StarHub Pte Ltd
51 Cuppage Road
#07-00 StarHub Centre
Singapore 229469
Tel: 6825 5000
Fax: 6721 5004

6 August 2004

Mr Ho Chee Pong
Director (Infocomm & Media Development)
Ministry of Information, Communications and the Arts
140 Hill Street
#06-01 MITA Building
Singapore 179369

(Fax: 6837 9444)

Mr Ho,

TELECOMMUNICATIONS ACT AMENDMENT BILL – CONSULTATION DOCUMENT

StarHub welcomes the opportunity to comment on the Ministry's proposed Telecommunications Amendment Bill, and supports the need for legislation to keep pace with market conditions.

Nevertheless, StarHub is concerned by two major issues under the proposed Amendment Bill:

- First, the proposed amendments to section 17 and 21, which would impose serious costs and constraints on operators deploying telecommunications infrastructure in Singapore; and

- Second, the failure of the Amendment Bill to align the Telecommunications Act with the Competition Bill (which is currently going through its final round of public comment).

StarHub considers it critically important for the Amendment Bill to align the Telecommunications Act with the Competition Bill (particularly in regard to such matters as fines, private rights of action, and appeals processes); and for the proposed amendments to sections 17 and 21 to be reversed.

We would also highlight the very short consultation period set by the Ministry for the Amendment Bill (only three weeks). Given this short consultation period, and the importance of the issued raised in the Amendment Bill, we would request that the Ministry allow a second round of consultations on the Amendment Bill (with the opportunity for further public comment), prior to the Bill being introduced to Parliament. We note that this approach has been followed for the Competition Bill.

StarHub's detailed comments on the Amendment Bill are set out in the attached annex. StarHub is willing to provide any clarification or elaboration that is required on these comments.

Yours sincerely,
For and on behalf of
StarHub Pte Ltd

_____

Tim Goodchild
Head (Regulatory)

TELECOMMUNICATIONS AMENDMENT BILL:
STARHUB COMMENTS

EXECUTIVE SUMMARY:

StarHub supports many of the proposed changes set out in the Amendment Bill, for example the proposed s21(1) and s69(9)(b). However, we believe that the proposed amendments to s17(4) and s21 will distort and deter the deployment of telecommunications infrastructure, and will significantly raise the cost of operating telecommunications networks in Singapore. We believe that it is critical for these provisions, in particular, to be removed from the Amendment Bill.

StarHub also notes that the Amendment Bill fails to align the Telecommunications Act with the Competition Bill (which is due to be tabled in Parliament in the fourth quarter of 2004). This lack of alignment would leave the telecommunications sector with significantly weaker regulation than the sectors of the economy within the scope of the Competition Bill, and we can see no economic justification for this.

Given the importance of aligning the Telecommunications Act with the Competition Bill, StarHub would propose that the Amendment Act be postponed until the Competition Bill is finalized. The Amendment Act could then be redrafted to align the Telecommunications Act with the Competition Bill, particularly in regard to such matters as financial penalties, private rights of action, and appeal processes.

STATEMENT OF INTEREST:

StarHub Pte Ltd is a Facilities Based Operator ("FBO") in Singapore, having been awarded a licence to provide public basic telecommunication services ("PBTS") by the Telecommunications Authority of Singapore ("TAS") on 5 May 1998.

StarHub Mobile Pte Ltd is a wholly owned subsidiary of StarHub Pte Ltd. StarHub Mobile Pte Ltd was issued a licence to provide public cellular mobile telephone services ("PCMTS") by the TAS on 5 May 1998. StarHub launched its commercial PBTS and PCMTS on 1 April 2000.

StarHub acquired CyberWay (now StarHub Internet Pte Ltd) for the provision of Public Internet Access Services in Singapore on 21 January 1999. In July 2002, StarHub completed a merger with Singapore Cable Vision to form StarHub Cable Vision Ltd ("SCV"). SCV holds a FBO licence and offers broadband and cable TV services.

This submission represents the views of the StarHub group ("StarHub") of companies, namely, StarHub Pte Ltd, StarHub Mobile Pte Ltd, StarHub Internet Pte Ltd and StarHub Cable Vision Ltd.

PROPOSED PART II: EXCLUSIVE PRIVILEGE AND LICENSING OF TELECOMMUNICATIONS SYSTEMS

Section 8:

Under the Amendment Act, the circumstances in which a licence can be suspended, terminated, or reduced have been widened. These circumstances now include when: (i) a party *"is no longer in a position to comply with this Act or the terms or conditions of its licence"*; and (ii) if "*the public interest so requires*".

StarHub would respectfully note that this wording is vague and open to wide interpretation. The Amendment Act fails to provide any interpretation of this wording, and is silent as to how a licensee faced with suspension or termination could present its views. In addition, we would suggest that s8(2)(c) is already unnecessary, as a licensee will either be in breach of its licence terms (in which case provisions already exist for termination, suspension, or reduction); or the licensee will be in compliance with its licence terms (in which case it is unnecessary for the licence to be terminated, suspended, or reduced).

Given the impact on a licensee of terminating, suspending, or reducing its licence, StarHub would propose that s8 be amended to:

- Detail how "the public interest" will be assessed by IDA;
- Delete s8(2)(c); and
- Set out a process where-by a licensee whose licence is to be suspended, terminated, or reduced has the opportunity to present its case and be heard.

PROPOSED PART III: ERECTION, MAINTENANCE, AND REPAIR OF TELECOMMUNICATION INSTALLATIONS:

Section 17:

Section 17 removes IDA from the role of adjudicating in disputes between licensees and the owners/developers of land/buildings. However, given the heightened potential for disputes under the amended Part III of the Amendment Act, it is unclear how such disputes will now be resolved. Under s17(2) the licensee can set "reasonable" terms and conditions on owners/developers for relocation or diversion of facilities if the licensee is satisfied that the relocation or diversion is "reasonable". However, the Amendment Act is silent on what would be considered "reasonable", and how disputes over "reasonableness" should be resolved. Given the potential for disputes to arise in regard to diversion / relocation matters, StarHub would propose that:

- S17(7) of the existing Act be retained, and that IDA continues to act as the dispute resolution point on these issues.

StarHub is also concerned by the reference in s17(3) that would apparently allow *"any public authority"* to impose terms on licensees and restrict the licensees' ability to recover costs and expenses. We believe that this reference is both unnecessary and impractical. StarHub would propose that:

- If "public authorities" are to have the ability to impose terms on licensees, the Act should precisely define "public authorities" and set strict limits on the terms they can impose. It will also be necessary to distinguish between public agencies acting in their role of regulators, and public authorities acting as owners of land or buildings.

StarHub is also deeply troubled by the proposal in s17(4) which would severely limit the ability of licensees to recover relocation or diversion costs from the owners/developers of land/buildings. It is important for the Ministry to note that it is extremely common for one piece of telecommunications equipment or infrastructure to serve several buildings and numerous users, as this is the efficient and sensible way to operate telecommunication networks. However, the proposed s17(4) severely limits the licensee's ability to recover relocation costs if the relocated equipment serves more than one building or land. For example:

- **Example One:** The developer of a piece of land asks a licensee to relocate an optical fibre cable crossing that land. Under the existing Act the Licensee could seek compensation for this, as the developer is causing the licensee to incur costs. However, if s17(4) is introduced, the licensee would not be able to recover its relocation costs, as the developer could claim that the cable is being used to serve other buildings or land. But it would be impractical and unreasonable for the licensee to recover this cost from the users of this cable (who, after all, have not caused the relocation costs to be incurred).

- **Example Two:** One piece of equipment in a building MDF room provides services to an adjacent building. This could be because: (i) the MDF room in the adjacent building is already congested; (ii) sensible network architecture mandates that the equipment can serve more than one block; or (iii) for historical legacy reasons, there is only one MDF room serving a number of adjacent buildings (for example, JTC factories). If the owner of the building imposes costs on the licensee through a request for relocation or diversion, the licensee would have to determine what "part or proportion" of that equipment is used to serve the adjacent building and deduct that from the costs to recovered. It is extremely unlikely that a licensee would be able to recover any costs from the owner of the adjacent building, as they are not the party causing the costs to be incurred.

The practical implications of s17(4) would be that licensees will only be able to recover a small fraction of the costs they incur in relocating or diverting their equipment and facilities. As such s17(4) will be a major deterrent for licensees to deploy facilities in Singapore. It will also discourage operators from deploying their networks in a sensible manner (i.e. from serving customers in adjacent buildings from a central location, serving buildings with congested MDF rooms from adjacent locations, etc). S17(4) would reduce choice for customers and limit investment in telecommunications infrastructure. StarHub would therefore propose that:

- S17(4) be deleted from the Amendment Bill.

Section 21:

StarHub supports s21(1), and believes that it is necessary for IDA to maintain its powers in this regard. However, we are very concerned by the implications of s21(2) which would effectively preclude licensees from providing services to adjacent buildings from a central site, thereby limiting infrastructure deployment, customer choice, and competition.

Under s21(2), the approval of both the IDA and the owner/developer of land/building is required before a licensee can use space in that land/building to serve an adjacent building. We believe that building owners are unlikely to grant this approval, and that recourse to the IDA through s21(4) is impractical for a licensee rolling out infrastructure (when speed is essential).

StarHub would re-emphasize that:

- Modern network architectures allow multiple buildings to be served from a single location.

- There will be numerous situations (such as where building MDF rooms are already congested) when there is no practical alternative to serving a building or land from an adjacent location.

- There are also cases where, for reasons of historical legacy, there is only one MDF room serving a number of adjacent buildings, and where it is not physically possible to serve each individual building with its own individual equipment, in its own individual MDF room.

- If licensees are only able install in buildings or land the facilities and equipment just to serve that individual building or piece of land, this would dramatically increase the cost of deploying infrastructure and serving customers (and significantly reduce the efficiency of licensees).

StarHub would also note that the proposed wording of s21(2) is likely to discriminate against new entrants. This is because s21(2) refers to the obligations on licensees when installing **additional** plant or systems used to serve another building. This wording could be interpreted as allowing a licensee's **existing** plant and systems to continue to serve multiple buildings, without having to obtain the approval of the first building owner or the IDA. This wording would therefore discriminate against new entrants (who have yet to deploy all their infrastructure); while benefiting incumbents (whose infrastructure is already deployed).

S21(2), with the costs and inefficiencies inherent in it, would be a major deterrent to the deployment of new network infrastructure. Given IDA's stated objective of fostering *"facilities-based competition in order to achieve long-term sustainable competition"* it is unclear why the s21(2) has been drafted in a manner that would deter infrastructure development and competition. StarHub would therefore strongly recommend that:

- S21(2), (3), (4), (5) and (6) be deleted from the Amendment Bill.

PROPOSED PART IV: CODES OF PRACTICE AND DIRECTIONS:

Section 26:

StarHub generally supports s26, as it clarifies the circumstances in which Codes of Practice and Standards of Performance can be issued.

However, StarHub is concerned by the proposed s26(5) and (6). Under these sections, IDA could decide to exempt a person from any (or all) of a particular Code or Standard, and would (apparently) not have to make public that exemption. StarHub believes that, in the interests of openness and transparency, any exemption from a Code or Standard must be made public (along with the reasoning for the exemption, the scope of the exemption, and the terms and conditions (if any) that the exempted party must follow).

StarHub is also concerned by the absence of any process for public consultation on an exemption decision, prior to that exemption decision being made. StarHub would therefore propose that:

- S26(6) be amended to state that: "*An exemption granted under subsection (5) need not be published in the Gazette. Notwithstanding the above, the Authority shall, with 5 days of an exemption being granted under subsection (5) make publicly known the existence of the exemption, the scope of the exemption, the reasoning of the exemption, and the terms and conditions (if any) that the exempted party must follow. In addition, prior to the granting of an exemption under subsection (5), the Authority shall publicly consult with interested parties on the proposed exemption.*"

In regard to the Codes that can be issued by the Authority, StarHub would highlight one apparent contradiction between the Amendment Bill and the Competition Bill:

- Under s26(1)(e), the IDA can issue Codes and Standards in regard to "*the acquisitions or consolidations involving a telecommunication licensee and any other person (whether a telecommunication licensee or otherwise)*". StarHub would interpret the clause as meaning that the IDA, pursuant to an IDA-issued Code, would want to regulate the consolidation of a telecommunications licensee and a company outside of the telecoms sector.

- However, as part of the "Second Public Consultation of the Draft Competition Bill, MTI has commented on the scope of the Competition Commission's jurisdiction, stating that "*Cross-sectoral competition issues* [presumably including consolidations] *that arise, even if between excluded sectors, will however be dealt with by the Commission.*"

These two statements could suggest that the responsibilities of the IDA and the proposed Competition Commission might not yet be entirely aligned, and that further alignment is necessary. As later outlined, StarHub believes that it is critical for the Competition Bill and the Telecommunications Act to be closely aligned.

PROPOSED PART VA: CONTROL OVER DESIGNATED LICENSEES:

Section 32:

StarHub notes that this section creates the category of "designated telecommunications licensee" which may include FBO and SBO licensees. Under this section of the Amendment Bill: (i) Minister and IDA can disenfranchise such licensees if ownership changes raise *"regulatory or national interest concerns"*; (ii) IDA's prior approval must be obtained for 12% and 30% changes in the control of such licensees; and (iii) IDA may impose on such licensee such Directions and Codes of Practice as IDA sees fit.

It is unclear to StarHub why these provisions have been included in the Amendment Bill. StarHub notes that FBO licenses already include provisions requiring IDA's approval for changes to shareholdings, and for the appointment of Directors, Chairman and Chief Executive Officers. Therefore the provisions of s32 in this regard are superfluous.

StarHub is also concerned that there is no indication in the Amendment Act as to how IDA will determine what a "designated telecommunications licensee" is; and the circumstances in which a licensee will be released from their status as a "designated telecommunications licensee".

If incorrectly applied, the provisions in s32 could act to discourage investment (particularly foreign investment) in the telecommunications sector. When making their investment decisions, potential investors will have to take into account that, if they invest in a telecommunications company in Singapore, IDA could designate that company as a "designated telecommunications licensee" and impose Codes and Directions on that company. StarHub would therefore recommend that:

- S32 sets out the circumstances in which a licensee will be designated as a "designated telecommunications licensee";

- S32(F), relating to the appointment of Directors, Chairman and Chief Executive Officers, be deleted; and

- S32 sets out the process in which a licensee will be released from their status as a "designated telecommunications licensee".

PROPOSED PART IX: GENERAL PROVISIONS:

Section 67:

Under the amended s67, a party that is adversely affected by an IDA decision may, within 14 days, seek reconsideration from the IDA. Should either party not be satisfied with the IDA's reconsideration decision, the party can then appeal to the Minister within 14 days of IDA's decision.

StarHub is concerned that IDA's reconsideration will add little (if any) value to the process if the people carrying out the reconsideration are the same people who made the original decision. If IDA is to be given the right to review its own decisions, StarHub would suggest the establishment of a review board within the IDA, specifically tasked and resourced to carry out reconsiderations. In this regard, StarHub would highlight the role of the Telecommunications (Competition Provisions) Appeal Board in Hongkong. The Board was established under section 32L-U of the Telecommunications Ordinance (Cap. 106) to determine appeals against Ofta in enforcing fair competition in the Hong Kong telecommunications market. The Board's terms of reference is to:

a. Hear appeals by any person aggrieved by an opinion, determination, direction or decision of Ofta relating to section 7K-7N of the Telecommunications Ordinance (Cap. 106) or any licence condition relating to any such section, or any sanction or remedy imposed by the Ofta as a consequence of a breach of such section or licence condition; and

b. Determine appeals by upholding, varying or quashing the appeal subject matter and make consequential orders.

StarHub would therefore recommend:

- The creation, under s67, of a review board within IDA, to hear the reconsideration of cases under s 69(1) and (2).

StarHub is also concerned that the creation of an IDA reconsideration process under s69 will simply add to the (already lengthy) timeframes for the appeals process. StarHub would highlight the recent case of the designation of SingTel's Local Leased Circuits as a mandatory wholesale service. In this case, SingTel filed an appeal with Minister on 31 December 2003, and a decision on that appeal was not released until 2 July 2004, 6 months later. This 6-month period represents a significant delay in the development of competition, and we believe that any appeals process under the Act must be both timely and time-bound.

StarHub would also note that a party that feels aggrieved by an IDA ruling, and who fails to get that decision overturned in the reconsideration process, will simply appeal IDA's decision to the Minister under s69(4). The reconsideration process will not restrict the ability of parties to appeal to Minister, and as such the reconsideration process might achieve nothing more than additional delays. In this regard, StarHub would note the comment by an Optus spokesman earlier this year that *"delay is clearly in the interest of the incumbent"*.

Therefore StarHub would recommend that:

- S69 set out the maximum timeframe to be followed by IDA in any reconsideration, pursuant to s69(1), (2), and (3); and

- S69 set out the maximum timeframe to be followed by the Minister in any appeal, pursuant to s69(4).

StarHub notes that, under s69(9)(b) Minister may require information from *"any person who is not a party to the appeal but appears to the Minister to have information that is relevant"*. StarHub welcomes that ability for third parties to be included in the appeals process, and believes that it is critical for the appeals process to operate with openness and transparency.

However, we would note that there is no equivalent ability for IDA to seek input from affected third parties as part of the reconsideration process of s69(1). StarHub would therefore propose that:

- S69(1) be amended to allow IDA to seek information from third parties as part of the reconsideration process.

StarHub also believes that the language of s69 must be broadened, to give affected parties (and not just the appellant) the right to be heard as part of an appeals process. A weakness in the current appeals process is the failure of the Act to allow a party who will be demonstrably affected by the outcome of the appeal to have its position heard as part of that appeal. StarHub would question whether the current restriction complies with the laws of Natural Justice, and would strong recommend that:

- S69 be amended to grant to any party who will be demonstrably affected by the outcome of the appeal, the right to be heard as part of the appeals process.

ALIGNMENT OF THE TELECOMMUNICATIONS ACT AND COMPETITION BILL:

StarHub notes the statement in paragraph 20 of the Ministry's covering memorandum that: *"MITA is aware of the need for competition provisions in the telecommunications sector to be aligned as far as practicable with the Competition Act, while considering the differences in the policy objectives to be achieved under sectoral legislation and the Competition Act. MITA will work with MTI to review the feedback and make changes to relevant legislation and frameworks, if necessary, at a suitable time."*

Nevertheless, StarHub is deeply troubled by major inconsistencies between Competition Bill and the Telecommunications Act. These inconsistencies, (if left unresolved) would leave the telecommunications sector with significantly **weaker** regulation than the sectors of the economy within the scope of the Competition Bill. We can see no economic justification for this. On the contrary, international best practice supports stronger, not weaker, regulation of the telecommunications sector given the:

(i) Natural advantages to incumbent operators in the telecommunications sector (e.g. control of essential facilities, vertical economies, etc);

(ii) Market structure and characteristics of the telecommunications industry; and

(iii) Critical importance of the telecommunications sector to a small and open economy such as Singapore.

StarHub would note that the Telecommunications Act is currently weaker than the Competition Bill in three critical areas:

- **Penalties:**

The Competition Bill provides for maximum financial penalties of up to 10% of the infringing party's annual turnover in Singapore (for up to 3 years). The size of this penalty is consistent with international best practice and is a potent deterrent. However, the Telecommunications Act contemplates a maximum financial penalty of only $1 million per contravention, and the Ministry has indicated that it sees this level as "sufficient"[1]. We believe that it is important for the Ministry to clarify why anti-competitive behaviour in the telecommunications sector should be subject to lower penalties than the equivalent behaviour in any sector governed by the Competition Bill.

- **Private Rights of Enforcement:**

The Competition Bill provides a private right of enforcement if the Competition Commission has determined that an infringement has occurred, and any person that suffers loss or damage may seek injunctive or declaratory relief, damages, or such other relief as the court thinks fit. By way of comparison, the Telecommunications Act does not provide for any private right of enforcement, and as IDA has never awarded damages, its powers to do so are unclear. Private rights of action are a major deterrent to ant-competitive behaviour, and should be allowed under both the Telecommunications Act and the proposed Competition Act.

- **Appeal Rights to an Independent Competition Appeals Board:**

The Competition Bill provides that most decisions of the Competition Commission can be appealed to the Competition Appeals Board. However, under the Telecommunications Act, appeals are to the IDA and then the Minister. We believe that it is inappropriate to have a situation in which enforcement actions for breaches of the general competition law are subject to independent review, but enforcement actions for breaches of the competition provisions of the Telecommunications Act are not. StarHub believes that the appeals process set out in the Competition Bill should be adopted for the Telecommunications Act.

---

[1] For comparative purposes, StarHub would note that 10% of the annual turnover of SingTel's operations in Singapore for the last 3 years is approximately $1,370 million. The maximum fine under the Telecommunications Act ($1 million) is 0.073% of this amount.

StarHub would stress that it is critical for the Competition Bill and the Telecommunications Act to be aligned, to prevent distortions developing between the sectors. StarHub also believes that it is critical for the Ministry to ensure that the telecommunications sector is not subject to weaker regulation than the sectors of the economy covered by the Competition Bill.

It is unclear to telecommunications licensees how the alignment process will happen; when the alignment process will happen; whether the Competition Bill or the Telecommunications Act will be finalized first; and what framework will be considered for aligning the legislation.

StarHub believes that it would be a wasted opportunity to introduce into Parliament an Amendment Bill that fails to align the Telecommunications Act with the Competition Bill. Should this happen, it would be necessary for another Amendment Act to be introduced in 6-12 months, to align these pieces of legislation. Given the critical need for the Telecommunications Act and the Competition Bill to be aligned, StarHub would therefore recommend that:

- The Amendment Act be postponed until the Competition Bill is finalized, with the Amendment Act then being redrafted to align the Telecommunications Act with the Competition Bill (particularly in regard to such matters as fines, private rights of action, and appeals processes).

CONCLUSION:

StarHub recognises the need for legislation to be dynamic and to reflect changing market conditions. However, we are concerned that the implications of the proposed s17 and 21 on the deployment of telecommunications infrastructure have not been fully considered. We are also concerned that the Amendment Act fails to grasp the opportunity to align the Telecommunications Act and the Competition Bill, and in doing so leaves the telecommunications sector with significantly weaker regulation than the sectors within the scope of the Competition Bill.

StarHub welcomes the opportunity to comment on the draft Amendment Bill.