



**RECONSIDERATION REQUEST OF BRITISH TELECOMMUNICATIONS PLC AND  
BT SINGAPORE PTE LTD PURSUANT TO SECTION 10 OF THE TELECOM  
CONSOLIDATION GUIDELINES AND SECTION 11.9 OF THE CODE OF PRACTICE  
FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES  
FOR RECONSIDERATION OF THE IDA'S DECISION DATED 18 AUGUST 2005  
REGARDING:**

**(A) REQUEST BY AT&T CORP, AT&T WORLDWIDE TELECOMMUNICATIONS  
SERVICES SINGAPORE PTE LTD AND SBC COMMUNICATIONS INC FOR  
EXEMPTION FROM THE REQUIREMENT TO FILE A LONG FORM  
CONSOLIDATION APPLICATION**

**(B) SHORT FORM CONSOLIDATION APPLICATION IN RELATION TO THE  
PROPOSED CHANGE IN OWNERSHIP IN AT&T WORLDWIDE  
TELECOMMUNICATION SERVICES SINGAPORE PTE LTD**

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## ***RECONSIDERATION REQUEST OF BRITISH TELECOMMUNICATIONS TO THE IDA DECISION ON THE AT&T/SBC REQUEST***

### **I. SUMMARY & MAIN POINTS**

The IDA should reconsider its decision to the AT&T/SBC Request in order to prevent substantial detriments to competition for Singaporean consumers and businesses.

In particular, the review of the SBC/AT&T decision **cannot** be undertaken in the absence of a review of the consolidated impacts of the parallel Verizon/MCI proceeding.

The merger constitutes a horizontal consolidation with market share impacts which dictate the filing of a Long Form Consolidation Application.

The IDA was working from a fact base provided by the merging parties which contains some material misstatements which need to be reviewed to enable the authority to reach a proper decision. These include internet market share figures which are fundamentally flawed, backward looking and fail to take account of the huge growth of the SBC backbone. There are substantial other elements of the fact base provided by the parties and relied on by the IDA which were not clarified by the industry, that require material review in a reconsideration proceeding.

The main points are set out below.

#### **Paragraph 48**

***The AT&T/SBC Request should be reconsidered in light of the MCI/Verizon consolidation and the decision reached in the AT&T/SBC Request failed to take account of the co-ordinated impacts of the two simultaneous merger proceedings***

In BT's comments to the IDA public consultation on the AT&T Request dated 7 July 2005<sup>1</sup>, we had urged the IDA to explore and analyse the competition issues taking account of both the AT&T/SBC and MCI/Verizon mergers. IDA conducted its review of the AT&T/SBC Request on a standalone basis which BT submits is a fundamentally flawed approach. The IDA does not seek to consider the combined impacts of the two mergers and acknowledges as much in the clearance decision at paragraph 48.

However, given that a review of the MCI/Verizon Request<sup>2</sup> is well underway, it is timely and apt for the IDA to now undertake a reconsideration of the AT&T/SBC Request in conjunction with the MCI/Verizon Request. BT notes that SingTel also, in its response to IDA's public consultation on the MCI/Verizon Request<sup>3</sup>, was strongly opposed to the IDA's approval of the AT&T/SBC Request and had stated that it was incorrect for the AT&T/SBC Request to have been reviewed in isolation.

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<sup>1</sup> Page 7

<sup>2</sup> IDA Public Consultation on Request by MCI Worldcom Asia Pte Ltd, MCI Inc and Verizon Communications Inc for: (A) Exemption from filing Long Form Consolidation Application in relation to the proposed acquisition of MCI by Verizon; and (B) Approval of the Consolidation Application, issued on 17 August 2005

<sup>3</sup> Paragraph 1.8



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The parties to the two mergers themselves acknowledge their linked status – in the filings before the FCC, MCI note that the rationale for their deal is tied to the consolidation of their major rival with a dominant local access provider. In addition both MCI and AT&T belong to the very small group of global Tier 1 internet providers and each of the members of this group (including MCI and AT&T) have peering arrangements between them. In addition to the other reasons mentioned in this submission, this fact alone should justify the conclusion that both mergers should be assessed together or at the very least these relationships assessed to determine the post merger impact.

### **Impact on local access:**

The combined effect of the Verizon/MCI and SBC/AT&T mergers will be the elimination of virtually all meaningful horizontal competition for special access in the United States. AT&T and MCI are, in the merged parties' own pre-merger words, by far their largest in-region facilities-based<sup>4</sup> and wholesale<sup>5</sup> competitors for special access – in other words, this merger eliminates meaningful horizontal competitors to the dominant operators in the US. Critically, post-merger, SBC and Verizon (the BOCs) are unlikely to compete against each other out-of-region. To the contrary the most likely scenario is mutual forbearance, each serving its "sweet spot" of in-region customers,<sup>6</sup> going out of region only to serve its in-region customers' remote sites. This is evident from their past<sup>7</sup> and current conduct. As to their ongoing mutual forbearance, the BOCs, in a pending non-merger proceeding in the U.S.<sup>8</sup> have asserted that they are currently able to provide out-of-region access services. Verizon, for example, has identified "at least twenty-six out-of-region states" where it has arrangements for out-of-region access, including Texas (Houston) and Illinois (Chicago) in SBC's territory.<sup>9</sup> Yet they have not used that out-of-region access to effectively compete with each other.

The simultaneous mergers will also create two super Tier 1 backbone providers to the substantial detriment of competition in the internet backbone and thus consumers worldwide. This will occur as a result of the horizontal consolidation of backbones as well as the vertical effect of steering captive local access customers to their backbones. Given the size of their respective customer bases, SBC/AT&T and Verizon/MCI can tacitly coordinate their actions by only peering with each other. This strategy is self-enforcing because it enables both merged

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<sup>4</sup> Declaration of Alfred E. Kahn and William E. Taylor on behalf of BellSouth Corporation, Qwest Corporation, SBC Communications, Inc. and Verizon, *Special Access Proceeding* (Dec. 2, 2002) ("Kahn and Taylor Declaration") at 23-24 and Table 14. As Professors Kahn and Taylor noted, AT&T and MCI are the largest facilities-based competitors, in part, because "between 1996 and 1998, the three largest consolidated CAPs were further acquired by AT&T and WorldCom ... AT&T acquired Teleport in January, 1998, and WorldCom bought MFS in August, 1996 and Brooks Fiber in October, 1997."

<sup>5</sup> Reply Comments of SBC Communications, *TRO Remand Proceeding*, WC Docket No. 04-313, CC Dkt. No. 01-338, at 33 (MCI and AT&T wholesalers) and Joint Declaration of Scott J. Alexander and Rebecca L. Sparks on Behalf of SBC Communications Inc., ¶¶27 and 29-31; AT&T's TRO Remand Reply Comments at 59 ("the record here makes clear that competitors usually provide the private line and other 'wholesale' services described on those websites by using the ILEC's facilities (either as UNEs or as special access)").

<sup>6</sup> Joint Opposition of SBC Communications and AT&T Corp To Petitions to Deny and Reply to Comments, WC Docket No. 05-65 (May 10, 2005) at 137.

<sup>7</sup> Perhaps captured most effectively by Qwest Chairman (and former Ameritech Chairman) Richard Notebaert who stated that competing for local customers currently served by Ameritech "might be a good way [for Qwest] to turn a quick dollar" but that "doesn't make it right," Chicago Tribune, 'Ameritech Customers Off-Limits: Notebaert' October 31, 2002

<sup>8</sup> *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25 and RM No. 10593)

<sup>9</sup> *Id.*, Verizon's Comments at 32-33 (June 13, 2005); Pilgrim Decl., ¶¶ 14-15.



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entities to increase their dominant position in the internet backbone market by de-peering other top-tier providers. As peering agreements are denied, the two top-tier IBPs will generate greater revenues from additional and higher interconnection fees. In addition, SBC/AT&T and Verizon/MCI will not have incentives to deviate from this course of action (coordination is made very easy given the fact that both AT&T and MCI are part of the small group of global tier 1 internet providers and have peering arrangements between them already). As long as BOC-owned AT&T and MCI backbone businesses remain of comparable size over time, they will continue to peer with each other while they both target smaller internet backbone providers for increasing transit fees and degradation. The two internet backbone providers will feel comfortable in their position of shared dominance, mutually relying upon the fact that their respective upstream parents possess roughly comparable abilities to increase the customer bases of their respective downstream affiliates.

Contrary to the assertions of the parties and re-iterated by the IDA, SBC and AT&T **are** horizontal competitors for the provision of internet backbone services – they provide realistic alternatives to providers in Singapore today. That will no longer be the case after the merger, if approved in the present form.

### Paragraph 4

***The AT&T/SBC Request should be rejected and the parties should be required to file a Long Form Consolidation Application in accordance with 10.5.1 of the Code given that it raises very substantive issues that should be fully assessed and considered***

In assessing the competitive effect of the proposed AT&T/SBC consolidation, IDA has used the test of substantially lessening competition. This test requires a full examination of the facts. According to the Section 6.1.1 of the Telecom Consolidation Guidelines (“Consolidation Guidelines”), a consolidation will substantially lessen competition where it will “(a) result in a significant reduction in existing competition in the Singapore telecommunication market; or (b) significantly impede the development of future competition in the Singapore telecommunication market.” As regards the latter point (b), we would submit that the IDA has failed to consider fully whether the AT&T/SBC merger will impede the development of future competition, especially when taken together with the MCI/Verizon merger.

The Consolidation Guidelines outline the considerations for assessing horizontal and non-horizontal Consolidations and include, at Section 7.1, a discussion of the IDA’s approach to Consolidations with entities that have significant market power in markets not subject to IDA regulation. Section 7.1 of the Consolidation Guidelines states:

“IDA recognises that, in some cases, a Consolidation may involve an Applicant that has Significant Market Power in a market that is not subject to IDA regulation, such as a foreign telecommunication operator that has exclusive or special rights in its home country, or a Singapore-based company that does not provide telecommunication services. In assessing whether the Consolidation is likely to substantially lessen competition, IDA will give full consideration to the ability of the non-licensed entity to use its market position in a manner that would substantially lessen competition in the telecommunication markets subject to IDA’s jurisdiction. IDA will consider the need for, and likely effectiveness of any Conditions, such as the imposition of structural separation or non-discrimination obligations.”



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Clearly, IDA must therefore take into account the likely effects of the merger outside Singapore in order to assess fully the effects of the merger in Singapore telecommunication markets. However, paragraph 35 of the IDA Decision states that IDA “*will not consider the effects of the proposed AT&T-SBC merger on telecommunication markets in the US or beyond Singapore*”. By failing to take into account the strengthening of the position of the merged entity in its home market and the lack of regulatory safeguards to counter its market power, IDA has failed to take into account a significant factor in its decision.

It is noted that SingTel shares BT’s view and has stated that the AT&T/SBC Request “*does not satisfy the criteria for submitting a Short Form Consolidation Application. As such, it should be required to submit a Long Form Consolidation Application. On this basis, SingTel considers that the IDA should reject the request by the applicants to be exempt from its obligation to submit a Long Form Consolidation Application in accordance with the provisions of the Code*”<sup>10</sup>.

### Paragraphs 5 and 34

#### ***The AT&T/SBC Request should be treated as a Horizontal Consolidation***

BT disagrees that the proposed AT&T/SBC consolidation is non-horizontal. In the internet backbone space, there are clear overlaps as both AT&T and SBC are internet backbone providers and SBC is in fact one of the fastest growing internet backbone providers<sup>11</sup>. This growth is driven by the huge growth in DSL services and thus “eyeballs” which SBC will bring to the merged backbone as well as the growth of 3G mobile “eyeballs” which will be driven through Cingular, SBC’s mobile arm.

The impact of the AT&T/SBC merger on the internet backbone market clearly constitutes a horizontal consolidation.

SBC and Verizon today compete in the Internet backbone market against the two Internet exchange carriers they propose to acquire. The post-merger market share for each merged entity is set forth in Chart 1 of the Preston Declaration, which clearly shows that the combined market share of the four parties to be above 50%. Mr. Preston’s discussion of MCI’s pre-merger market share and the combined entity’s post-merger share also shows the sizeable share increase resulting from this merger<sup>12</sup>. Therefore, the IDA should apply the considerations listed in Section 6.2 of the Consolidation Guidelines in its reassessment of the AT&T/SBC Request.

As such, the fact that this merger constitutes a horizontal consolidation, with market shares of the combined merged entities of over 50%, means that this requires reconsideration based on a wider fact base.

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<sup>10</sup> SingTel Response to the IDA Public Consultation on AT&T/SBC Request, 7 July 2005, paragraph 3.6

<sup>11</sup> Preston, MacFarland & Gurrea, *An Economic Analysis of the Competitive Effects of the SBC/AT&T and Verizon/MCI Mergers on the Internet Backbone Market*, Economists Incorporated

<sup>12</sup> *Id* at 11



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### **II. SPECIFIC POINTS**

#### Paragraph 6

Firstly, it is not sufficient to analyse the AT&T/SBC consolidation from an AT&T-Singapore perspective *per se* as the Internet Backbone markets and GTS are global markets. The transaction will have detrimental effects both in the GTS and the Internet Backbone markets globally and since competition will be restricted on a global basis it will have an effect on customers in Singapore. It is therefore very important that IDA reviews the aspects of this transaction taking a global perspective.

Referencing our comments in paragraph 4 above, the IDA must therefore take into account the likely effects of the merger outside Singapore in order to assess fully the effects of the merger in Singaporean telecommunication markets. However, paragraph 35 of the IDA Decision states that IDA “*will not consider the effects of the proposed AT&T-SBC merger on telecommunication markets in the US or beyond Singapore*”. By failing to take into account the strengthening of the position of the merged entity in its home market and the lack of regulatory safeguards to counter its market power, IDA has failed to take into account a significant factor in its decision. FCC decisions on special access which the IDA refers to are not expected to have an impact within the timeframes relevant to the present review by the IDA. In particular, these proceedings will not prevent detriments to consumers in Singapore and will have no impact on the internet space and thus should be discounted. Indeed, recent FCC rulings on DSL have enhanced the potentially anti-competitive impacts of the arrangements – see **Annex 1** citing the CISPAs concerns over the mergers.

Secondly, IDA should not assume that because AT&T Singapore allegedly does not purchase SBC’s special access services to provide internet access and IP telephony *at present*, this will be the status quo post-consolidation. It is not an unreasonable prediction that AT&T Singapore will buy substantial quantities of SBC special access once the two entities merge as it moves to use in-house supply. In this regard, IDA will have to take into account whether the proposed AT&T/SBC consolidation will impede future competition under the test of substantially lessening competition. AT&T is a major purchaser of special access and the IDA should determine the extent to which the services at issue here are not provided utilizing SBC special access **at the present time**, contrary to the arguments of the parties.

#### Paragraph 8 and 46

Firstly, that “SBC is not a significant internet backbone provider in the US” is grossly incorrect. The rules relating to Tier 1 peering have been changing and based on the number of “eyeballs” that DSL customers deliver, SBC closely qualified as a Tier 1 ISP. See Opposition of Broadwing Communications, LLC and Savvis Communications Corporation to the Merger Application filed by SBC Communications, Inc., and AT&T Corp., *In the Matter of AT&T Corp. and SBC Communications Inc., Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission’s Rules for Consent to the Transfer of Control of AT&T Corp. to SBC Communications Inc.*, WC Docket No. 05-65 (April 25, 2005) at 41 (“SBC ... is thought of as a Tier-1 peer by knowledgeable industry observers” and “Verizon’s regional network carries enough traffic to earn it the fourth largest revenue share in the country from Internet backbone services”) and Dovens Declaration, appended thereto, ¶ 11.



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Secondly, the IDA Decision further states that *'IDA remains concerned that Singapore-based Internet providers are required to purchase "full circuits" to the US to obtain Internet connectivity and cannot enter into peering arrangements with Tier 1 Internet backbone providers in the US'*, and that *'the US is a key Internet destination to which a relatively high portion of Singapore's Internet traffic is sent'*.

The statement made by IDA implies that the Tier 1 internet backbone providers in the US constitute a closed group and to which non Tier 1 Internet providers cannot have peering access. However, IDA has failed to draw the consequences of this and has not verified whether AT&T and MCI could use their unique position in the group to form a super Tier 1 group that would only include AT&T and MCI. Notwithstanding, IDA has not proposed any remedies to address these concerns.

If Singapore-based ISPs are presently unable to peer with Tier 1 ISPs, there is no good reason to assume that the AT&T/SBC and MCI/Verizon consolidations will favorably change the current arrangement. In fact, the consolidations will exacerbate the exclusion of non-US based ISPs from the Tier-1 "super-club" structure and lead to price increases of IP-based communication services to consumers and businesses. The commercial risk that existing agreements will be revoked and downstream access seekers forced to pay and/or pay more for access to the Tier 1 "super-club" is very real. This outcome would be undesirable given that the Next Generation Networks (NGNs) will be IP-based and will have to rely on the internet backbone for transport. If control to this internet backbone is dominated by a group of Tier 1 "super-club" carriers in an oligopoly market structure, the cost of interconnection to the Tier 1 internet backbone will only increase and this will eradicate all the benefits of IP-based NGNs professing the delivery of cost benefits and convenience to consumers and may even delay NGN or 21CN deployment.

BT submits that this is a serious problem and one that the IDA cannot afford to dismiss. SingTel have also repeatedly raised this as an issue in both its responses to the IDA consultation on the AT&T/SBC Request<sup>13</sup> and the MCI/Verizon Request<sup>14</sup>.

### Paragraph 9(c)(ii)

On the contrary, SBC is *not* a small participant in the global Internet backbone market. Please refer to our earlier comments on paragraphs 8 and 46 above and the Preston Declaration attached.

### Paragraph 9(c)(iv)

An issue that has not been taken into account by the IDA is the ability that the merging parties will have post merger to use their increased strength in the DSL and mobile telephony space to enhance their market power over the internet backbone but also more generally. The proposed merger will increase the strength of the merging parties given the strong presence they have in local access and the DSL market combined with the strong presence that SBC has in the

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<sup>13</sup> SingTel's Response to the IDA Public Consultation on the AT&T/SBC Request, 7 July 2005, paragraphs 5.28 – 5.32, pp20-21

<sup>14</sup> SingTel's Response to the IDA Public Consultation on the MCI/Verizon Request, 31 Aug 2005, paragraphs 5.35 – 5.42, pp25-27



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mobile market through its joint venture company Cingular in the US. The strength of SBC in the mobile telecommunications market is a well known fact. Thus in 2000, SBC combined its wireless business operations with those of Bellsouth to create Cingular Wireless (“Cingular”), which is today the US’s largest wireless company with a global revenue of approximately US\$32 billion (Euro 26 billion). Cingular’s business was further strengthened in 2004 with the acquisition of AT&T Wireless.

The Annual Report filed by SBC for the financial year ended 31 December 2004 indicates that its worldwide revenues for 2004 were approximately US\$40.8 billion (Euro 32.8 billion). This revenue, however, does not include the share of the revenue achieved by Cingular and that should be allocated to SBC for the purpose of the merger rules, SBC being one of its two controlling parent companies. The addition of half of the global revenue of Cingular to SBC’s total revenue makes an aggregate SBC’s worldwide revenue of approximately US\$56 billion (Euro 45 billion) (this revenue may not even include the turnover of AT&T Wireless that Cingular acquired during 2004).

### Paragraph 12

The IDA recognised, in paragraph 12 of the IDA Decision, the need for the applicants to file a Long Form Consolidation Application because SBC has a market share in excess of 25% in certain US telecommunication markets. The applicants contended that the Long Form Consolidation Application was unnecessary to assess the likely competitive impact of the consolidation. The IDA has not adequately addressed this point. In the IDA Decision, consideration was given to the market shares of the applicants in Singapore markets but not the fact that “one Applicant has more than a 25 percent market share in at least one telecommunication market, whether or not located in Singapore” (as per question 10 of the Long Form Application Form). This cannot be ignored. The Preston Declaration clearly highlights that the combined SBC/AT&T will have greater than 25% of the internet backbone market, with clear impacts on competition globally and in Singapore.

Moreover, the IDA does not adequately explain the rationale behind the market share figures it uses in its decision. For example, it misleadingly gives AT&T Singapore’s share of the IP transit market as 5% without taking into account the shares of the two parties to the merger. The IDA should reconsider its calculation of market shares and clarify its methodology.

In addition, in the light of the MCI/Verizon application, the IDA should take into account the market shares of all four parties in the relevant markets – notably the IP market. As we have stated previously, the combined entities will have a market share in excess of 50%<sup>15</sup> and will thus have considerable market power. This fact alone should prompt IDA to reconsider the present decision and request a Long Form Consolidation Application from the parties to both proposed mergers so that the combined anti-competitive effects may be established properly. To consider the two mergers separately will produce a distortion of the true impact on competition in Singapore and globally.

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<sup>15</sup> Preston, MacFarland & Gurra, *An Economic Analysis of the Competitive Effects of the SBC/AT&T and Verizon/MCI Mergers on the Internet Backbone Market*, Economists Incorporated, 20 July 2005, Chart 1, pp10





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### Paragraph 15

***The claims used to justify that the combined AT&T/SBC entities would not be able to leverage SBC's market power to strengthen AT&T Singapore's position in the GTS market is based on inaccurate facts***

Firstly, it is not true that AT&T only has a small share in the global GTS market. AT&T has argued with the various competition authorities that its GTS market share is not significant and has referred to a report published by Forrester<sup>16</sup> to substantiate that statement which BT suspects may have been provided to the IDA in supporting the claim that its GTS market share is small. BT believes that AT&T's market share is very significant – in the region of 30% to 40 % as indicated in the Ovum Report<sup>17</sup>. The Forrester report that is being referred to by AT&T only relates to WAN services and therefore does not include all the services that fall within GTS. It thus grossly understates the relevant market shares of the parties. In addition, the Forrester report has very limited value since Forrester only interviewed 36 vendors and user companies in this limited space.

In this regard, one should rely not just on the detailed economic analyses of numerous competition agencies highlighting AT&T's very strong position in the GTS market space, not least that of the European Commission in the recent BT/Infonet decision<sup>18</sup> to which the IDA should have regard. In this decision, the Commission found, after extensive analysis, that AT&T is the market leader in the global GTS market with a market share of 30-40%. One should also look at the statements of the acquiring parties. Pre-merger SBC and Verizon asserted that AT&T and MCI "dominated" the enterprise/GTS market: *Ex parte* Letter from Dee May, Vice President, Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Dkt. No. 02-112 (May 19, 2004) ("*Non-Dominance NPRM Proceeding*") at 1 (AT&T and MCI "dominate the most lucrative portion of the long distance market – the enterprise/large business segment"); Reply Comments of SBC Communications, Inc., *Non-Dominance NPRM Proceeding*, WC Dkt. No. 02-112 (May 19, 2003) at 4 ("the more lucrative enterprise market that remains dominated by the big three IXCs"); AT&T's TRO Remand Reply Comments at xi ("of the so-called 'Big 3,' AT&T is the only carrier currently to earn a profit on its business services") and 73-74.

Secondly, it is not true that the cost of obtaining access in SBC's 13-state region in the US constitutes a small fraction of the overall costs of providing GTS. Contrary to the statement in the AT&T Response to Industry Comments<sup>19</sup> that "*by definition, GTS is not highly dependent on local connectivity...*" a fact is that the provision of GTS is highly dependent on local connectivity for the following reasons:

- Given GTS' international nature, no GTS provider is in a position to provide its services on the basis of just its own infrastructure. Most GTS providers will have to rely on the domestic network provider in jurisdictions where they lack a network and unless there is

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<sup>16</sup> Forrester Wave: Global WAN Services, 11 May 2005

<sup>17</sup> *MNC Providers in Europe – 2004*, Ovum in 2004

<sup>18</sup> Case No. Comp/M.3641

<sup>19</sup> AT&T's Response to Industry Comments on IDA's Consultation, 18 July 2005



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effective competition in local access, GTS providers will be faced with a high cost base for local access and this will translate to higher prices of GTS for consumers;

- It is estimated that local connectivity constitutes **[Confidential Information]**<sup>20</sup> of the total cost of providing GTS. Again, there seems to be a material inconsistency between the statements made to the IDA by the merging parties and pre-merger statements of AT&T. Pre-merger, AT&T itself has noted that special access constitutes a significant percentage of the overall cost of the service<sup>21</sup> [cross reference comments on paragraph 24(b) below]. Singapore-based GTS providers will need cost-based, non-discriminatory access in the US to efficiently meet the demand from their present and prospective GTS customer base and to compete effectively in the Singapore A-ended GTS market.
- Local connectivity in the U.S. is more critical than in many other countries. This is true for a number of reasons, not least that 65% of relevant GTS customers are headquartered in the US and coupled with the geographic scale of the country and the spread of the customer base outside of metro areas (BT can provide substantial evidence of the geographic spread of customers and hence dependence on special access providers, based on detailed customer research conducted in the course of this review). Critically, SBC controls a large portion of US local access connectivity. 75% of major corporate customer locations are in SBC and Verizon regions. SBC controls access in states in the southwestern, western and middle portions of the United States. These are critical regions for access connectivity, including California. California, in its own right, is one of the most important economic regions globally [cross reference comments on paragraph 24(b) below].
- The profit margin (EBIT) for providing GTS services can be limited for certain customers. It is not uncommon for bids to generate a margin (EBIT) of only **[Confidential Information]**<sup>22</sup>. If costs for local access in SBC territories were to increase to an anticompetitive level or discrimination is undertaken in input costs, some GTS suppliers would not be in a position to compete with AT&T/SBC and there will be a reduction in choice for customers and price increases and service degradation. It should be noted that a non-discrimination obligation imposed on the merging parties may not be sufficient to address this issue. This is because if SBC were to increase the price of local access above competitive levels and charge the same price to AT&T and AT&T's competitor's, this would have a direct impact on the level of the profits of the GTS suppliers other than AT&T and therefore on their decision whether or not to respond to a bid. AT&T would not have the same problem since SBC and AT&T would be part of the same group of companies so that they would be able to transfer costs between them.

Thirdly, it is questionable if US access regulation provides sufficient regulatory safeguards. The US addendum to the ECTA Report<sup>23</sup> on the effectiveness of the telecommunications regulatory frameworks highlights the facts that: (i) the US has poorly implemented telecommunications regulation and its overall score is comparable to the two worst performing European countries;

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<sup>20</sup> Appendix

<sup>21</sup> AT&T's TRO Remand Reply Comments at 65.

<sup>22</sup> Appendix

<sup>23</sup> A copy of this US addendum to the ECTA Report can be found on SPC Network's website at: <http://www.spcnetwork.co.uk>



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(ii) the European regulatory framework is better than the US framework at ensuring that competitors have access to key wholesale products on fair and equitable terms, so that they can compete with ILEC at the retail level; and (iii) the US has taken a backward step with regard to pro-competitive regulation – recent decisions have meant that competitors find it increasingly difficult to enter the market sustainably. Indeed, this has been cited as the main reason for the mergers taking place by the acquired parties themselves – their failure to be able to secure competitive access services from the incumbent players. The US addendum referred to above, was undertaken using detailed inputs from experts in the US, Europe and audited by third party telecommunications consultants as well as the respected Comptel body in the US. It is thus a highly relevant review of the state of telecommunications regulation in the relevant countries, contrary to AT&T's claims in its Response to Industry Comments<sup>24</sup>.

3.3.1 BT contends that "regulation in the U.S. has proven less effective in access regulation."<sup>21</sup> This is based on a recent U.S. "addendum" to an earlier European "regulatory scorecard",<sup>22</sup> The Applicants submit that no weight should be given to this U.S. analysis.

Moreover, the ability to leverage foreign market power would also depend on the effectiveness of local regulation. Where regulation is effective, as in the UK, there is no ability to leverage. And where ineffective, as in the US, there is scope for local incumbents to leverage their dominant position. The UK has a highly effective regulator and is rated to have the most effective regulatory framework in Europe in the Jones Day / ECTA Regulatory Scorecard 2005<sup>25</sup>. Notwithstanding that the UK has one of the most competitive markets for communication services world-wide, BT continues to be subject to strict regulatory controls. For instance:

- Local access prices in the UK are cost-based and key performance measurements are published by BT quarterly. That is not the case in the United States. AT&T demonstrated to the FCC in 2002 that SBC was earning a rate of return of over 50% on special access<sup>26</sup>. Note that for the year ended 31 December 2004, SBC's realized rate of return on its embedded investment in the interstate special access services category was 76.19% up from 63.16% for the previous year, while its revenues grew at double digit year-over-year rates to \$4.5 billion in 2004<sup>27</sup>. Whereas, BT has no margins on partial private circuits (or "PPCs" which are the UK-equivalent of special access in the United States). BT's prices for PPCs are based on LRIC and the weighted average cost of capital ("WACC") that BT is entitled to recover.<sup>28</sup>
- Moreover, in the United States, there is nothing in federal telecommunications regulation (except for the limited Section 272 audits and assuming that Section 272 has not sunset) that would allow competitors or regulators to detect if there is service discrimination by the likes of SBC and Verizon. By contrast, in the UK, BT is unable to engage in any kind of service discrimination because it is policed by its competitors who

<sup>24</sup> AT&T's Response to Industry Comments on IDA's Consultation, 18 July 2005, paragraph 3.3.1

<sup>25</sup> Comments of BT to IDA Public Consultation on AT&T/SBC Request, 7 July 2005, Annex 2

<sup>26</sup> Chart showing the excessive rate of return of SBC and other local incumbents submitted by AT&T (Professors Ordoover and Willig in support of AT&T Petition in October of 2002).

<sup>27</sup> Selwyn Merger Declaration, at ¶¶ 10, 48-49, Figure 2 and Table 2, based on the ARMIS 43-04 Report

<sup>28</sup> WACC is not a profit indicator, but the cost that BT incurs in order to pay back its equity and debt providers via dividend and interest.



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can detect discrimination based on detailed quarterly Key Performance Indicators that BT must publish on provisioning, repair and maintenance metrics<sup>29</sup>.

- Furthermore, BT has recently gone a step further by agreeing to create a separate, independent, and highly regulated business unit, the Access Services Division ("ASD") that will provide transparent and equal access to BT's local network<sup>30</sup>

### Paragraph 24(b)

#### **AT&T/SBC's claim that 'the cost of special access services within SBC's 13-state service region is typically a small portion of the total cost of GTS' is a gross misrepresentation**

BT would reiterate and stress the second point in our comments on paragraph 15 above – that the importance of local connectivity in the provision of GTS is premeditated on the fact that the cost of local access constitutes a significant portion of the total cost of providing GTS. This is a fact that AT&T itself has acknowledged in having submitted pre-merger that *"In many instances, the special access circuits required to connect the end user to the IXC network represents the majority of the total cost of the circuit. That is, more than 50% of the total cost of a frame relay drop or private line circuit is represented by the cost of the last mile that the IXCs must pay to the ILECs ... the price of these corporate data services is falling at a faster rate than the price of special access, suggesting that, over time, access is becoming a larger portion of the overall spend and that the Bells' cost advantage versus the IXCs will continue to increase"*<sup>31</sup>.

This contradicts the subsequent AT&T Response to Industry Comments<sup>32</sup> that *"by definition, GTS is not highly dependent on local connectivity..."* which is far removed from the truth.

3.2.1 Both before and after the Consolidation, competition for the business of any particular multi-national customer will include both suppliers that, like BT and SingTel, are vertically integrated with local facilities in one or more of the countries at issue, and those that are not. Such vertical integration has never in the past been thought to impair the ability of GTS suppliers that are not vertically integrated in a country to compete effectively for GTS business. The merger of AT&T and SBC will not change that. By definition, GTS is *not* highly dependent on local connectivity in any single country, thus depriving *any* vertically integrated GTS carrier of any ability to disable its competitors by "leveraging" any local access advantage that it might be claimed to possess.

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<sup>29</sup> The latest quarterly service performance report on PPCs from January to March 2005 is available at [http://www.btwholesale.com/content/binaries/service\\_and\\_support/contractual\\_information/docs/ppcoffer/briefings/Quarterly\\_Report\\_of\\_BT%27s\\_PPC\\_Service\\_Performance\\_to\\_PECNs\\_January\\_to\\_March\\_2005\\_new.pdf](http://www.btwholesale.com/content/binaries/service_and_support/contractual_information/docs/ppcoffer/briefings/Quarterly_Report_of_BT%27s_PPC_Service_Performance_to_PECNs_January_to_March_2005_new.pdf). The 23 pages report contains granular indicators for provisioning and fault repair that benefit AT&T, MCI and other twenty carriers buying PPCs.

<sup>30</sup> See Ofcom's website: [http://www.ofcom.org.uk/consult/condocs/telecoms\\_p2/statement/main.pdf](http://www.ofcom.org.uk/consult/condocs/telecoms_p2/statement/main.pdf). This new entity will include some 30,000 BT staff and nearly all of its access infrastructure and facilities, including the copper local loop, local exchanges, and associated ducts and other civil infrastructure. While remaining part of BT, the ASD will be organized as a separate business unit with its own management structure and substantial operational independence. The ASD headquarters will be in a separate physical location from other BT staff, and will have separate operating and trading systems from those used by other parts of BT. Compensation will be based solely on ASD's performance. The ASD will have its own distinctive brand. A new Equality of Access Board ("EAB") will monitor and report on the ASD's operations and its performance.

<sup>31</sup> AT&T Asia / Pacific Group Limited, *Designation of Singapore Telecommunications Ltd's Local Leased Circuits as Mandatory Wholesale Service*, 30 June 2003, pp3

<sup>32</sup> AT&T's Response to Industry Comments on IDA's Consultation dated 18 July 2005, paragraph 3.2.1



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SingTel<sup>33</sup> has also confirmed the importance of “*local connectivity – as an essential element of ICS, local connectivity accounts for between 40 to 60 per cent of the cost of international connectivity*”.

Furthermore, SBC’s 13 state region includes California which is one of the most important states in the world for commerce. California, with a \$1.3 trillion gross state product, is the seventh largest economy in the world and is the largest exporting state in the United States<sup>34</sup>. It is also interesting to note that in those states where Verizon is also present, they have only minimally sought to enter the other’s territory. Besides, many of those states are larger than many independent nations, so that controlling access of California, Texas and the 11 other states is hugely important – it could be deemed to the equivalent of controlling access in 13 nations, and very few telecommunications providers dominate more than a single nation. The importance of SBC’s 13-state region has been underplayed heavily by the parties and requires reconsideration.

Finally, as mentioned above, one of the key questions is the impact that an increase of local or special access costs in SBC’s territories would have on the level of profitability of the other GTS providers. This question has not been looked at by IDA. Even assuming that access costs in the US was not a significant proportion of the total costs of a GTS contract (as explained above such assumption would be wrong), since the level of profits achieved in GTS contract is not significant any increase of costs for local access in SBC’s territories is bound to have an impact on the ability of the other GTS providers to compete with AT&T.

### Paragraph 25(c)

BT believes that the combined AT&T and MCI market share of 28% for Internet traffic is based on a backward looking analysis which would not be an appropriate methodology as it would not be representative of the evolving internet backbone market structure and underestimate the strength of the players going forward. BT submits a forward looking approach to market share calculations demonstrating that MCI and AT&T combined, control over 50% of the global internet backbone market this year<sup>35</sup>. This will increase post merger, and within the relevant time frame for the IDA review, and thus requires reconsideration.

### Paragraph 31

IDA has acknowledged and recognizes that horizontal consolidations have the potential to raise serious competitive concerns. It has also defined horizontal consolidations as resulting in the elimination of direct competitors. BT firmly submits that the proposed AT&T/SBC consolidation is a horizontal consolidation due to its effects, the substantial impacts of mutual forbearance which will be to eliminate virtually all meaningful horizontal competition for special access in the US (with impacts globally) and peering to the global internet backbone.

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<sup>33</sup> SingTel Response to the IDA Public Consultation on AT&T/SBC Request, 7 July 2005, paragraph 5.11

<sup>34</sup> See Asia Media (Asia Institute at UCLA) at <http://www.asiamedia.ucla.edu/article.asp?parentid=14498>.

<sup>35</sup> Preston, MacFarland & Gurrea, *An Economic Analysis of the Competitive Effects of the SBC/AT&T and Verizon/MCI Mergers on the Internet Backbone Market*, Economists Incorporated, 20 July 2005



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As such, it is an error to assess the AT&T/SBC Request as a non-horizontal consolidation. BT would strongly urge the IDA to rectify this finding and to analyse the competition issues of the AT&T/SBC Request as a horizontal consolidation.

### Paragraph 33

In paragraph 33, the IDA recognize that they would be forced to take steps to preserve competition in downstream markets in the event of a non-Singaporean merger of two of the major telecommunications equipment providers. Given that the access costs, the essential inputs controlled by the parties to the present reviews, constitute a substantially more important element of global telecommunications costs, than equipment inputs, the IDA must re-consider their analysis of the present case.

### Paragraph 39(c)

The limitations and shortcomings of the US special access regulatory regime are highlighted below: This is critical to a proper analysis of the present merger proceedings.

- Special access in the United States has been partially deregulated, but even the BOCs concede that in many portions of the United States they are the only viable providers of special access, especially DSL special access. Even GTS customers require substantial amounts of lower capacity access at more remote locations (for manufacturing and warehousing facilities that for environmental or financial – the high cost of real estate and labour – reasons cannot be located in large population centers, or sales offices) where there is no viable local access competition. Specifically, special access has been subject to price cap regulation since 1991 with pricing flexibility introduced in 1999. There are two types of “pricing flexibility” triggered by collocation-based thresholds. Under Phase I pricing flexibility a Local Exchange Carrier (“LEC”) may offer volume and term discounts and contract tariffs for interstate special access services, but must also continue to offer its price cap rates. Under Phase II a price cap LEC meeting higher thresholds may file individualized special access contract tariffs, subject only to continuing to make available generalized special access tariff offerings.
- AT&T themselves filed a Petition for Rulemaking in 2002 arguing for re-regulation of special access, submitting evidence that the BOCs had extraordinarily high revenues and earning in those areas where Phase II deregulation had been granted. An analysis of embedded/historical costs showed 46-55% returns at that time for three of the four largest price cap LECs (a recent update showed accounting rates of return in 2004 in excess of 76% for three of the four largest price cap LECs). A forward looking cost analysis showed even larger rates of return. AT&T also submitted evidence that in order to obtain discounts, customers had to subscribe to anticompetitive volume and term plans. AT&T argued that these data reflected the BOC’s continuing pervasive market power in special access, particularly at the DS-1 and DS-3 levels, for which there were very high barriers to entry. Other parties supporting the Petition submitted similar evidence, which was disputed by the BOCs. The FCC declined to take any action on AT&T’s Petition until after AT&T filed a Petition for Mandamus with the D.C. Circuit



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Court of Appeals requesting the court to direct the Commission to act on its rulemaking petition. The Commission issued a Notice of Proposed Rulemaking in January 2005, with the Comment cycle beginning in June and not completed until mid-July.

- The mergers will further increase the BOCs market power over special access by eliminating the largest competitors and customer of special access. Specifically, the mergers will eliminate the two largest facilities-based competitors as well as the two largest wholesale competitors for special access. The mergers raise barriers to entry by: (i) eliminating sufficient independent demand for special access so as to make competing entry uneconomic, and (ii) raising brand barriers to entry. The result will be even higher prices for special access and a greater likelihood of discrimination in the provisioning and maintenance of those facilities. The mergers will also have a vertical anticompetitive affect as the now even more powerful upstream special access providers acquire the dominant downstream enterprise customer providers. The result will be a substantially greater likelihood of price squeezes. Critically, AT&T provides to third parties, lowered price special access services, taking advantage of its discount rates from the BOCs. This wholesale discount will be removed as result of the merger with huge impacts on competition.

### Paragraph 41

IDA has failed to take into account the risk that the merging parties will be able to discriminate in terms of service levels and Service Level Agreements (“SLAs”) and thus harm customers competing with downstream arms.

Following the merger with AT&T, SBC’s overriding economic incentives and duty to its shareholders to maximise its profits will very likely lead to discrimination in favour of its own retail GTS affiliate (AT&T) and against rivals in a number of ways, including by lowering or deteriorating the quality of services it offers to its other competitors. Until the merger, SBC’s incentive to deteriorate the quality of services to competitors has been small or non-existent because SBC has not had the network or the products to compete effectively in the GTS marketplace. However, following the merger, SBC will have a much more powerful incentive and ability to favour its affiliate (i.e. AT&T) over its rivals in the GTS market.

Critically, also, there are risks of similar degradation in the internet space with customers not on the merged parties’ networks, not seeing the same class of service. This view has been expressed by number of commentators and is becoming a particular concern of regulators worldwide as to the impacts of the merger.

### Paragraph 41(c)

IDA’s view that *‘it does not believe that the AT&T/SBC consolidation will exacerbate the current situation of Singapore-based Internet providers having to purchase “full circuits” to the US and cannot enter into peering arrangements with Tier 1 Internet backbone providers in the US’* is premised on the basis that SBC is not a significant Internet backbone player. It has been sufficiently established in our earlier comments that SBC is a significant Internet backbone player and BT would thus request that the IDA review its analysis of this point.



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### Paragraph 39(d), 40(c) and 41(d)

As part of the rationale for not choosing to impose conditions on the merger of AT&T/SBC, the IDA refers to Section 8.3 of the Competition Code. IDA regards this provision as an adequate deterrent to the risk that AT&T-Singapore may benefit from anti-competitive conduct by the combined AT&T/SBC. We do not agree with this assessment for the following reasons:

(i) a licensee suffering damage as a result of a breach of Section 8.3 would need to bring a complaint to the IDA and request it to investigate. The investigation would then happen on an *ex post* basis i.e. after the damage had been done. It would be far more effective if mechanisms were put in place *ex ante* – to prevent the anti-competitive behaviour from happening in the first place. It also requires some mechanism to identify the relevant harms are taking place. We would ask IDA to place transparent reporting obligations on AT&T-Singapore and to monitor its business practices, and impose specific non-discrimination obligations which are subject to strict policing. Such obligations have frequently been applied in merger cases before the European Commission and other agencies with great effectiveness. These can be set up in such a fashion that they can be seen to be self-policing to reduce the regulatory burden.

(ii) Unless appropriate regulatory safeguards are in place, it is notoriously difficult to prove anti-competitive behaviour between intra-group companies and competition rules often do not cater for such situations. Pricing abuses can easily be hidden in complex intra-group accounting unless appropriate protections are in place. It would therefore be more effective if IDA were to lay down some conditions on the merged entity to ensure transparency and non-discrimination. Also, reporting obligations would allow the IDA and/or third parties to police compliance with these conditions.

(iii) The Competition Code does not provide the IDA with adequate powers of investigation and enforcement in order to prevent a breach of Section 8.3 by the merged AT&T/SBC. Moreover, financial penalties under the Code are set at \$1 million which does not provide adequate deterrence, particularly given the scale of potential detriments in the GTS and internet space which could have material impacts for Singaporean customers and business.

Furthermore, given that competition issues regarding telecommunications is currently regulated on an *ex-ante* basis under the Code and having identified this as a matter of concern, the IDA should accordingly impose conditions to address the potential harm of anti-competitive behaviour which could include: -

- Non-discrimination – in order to prevent the merged AT&T/SBC entity from discriminating against Singapore internet backbone and access providers in favour of its downstream operations, IDA should impose a condition requiring the merged AT&T/SBC to provide similar access to its competitors on non-discriminatory prices, terms and conditions.
- Accounting Separation – in order to ensure that the merged AT&T/SBC entity is not engaging in discriminatory, predatory, price squeeze or other abusive pricing practices, the IDA should impose strict accounting separation and reporting obligations.





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- Other non-price obligations – in order to prevent the merged AT&T/SBC entity discriminating against its competitors on non-price terms (such as delivery times, quality, maintenance etc), the IDA should impose obligations on the merged entity and require them to report accordingly.
- Conditions to promote competition – this could take the form of commitments to retain existing peering arrangements between Singapore IBPs and the merged AT&T/SBC entity.

Given the scale of potential harms, the IDA should consult widely with interested parties on the relevant remedies and ensure co-ordination with the remedies applied to the MCI/Verizon Request.

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**ANNEX 1**

**Press Release: ISPs in Uproar over Verizon-MCI Merger<sup>36</sup>**

By Dan Neel  
12.58 PM EDT Tue Aug.23, 2005

The California ISP Association (CISPA) claims the merger of Verizon Communications and MCI will threaten ISP business models.

CISPA represents more than 180 ISPs. Mike Jackman, executive director of the Sacramento, Calif.-based organization, said the multibillion-dollar Verizon-MCI merger, announced in February, will run many pure-play ISPs out of business or force them to diversify their offerings--possibly into more value-added services that could compete with those provided by VARs and system integrators.

Verizon and MCI expect to close their merger by the end of the year. Another blockbuster telecommunications merger--between SBC Communications and AT&T--also is slated to close by the end of this year or in early 2006.

Spurring the CISPA complaint is an Aug. 5 Federal Communications Commission decision to reclassify DSL service as an information service instead of a telecom service, which Jackman said frees phone companies like Verizon from regulations requiring them to share bandwidth with ISPs. The FCC has placed a one-year grace period on enforcement of the change, he added.

"So the result is that Verizon-MCI, as well as [SBC-AT&T], will no longer have to lease DSL to ISPs," Jackman said. "They probably will, but it will be at such an outrageous price that ISPs won't be able to make any money on it."

Big carriers want to "own" the customer, he noted. "This merger will reduce the number of ISPs dramatically. If you're in the [ISP] channel, the number of customers you have will drop dramatically. And you'll either be unable to make money, or what you'll do in a worst-case scenario is add value-added services. You'll still be able to buy DSL, but you'll have to add more services to compensate for little or no margin."

Mark Esser, vice president of CISPA's board of directors, protested the Verizon-MCI merger in hearings before the California Public Utilities Commission (CPUC). Referring to the Verizon-MCI and SBC-AT&T deals, he said, "Duopolies or oligopolies do not create competition in the marketplace," according to CISPA. He added that other state PUCs say the mega-mergers are bad for business and could invite "tacit collusion" among the large carriers.

CISPA's complaints are "largely a replay of material aired several times already," MCI said in a statement. Verizon couldn't be reached for comment.

"As Verizon and MCI have explained in filings with the state of California and the FCC, the Verizon-MCI transaction will benefit customers and the economy while allowing the new

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<sup>36</sup> Press release is accessible at:  
<http://www.crn.com/sections/breakingnews/breakingnews.jhtml;jsessionid=P4TBQHJM0MMKYQSNDBESKHA?articleId=169600170>



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combination to compete effectively in a changing marketplace," the MCI statement said. The company added that the merged Verizon-MCI would have a 16 percent to 22 percent share of the enterprise market.

Jackman disagreed with those market-share figures. "They will be the baseline [telecom] providers of 80 percent of the customers," he said.

CISPA, which was formed in 2000 to battle the big carriers over line sharing, believes there's no way the telecom megamergers will lead to fair play among ISPs, according to Jackman. "The idea of having ISPs is foreign to their culture," he said of the large carriers. "They are monopolistic. They have always resisted change."

Amid all of the market flux, some DSL resellers have started seeking creative ways to diversify their offerings.

Pac-West Telecom, a large CLEC in Stockton, Calif., has begun partnering with cable providers assist them with their voice offerings, said John Sumpter, Pac-West's vice president of regulatory. As a result, Pac-West essentially is going head-to-head with the big phone companies by working from the corner of the cable providers, a group competing with the Baby Bells to offer what Sumpter called "the triple play: TV, Internet, and voice service."

"Our new line of business is to be the back-room support for a cable TV company that wants to add voice to broadband and cable TV services," he said.

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