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Ms. Aileen Chia
Director (Economic Regulation)
8 Temasek Boulevard
#14-00 Suntec Tower 3
Singapore 038988

**Re: IDA's Telecom Consolidation Guidelines and Proposed Amendments to Section 9
of the Telecom Competition Code**

Dear Ms. Chia

On behalf of AT&T Worldwide Telecommunications Services Singapore Pte. Ltd. and its parent corporation AT&T Corp. (collectively, AT&T), I am pleased to submit the following comments on the IDA's Consultation Document concerning *Telecom Consolidation Guidelines and Proposed Amendments to Section 9 of the Telecom Competition Code*, issued on 7 May 2003 (the "*Consultation Document*"). The *Consultation Document* reflects IDA's comprehensive review of its current regulatory and competition law regime applicable to changes in ownership and consolidations, and also takes into account the industry comments filed in IDA's previous public consultation on this matter in November 2001. AT&T values the IDA's efforts to forge dynamic market-opening policies and for continuing to solicit input from the public to provide guidance on important telecommunications decisions.

As IDA recognizes, mergers, consolidations and other changes of control are a normal aspect of the operation of competitive markets. In many instances such transactions do not involve parties with an ability to exert market power, and it is proper to presume that such transactions will promote competition by fostering more efficient methods of producing telecom service. In a limited range of identifiable instances where proposed transactions do raise competitive concerns, it is appropriate to conduct a prior regulatory review. For the benefit of focusing industry efficiencies as well as IDA administrative resources, a goal of IDA should be to require prior regulatory reviews and information production requirements only when necessary to analyze a likely competitive concern.

AT&T is pleased to see that, when comparing the November 2001 proposed guidelines and the proposed guidelines in the *Consultation Document*, the IDA intends to remove pre-

approval requirements for certain transactions that raise no competitive concerns,¹ and to reduce the information and document production requirements for those consolidation applications that are not likely to raise competitive concerns.² This is a correct step towards avoiding unnecessary regulation. Although there are many points on which AT&T believes that IDA could further reduce application burdens and still have an effective and more efficient consolidation review process, our comments focus on one particularly important example where this is so: *pro forma* transfers of control or assignments.

Pro Forma assignments and transfers involve no change in a licensee's ultimate control. Thus, although there may be a change in direct or intermediate ownership of the licensee, there is no material change in the ultimate ownership or control of the licensee. An example that can occur frequently as part of efficient corporate planning could include an assignment of assets or transfer of shares from one wholly owned corporation to another wholly owned direct or indirect subsidiary, or perhaps the insertion of a new holding company in the ownership chain between the licensee and the ultimate controlling party.³ Here, the ultimate ownership level remains the point of greatest significance for ascertaining the competitive abilities of a single economic entity and all its subsidiaries. Absent some exceptionally rare circumstance, no change in ultimate ownership before and after the transaction will equate with no meaningful change in competitive risk. In turn, no meaningful change in competitive risk should equate with no need for prior review and approval of the *pro forma* transaction.

Although the IDA recognizes that *pro forma* acquisitions should be subject to less scrutiny than unrelated party transactions, the proposed degree of scrutiny still remains too high. In the *Consultation Document*, the IDA proposes that a *pro forma* change in ownership need not file a Consolidation Application, but it still must be subject to prior application and review under the procedures associated with an acquisition of an ownership interest in the licensee of between 12 percent and 30 percent.⁴ The associated effort for a licensee to prepare an application and for IDA to review the application is disproportionate to the likely competitive risk of a *pro forma* transaction. It would be more appropriate for the IDA to treat a *pro forma* transaction under post-transaction notification guidelines, such as those proposed for an acquisition of an ownership interest in the licensee of between 5 percent and 12 percent.⁵ As

¹ *Consultation Document*, Proposed Section Nine of the Telecom Competition Code at ¶9.3.4 (acquisition of an ownership interest in the licensee of less than 5%) and 9.3.5 (acquisition of an ownership interest in the licensee of at least 5% but less than 12%).

² *Id.* at ¶9.5.2 (Short Form Consolidation Application).

³ Other examples of *pro forma* assignments and transfers can be seen at Section 63.24(a) of the U.S. Federal Communication Commission regulations, 47 C.F.R. §63.24(a): “(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; (2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; (3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; (4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including reincorporation in a different jurisdiction or change in form of the business entity); (5) Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or (6) Assignment of less than a controlling interest in a partnership.”

⁴ *Consultation Document*, Proposed Section Nine of the Telecom Competition Code at ¶9.4.4(b)(i) (Situations in which a consolidation application need not be filed) and 9.3.6.2 (Acquisition of ownership interest via privately negotiated agreements to which the licensee is a party).

⁵ *Id.* at ¶9.3.5.

with this type of transaction that involves an immaterial change of influence in the licensee, the IDA should not require pre-approval for a *pro forma* transfer because it is similarly “unlikely to raise competitive concerns.”⁶ A post-transaction notification process for *pro forma* transactions will be a more efficient and effective procedure for IDA and its constituent licensees.

AT&T also must raise one procedural concern with the *Consultation Document*, regarding the opportunities for appeal of an adverse IDA determination of a transaction. At Section 10 of the proposed Advisory Guidelines Governing the Telecommunications Consolidation Review Process (the “Guidelines”), the draft language states that any applicant adversely affected by a decision that IDA rendered may ask the IDA to reconsider its decision.⁷ The draft does not clarify whether there would be further opportunities for appeal by an independent body, such as the Ministry of Information, Communications and the Arts (“MITA”). Because the Telecommunications Act of 1999 clearly states that any licensee aggrieved by an IDA decision may appeal independently to the Minister,⁸ whose decision will be final, IDA should amend the language in the Guidelines concerning the appeal process to clarify the opportunity after IDA review for an independent appeal to the Minister. The right of appeal to an independent body helps ensure the transparency and integrity of the decision making process.

Thank you for the opportunity to submit AT&T’s views on this important matter. I would be pleased to respond to any questions concerning these comments. Do not hesitate to contact me in that regard.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'C. A. Barton', with a long, sweeping horizontal stroke extending to the right.

C. A. Barton

⁶ *Consultation Document* at ¶3.4.2.

⁷ *Consultation Document*, Advisory Guidelines Governing the Telecommunications Consolidation Review Process, at ¶10.

⁸ TELECOMMUNICATIONS ACT OF 1999, No. 43 of 1999 (Dec 3, 1999) at §69 (Appeal to Minister).