuits by such customers in 2004 were approximately US$1.2 million. Verizon also notes that it has a multi-continent contract, with American Airlines. Pursuant to that contract, Verizon only leases customer premises equipment and provides related maintenance services, without providing any GTS.

Verizon for GTS. Indeed, neither BT nor SingTel complains that the consolidation will result in the elimination of horizontal competition for GTS.

Instead, the two commenters focus on the vertical relationship between MCI's GTS business and Verizon's operation of some local exchange facilities in the United States. They claim that the merged entity will harm competition in Singapore by abusing Verizon's purported market power over some local exchange facilities in the U.S. Moreover, the commenters claim that the FCC's regulatory regime cannot effectively prevent these predicted abuses. For the reasons described in our initial submission, and below, the commenters' arguments are unsupported.[5]

GTS bids encompass a wide-range of services across numerous countries. For any given bid, GTS competitors are as likely to require access services from BT in the United Kingdom, France Telecom in France, NTT in Japan, or SingTel in Singapore as they are to require access from Verizon in parts of the United States. Indeed, when the Applicants evaluated how critical special access in Verizon's territory is to the overall GTS market, they found that in 2004, MCI's estimated special access spend with Verizon for its Global Account Management ("GAM") channel amounted to less than **[Confidential Information]** of GAM's 2004 revenues. Put simply, special access services provided by Verizon is only a small component of the average GTS bid.[6]

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[5] SingTel believes that "[t]he fact that BT is concerned about their position [in the marketplace] is an indication of the immediate and real competitive concerns about the Proposed Consolidation." *SingTel Opposition*, ¶4.9. Other statements BT has made do not indicate any deep concern. BT has recently expressed a view of the acceptability of the Verizon-MCI transaction. In a recent *Wall Street Journal* article, for example, Andy Green, chief executive of BT's Global Services division, seems less concerned: "We are not interested in blocking the deals [the SBC-AT&T and Verizon-MCI transactions]." "In fact, [Green] said, BT could benefit from the mergers. He said SBC's and Verizon's plans to cut staff . . . will raise concerns among their customers and create opportunities for BT." David Pringle, *BT Is Mixed on U.S. Mergers: Telecom Objects to Rivals' Deals But Sees Competitive Benefit*, WALL ST. J., May 17, 2005, at B11.

[6] This is consistent with the recent finding of the United Kingdom's Office of Fair Trading in its decision on the SBC-AT&T transaction. According to the OFT, its "best estimate on available evidence from the complainants is that the 'average' costs of SBC access would represent no more than around 10 per cent of the 'average' GTS contract price, based on aggressive assumptions." Anticipated acquisition by SBC Communications Inc of AT&T Corporation, The OFT's decision on reference under section 33(1) given on 23 August 2005 ("*OFT Decision*"), ¶34 (http://www.oft.gov.uk/NR/rdonlyres/5FE2724B-FC66-4B97-AF6B-A282BE087CF8/0/SBC.pdf).

Moreover, as the IDA noted in the *SBC-AT&T Decision*, "vertical integration is common in the telecommunication industry." *SBC-AT&T Decision*, ¶39(a). Today, there are many vertically-integrated providers operating in Singapore, including some, like BT, with Significant Market Power in their domestic markets. To date, IDA has not detected any anti-competitive behaviour and has not imposed any special conditions on these providers. *Id.* The commenters have not put forward any evidence of such behaviour or even evidence establishing that such behaviour will occur—rather they have asserted that such behaviour is inevitable and unaffected by regulatory and competitive constraints.

The IDA has also found that "Non-horizontal [or vertical] Consolidations generally do not raise significant concerns. Indeed, they may often facilitate competition by creating a more efficient market participant." *SBC-AT&T Decision*, ¶32. Moreover, the IDA recently concluded that "there is little risk that the proposed Consolidation [of SBC and AT&T] would enable AT&T-Singapore to use SBC's dominant position in the provision of special access services within its 13-state service region to substantially lessen competition in the Singapore Terrestrial IPLC market." *Id.* at ¶39. Although the Applicants do not concede that Verizon has a dominant position for the provision of special access services in its territories, they believe that applying the same analysis to the facts here leads to the conclusion that the consolidation would not substantially lessen competition in the GTS or related markets.

With regard to SingTel's and BT's criticisms of the FCC, the IDA has previously held that the FCC's regulations are effective. *SBC-AT&T Decision*, ¶39(c). Specifically, the FCC's "regulations require SBC to provide competing operators with access to special access services. SBC must do so on just, reasonable and non-discriminatory prices, terms and conditions." *Id.* These regulations apply equally to Verizon.

Singapore is not alone in these findings. In its recent decision on the SBC-AT&T transaction, the United Kingdom's Office of Fair Trading ("OFT") rejected similar arguments by two GTS competitors[7] and CompTel, a U.S. advocacy group. The OFT found that "[t]he credibility of the allegations that U.S. regulation is ineffective must seriously be doubted." *OFT Decision*, ¶26. According to the OFT, "the law appears clear and the OFT has no reason to believe that the FCC, which is itself reviewing this transaction, is incapable of resolving any compliance issues such that U.S. regulation might be deemed 'ineffective'." *OFT Decision*, ¶29. Moreover, the OFT described the complainants' foreclosure theory in the GTS market as "flawed" and "lack[ing] sufficient evidentiary support." *OFT Decision*, ¶¶ 26-27. "Beyond the constraint of regulation, competitive constraints may also exist, in tandem, on SBC. Evidence available to the OFT suggests that a variety of competitive local exchange carriers (CLECs) that

[7] The OFT did not identify the two GTS competitors, so the Applicants cannot tell whether the OFT specifically rejected either SingTel's or BT's arguments in the United Kingdom. Nonetheless, the arguments rejected by the OFT are substantially similar to those made by BT and SingTel here, thus making the OFT's decision useful in this case.

competes to a degree with that of ILECs [incumbent local exchange carriers] like SBC." *OFT Decision*, ¶30. The Applicants submitted ample evidence in their Application and Abbreviated Statement to the IDA outlining the same FCC requirements placed upon Verizon and showing that there are numerous competitors for special access in Verizon's territories. *See, e.g.*, Abbreviated Statement, pp. 9-13 and the Taylor Declaration. The evidence shows that the IDA should reach the same conclusion OFT did.

The commenters offer no explanation of why Verizon has any incentive to upend its entire business model simply to favour MCI for a business that will represent only a small portion of the activities of the company as a whole. Verizon sells special access to a wide variety of wholesale customers, only a relatively small number of which provide GTS. Regulatory constraints prohibit Verizon from engaging in price discrimination between GTS providers and non-GTS providers when provisioning special access. Verizon would have to raise prices to all special access customers, precluding Verizon from being able to favour MCI over other GTS providers. Special access remains a regulated product within the United States, with the FCC continuing to monitor special access in ongoing regulatory proceedings. Any attempt by Verizon to increase special access prices to "favour" MCI would be subject to regulatory scrutiny by the FCC. 47 C.F.R. 69.727(a)(2)(iii) prohibits Verizon from providing contract tariff service to an affiliate unless it certifies that a non-affiliate is purchasing under that same contract tariff and Section 272(e) of the Telecommunications Act (47 U.S.C. § 272(e)) contains additional prohibitions against discrimination between Bell companies, such as Verizon and their long-distance affiliates.[8] Further, Verizon would have no assurance that MCI, instead of another GTS provider, would capture downstream GTS business, given that there are many competing GTS providers worldwide (all of whom would be able to acquire special access from Verizon on the same terms as MCI), and that many GTS customers' service requirements lead GTS providers to require only a relatively limited volume of U.S. special access.

Finally, the merged entity will have neither the incentive nor the ability to conspire with a merged SBC-AT&T to harm competition in Singapore.[9] SingTel, quoting BT America's Reply Comments (presumably at the FCC), believes that "[p]ost-merger, the two companies would have incentives not to undercut each other's special access prices" and predicts, without support, the dire consequences that the merged entities would likely "create a powerful duopoly that would have extraordinary market

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[8] Verizon and MCI have addressed special access issues before the FCC in some detail. See, e.g., http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document =6518141893.

[9] SingTel's contention that such anticompetitive conduct will occur relies on public comments by Simon Wilkie. Verizon and MCI have filed documents with the FCC demonstrating that Wilkie's analysis is factually, logically and economically erroneous. See Appendix 1.

power – not just in their own regions, but nationwide and internationally – that would be difficult or impossible for any other competitor to overcome." SingTel Opposition at ¶5.5. The OFT, however, rejected these very same arguments. "In short, complainants assert that the two firms [SBC-AT&T and Verizon-MCI] would not undercut each other's special access prices, but, according to the foreclosure theory, would undercut all other bidders with a lower price. Given the dynamics of GTS provision and the [OFT's other] findings, the logic of such a scheme is not independently apparent to the OFT." *OFT Decision*, ¶41. The OFT also found that any attempt at collusion could be defeated by the numerous credible bidders in the market and the sophisticated MNCs who routinely multi-source their needs. *OFT Decision*, ¶ 42.[10] Based on the evidence, the IDA must reach an identical conclusion.

Based on the foregoing, the Applicants submit that the consolidation will not substantially lessen competition for GTS or any related services such as Terrestrial IPLC or IMDS in Singapore.

Internet Services

In North America, MCI operates an Internet backbone comparable in size to at least five other providers; Verizon has no comparable backbone. Based on similar facts, the IDA recently found that the consolidation of SBC and AT&T had little impact on the current state of the market because SBC is not a significant backbone provider in the U.S. *SBC-AT&T Decision*, ¶46.[11] The Applicants submit that the same conclusion is appropriate here, especially given that it is believed that MCI is smaller than AT&T and Verizon is smaller than SBC in the marketplace.[12]

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[10] See also Opinion of the Attorney General on Competitive Effects of Proposed Merger of SBC Communications Inc. and AT&T Corp. Application No. 05-02-027 (where the California Attorney General concludes that a collusion strategy between SBC-AT&T and Verizon-MCI would "have little likelihood of success").

[11] Although the IDA noted a concern that Singapore-based Internet providers are required to purchase full circuits to obtain Internet connectivity with U.S. providers, the consolidation of Verizon and MCI has no impact on that situation, especially given that Verizon is not a significant Internet backbone provider in the U.S. *See, SBC-AT&T Decision*, ¶46.

[12] In their filings with the FCC, SBC and AT&T cite to an Internet traffic study by research analysts RHK that identifies AT&T as the largest backbone provider. Michael Kende also relied on RHK's analysis, which identified MCI as the fourth largest provider. Economists Incorporated attempts to challenge the reliability of RHK's analysis by noting that the study was commissioned by the Applicants. This assertion is incorrect. Applicants submit that the reliability of a study should be based on the integrity of the methodology and data rather than who commissioned it. RHK has produced Internet traffic studies for several years. The Applicants purchased a copy of the traffic analysis that RHK already had completed because it had been identified as the most reliable and valid measurement of Internet traffic and, hence,

SingTel and BT seem to concede that the merger of MCI's backbone and Verizon's substantially smaller backbone does not raise any competitive issues. Instead, the two propose that the merged entities SBC-AT&T and Verizon-MCI will together harm competition in the Internet sector. BT, for example, submits a paper from Economists Incorporated that misstates the theories of Jacque Crèmer, Patrick Rey, and Jean Tirole and dismisses (without putting forward any countervailing evidence) the traffic share data of RHK, the measurement that the European Commission, U.S. Department of Justice, and FCC found more reliable than revenue figures when evaluating the MCI/WorldCom and MCI WorldCom/Sprint transactions.

At the outset, it is important to understand the fundamental theory proposed by Crèmer, et al. Crèmer, et al. theorized that an Internet backbone provider that *both* grew to a dominant share *and* became significantly larger than the next-largest provider[13] could engage in a degradation theory to grow even larger.

It is critical to understand that the theory of Crèmer, et al. is a *unilateral* theory, not a duopoly theory. The reason for this is simple. If two Internet backbone providers were of equal size, there is no way to coordinate a degradation strategy. Indeed, if Backbone A were to degrade a small peer, Backbone B has no incentive to degrade that peer too. Moreover, even if Backbone A's strategy were successful and the smaller peer became a customer of a larger backbone, there's no reason to believe that the peer would become a customer of Backbone A. In fact, given the inevitable animosity over the degradation, it is more likely that the peer would become a customer of Backbone B, thus making Backbone B bigger. Put simply, Backbone A takes all the risk of a degradation strategy without reaping any of the rewards. Even worse, Backbone A's strategy potentially makes its rival larger. Faced with this decision, it is unlikely that Backbone A would ever elect to implement such a strategy in the first place. For this reason, one fundamental aspect of the Crèmer, et al. theory (an element that clearly is missing here) is that the dominant backbone is substantially larger than its next-largest rival. Not only is that not the case in a duopoly, it is also not the case here where traffic data shows that MCI is the fourth largest provider in the market both before and after the consolidation.

Economists Incorporated and the commenters attempt to mitigate the impact of the traffic measurements by arbitrarily dismissing them without justification and

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market share. The Applicants note that AT&T and SBC also cite to RHK as the most reliable source for market share information, even though RHK's analysis shows AT&T as the largest Internet network. *See, also* Opposition of Broadwing Communications LLC, et al. to the SBC/AT&T Transaction, p.44 (filed at the FCC on 25 April 2005) (identifying SBC as a Tier-1 provider while describing Verizon's backbone as a "regional network").

[13] In MCI/WorldCom, some believed that the merged entity would be two to three times larger than its next-largest provider.

embracing revenue data instead. What they do not even acknowledge is that the EC, DOJ, and FCC have previously found traffic data to be a more reliable measure of market share than revenues.[14]

Notably, the OFT recently dismissed the same theories posed here by BT and SingTel. The OFT did not believe that the coordination theory was credible because "[i]t is far from clear on the available evidence that the relevant post-merger two-firm combined share exceeds the 50 per cent level needed for theoretical global de-peering incentives to exist." *OFT Decision*, ¶71. The OFT found there to be "potentially serious flaws" with the coordinated de-peering argument but determined that it was unnecessary to review those flaws because it found that customers could defeat a de-peering strategy because of the ease of switching from one Internet backbone provider to another. *OFT Decision*, ¶77. The Applicants submit that the OFT's view of this issue is correct and urge the IDA to reject BT's and SingTel's Internet arguments for the same reasons found in the *OFT Decision*.

Based on the evidence provided in the Consolidation Application, the Abbreviated Statement, and this submission, the Applicants submit that the consolidation will not substantially effect competition in the Internet backbone or any related services market.

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Based on the foregoing and the previously submitted Short Form Consolidation Application and Abbreviated Statement, the Applicants request that the IDA exempt them from filing a Long Form Consolidation Application and approve their Consolidation Application for the Verizon-MCI consolidation.

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[14] *See, e.g.*, Paragraph 32 of the Complaint in *United States v. WorldCom, Inc.*, filed in the United States District Court for the District of Columbia (June 27, 2000) (http://www.usdoj.gov/atr/cases/f5000/5051.htm); Paragraph 109 of *MCI WorldCom/Sprint* Case COMP/M.1741; Paragraph 109 of *WorldCom/MCI (II)* Case COMP/M.1069.

CONFIDENTIALITY STATEMENT

Please note that we have submitted two versions of this submission. The version marked "confidential" contains commercially sensitive information relating to the Applicant's business, their market share and financials. We request that the confidential version of this submission be granted confidential treatment, pursuant to Section 11.7 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005.

Yours sincerely

Coudert Brothers LLP

Coudert Brothers LLP
on behalf of MCI WorldCom Asia Pte Ltd, MCI Inc. and Verizon Communications Inc.