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18 July 2005

Info-communications Development Authority of Singapore  
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Attention: Andrew Haire (Senior Director)/Ms Aileen Chia (Director)

Dear Sirs

**PROPOSED CHANGE OF OWNERSHIP OF AT&T WORLDWIDE  
TELECOMMUNICATION SERVICES SINGAPORE PTE LTD – RESPONSE TO  
INDUSTRY COMMENTS ON IDA’S CONSULTATION**

1. We refer to IDA's letter dated 11 July 2005 on the above matter ("IDA letter") in response to our letter to IDA dated 10 June 2005 ("Application").
2. This submission is filed by AT&T Worldwide Telecommunications Services Singapore Pte. Ltd. ("AT&T Singapore") on behalf of itself, AT&T Corp. ("AT&T") and SBC Communications Inc. ("SBC") (collectively the "Applicants") in relation to the proposed acquisition of AT&T by SBC ("Consolidation") and in response to the IDA letter, particularly the questions raised in paragraphs 2(a), (b), (c) and 3. The Applicants are extremely grateful to be given an opportunity to respond to the industry comments that IDA has received in response to its Consultation from BT Singapore PTE Ltd ("BT") and Singapore Telecommunications Ltd ("SingTel"). We trust that this submission will assist the IDA in achieving a balanced and objective assessment of the Applicants' original Application.
3. ***The Post-Consolidation Entity Will Not Have An Ability To Leverage SBC's Position In Its Thirteen-State Region To Detrimentially Affect Competition In Singapore.***

3.1 The Applicants demonstrated in their Application that the Consolidation would cause no substantial lessening of competition in any telecommunications market in Singapore, including the sale of global telecommunications services ("GTS"), or any of the individual services within that market, that competing providers supply to their GTS customers.

3.2 *The Post-Consolidation Entity Will Not Be Uniquely Situated Amongst Other Vertically Integrated GTS Providers In The Highly Competitive GTS Market.*

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.

3.2.2 Indeed, the same theories put forward here have been repeatedly rejected in the context of approved mergers between actual GTS competitors. Thus, for example, the U.S. Federal Communications Commission ("FCC") held that the AT&T-BT Concert Joint Venture was in the public interest and would not lessen competition for GTS despite BT's alleged dominance in the U.K.<sup>1</sup> Likewise, the European Commission recently approved the mergers of France Telecom-Equant, BT-Infonet, and BT-Radianz. In each of these cases, regulators found increased "vertical integration would not lead to any harmful effects on the market for extranet services to the . . . upstream market for global telecommunication services (GTS), given the presence of alternative telecommunication operators."<sup>2</sup>

3.2.3 BT and SingTel do not dispute these points. Instead, for the most part, BT and SingTel simply re-assert points that the Applicants have fully rebutted in their Application without acknowledging the Applicants' detailed filing.<sup>3</sup> As both BT and SingTel recognise, no provider

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<sup>1</sup> Memorandum Op. and Order, *AT&T Corp., et al.*, 14 FCC Rcd. 19140, ¶ 63 (1999) ("*AT&T-BT JV Order*") ("Market conditions on the U.S.-U.K. route make it highly unlikely that AT&T and BT could successfully engage in a strategy to raise rivals' costs").

<sup>2</sup> See EC Press Release, *Mergers: Commission approves acquisition of Radianz by BT* ("BT-Radianz Release") (Apr. 25, 2005) (available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/474&format=HTML&aged=0&language=EN&guiLanguage=en>); *BT-Infonet*, Case No. Comp/M.3641, ¶ 8 (EC, Jan. 25, 2005) ("*BT-Infonet Order*"); *France Telecom-Equant*, Case No. Comp/M.2257, ¶¶ 41-49 (EC, Mar. 21, 2001) ("*France Telecom-Equant Order*").

<sup>3</sup> A vivid example of this failure to confront the Applicants' evidence is their claim that AT&T's GTS market share is in the 30 to 40% range. BT at 5. BT does not even attempt to respond to the Applicants' showing that the source for that figure – a 2004 report by Ovum – is badly flawed. Abbreviated Statement ¶¶ 2.4.4-2.4.6. Indeed, the Ovum report itself expressly acknowledges that, because of data limitations, the report cannot be used as a reliable indicator of AT&T's GTS market share. See Ovum, *MNC Providers in Europe – 2004* (Oct. 2004). Ovum reports as "GTS" revenues for AT&T *all* of AT&T's business services revenues, including entirely domestic U.S. services that are not provided to multi-national customers and that account for the vast majority of AT&T's business services revenues. See *id.* at 22; *id.* at 18 note. Ovum thus included as GTS revenues the revenues that AT&T earns from its government, wholesale, and domestic small business segments. In addition to overstating AT&T's revenues, the Ovum report understates total industry GTS

today has the ability to offer these services entirely over its own facilities. The Consolidation will not alter that fact. Equally, BT and SingTel claim that SBC, the incumbent local access provider in only portions of 13 of the 50 states of its home country, will somehow be better positioned than other vertically-integrated providers that are incumbent providers of local access facilities throughout their home countries. However, the few new claims they offer in support of this assertion are, as demonstrated below, unsound.

3.2.4 At the outset, it is worth noting a few of the key facts that BT and SingTel do not and can not dispute. It is undisputed that the GTS market is vibrantly competitive.<sup>4</sup> Numerous established carriers compete in the GTS market, including SingTel, BT, FT, T-Systems, Cable & Wireless, MCI, Sprint, Global Crossing, Qwest, Colt, StarHub, Telecom Italia, Telstra, and NTT. BT and SingTel do not dispute that many GTS competitors – including BT and SingTel – are vertically integrated throughout their home markets whereas the Consolidation will provide SBC/AT&T with a similar position in only parts of SBC's 13 state region. BT and SingTel do not dispute that no GTS provider – even those with nationwide home-market vertical integration – has been able to "leverage" its home-market vertical integration to disable other GTS competitors. Indeed, many successful GTS competitors own no local facilities and purchase virtually all local access from other carriers (including their GTS rivals).

3.2.5 BT and SingTel similarly fail to offer any evidence to contradict the Applicants' demonstration that the costs of access to GTS locations in SBC states are such a small fraction of overall GTS costs that SBC's home market local facilities could not give SBC/AT&T the ability to disable other GTS competitors.<sup>5</sup> Instead, BT and SingTel offer only general and unsupported claims that GTS providers are "highly dependent on local special access in the SBC territory."<sup>6</sup> For example, they note that U.S. and Singapore are large trading partners, that 1,300 U.S.-owned companies operate in Singapore,<sup>7</sup> and that "MNCs comprise over 42 per cent of the United States' gross national product."<sup>8</sup> In fact, as the Applicants have demonstrated in their original Application – and as BT and SingTel do not dispute – only 19% of GTS-eligible locations worldwide are in SBC states. Of particular significance to this Application is that less than 4% of GTS-eligible locations of the Singapore-headquartered companies that are likely to be a primary focus of SingTel's marketing efforts are in SBC states.<sup>9</sup>

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revenues. Of particular relevance here, Ovum considered only the GTS revenues associated with "MNC Providers in Europe," and did not include the GTS revenues of such prominent Asia/Pacific-based providers as SingTel, NTT, China Netcom, Telefonica, Telstra and VSNL. In reality, AT&T has a small share of the GTS market: **CONFIDENTIAL INFORMATION REMOVED**. Abbreviated Statement ¶¶ 2.4.4-2.4.6.

<sup>4</sup> Abbreviated Statement ¶¶ 2.4.1-2.4.3.

<sup>5</sup> *Id.* ¶¶ 2.4.7 – 2.4.11.

<sup>6</sup> BT at 6.

<sup>7</sup> *Id.*

<sup>8</sup> SingTel ¶ 5.8.

<sup>9</sup> The methodology used in obtaining these figures is explained in our original Application at note 25. The relatively low percentage of Singapore-headquartered companies with locations in SBC states is explained by the fact that on average these companies have the majority of their sites in the Asia-Pacific region.

3.2.6 BT and SingTel also ignore the Applicants' initial filing when they claim that "GTS providers generally have little choice in access provider for enterprise customers" that have local access needs in the fraction of the U.S. in which SBC is the incumbent provider.<sup>10</sup> As the Applicants demonstrated, SBC faces substantial competition for local access with respect to "Silicon Valley placed businesses"<sup>11</sup> – *i.e.*, businesses in the densest business districts where large multi-national GTS customers are most commonly located and for the types of bandwidth services typically purchased by GTS customers to serve their major facilities. There are scores of competing local exchange carriers operating in SBC's territories that together have deployed fibre connections to thousands of the most significant commercial buildings in SBC's service areas.<sup>12</sup> And even where bypass facilities do not exist today, that does not, as BT suggests, mean that rival GTS providers have no economic choice but to purchase local access from SBC. Rather, as the FCC has determined it is often economically feasible for competitive carriers to bypass SBC and deploy facilities to serve high-demand locations.<sup>13</sup> Thus, where a GTS provider is seeking to obtain access to high demand locations – and the customers that purchase GTS typically have the highest demand of any users – the GTS provider can "terminate traffic with many facilities-based carriers in the U.S.; it may terminate traffic via ISR at very low rates; and it may build its own facilities in the U.S. and self-correspond."<sup>14</sup> Further, contrary to BT's and SingTel's claims,<sup>15</sup> SBC's local access rates are regulated by the FCC. Under that regime, SBC's dedicated local access rates are subject to price caps, with the exception of markets where the FCC has made specific findings that competitive local access facilities have been deployed.<sup>16</sup>

3.2.7 It is submitted that these facts cannot be reconciled with claims that BT and SingTel - or, indeed other GTS providers - are heavily dependent upon SBC's local access facilities in their provision of GTS services. AT&T, for example, today relies extensively upon competing local access providers in major cities in SBC's home markets. **[CONFIDENTIAL INFORMATION REMOVED]**

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<sup>10</sup> BT at 5; *see* SingTel ¶ 5.11.

<sup>11</sup> SingTel ¶ 5.11.

<sup>12</sup> See generally the Carlton Sider Reply Declaration filed by the Applicants in the FCC proceeding relating to the proposed merger. ([http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6517601194](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517601194))

<sup>13</sup> *In re Unbundled Access to Network Elements*, Order on Remand, WC Dkt. No. 04-313, CC Dkt. No. 01-338, 2005 WL 289015, ¶¶ 166-81 ("Triennial Review Remand Order").

<sup>14</sup> *AT&T-BT JV Order*

<sup>15</sup> *See* BT at 6; SingTel ¶ 5.22.

<sup>16</sup> Fifth Report And Order And Further Notice Of Proposed Rulemaking, *Access Charge Reform, Price Cap Performance Review For Local Exchange Carriers*, 14 FCC Rcd. 14221 (1999). Notably, the FCC has recently opened a rulemaking to ensure the scope of "pricing flexibility" is consistent with the scope of price-constraining competition. Order and Notice of Proposed Rulemaking, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Dkt. No. 05-25, 2005 WL 235782 (Jan. 31, 2005). In addition, SBC's special access rates are required by law to be "just and reasonable" and "nondiscriminatory." 47 U.S.C. §§ 201, 202. These requirements can be enforced both by private parties and the FCC. 47 U.S.C. § 205, 208.

3.2.8 Indeed, SingTel ultimately concedes that the "implications for domestic prices in the U.S.... are of negligible concern to Singapore."<sup>17</sup> SingTel goes on to suggest that the issue in Singapore is the potential for leveraging of market power in "international services,"<sup>18</sup> but it offers no evidence whatsoever that AT&T has any market power in the provision of these highly competitive international services or domestic long distance services.<sup>19</sup> Moreover, the Applicants submit that the Consolidation can have no impact in this area for the simple reason that SBC has no meaningful international assets or operations.<sup>20</sup> In short, whether the focus is on U.S. local access, domestic long distance international services, or any other telecommunications services, BT and SingTel cannot show any threat of substantial lessening of competition in Singapore.

### 3.3 *U.S. Special Access Regulation Is Effective and U.S. Local Access Rates Are Comparable To Other Countries.*

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.

3.3.2 Foremost, the proffered U.S. addendum does not purport to show that U.S. access prices are significantly above- cost or otherwise in excess of what SingTel or BT charge for comparable services in Singapore and UK.<sup>23</sup> Nor could it. Independent analysts have concluded that U.S. access prices are among the lowest in the world.<sup>24</sup>

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<sup>17</sup> SingTel at 8.

<sup>18</sup>*Id.*

<sup>19</sup> See generally AT&T Corp to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995). Order on Reconsideration, Motion of AT&T Corp. To be Declared Non-Dominant for Int'l Serv. 13 FCC Rcd, 21501 (1998). Similarly SingTel suggests that the relevant market at issue is the narrow U.S. Singapore route, but this is incorrect. The principal business of AT&T's subsidiary in Singapore, AT&T Worldwide Telecommunication Services Singapore PTE Ltd, is to provide GTS to MNCs, not simply to sell services between Singapore and the U.S. It makes no sense to analyse the proposed transaction with respect to markets that have little to do with the business conducted by the licensed entity. In any event, it is SingTel, not SBC-AT&T, that would have the greatest advantage in this hypothesized "market". SingTel is the incumbent, nationwide provider in Singapore and terminates virtually all traffic destined to MNCs in Singapore. In contrast, SBC is only the incumbent provider in 13 of 50 states. Thus the majority of MNC traffic from Singapore to the U.S. is outside of SBC's incumbent locations whereas the vast majority of MNC traffic from the U.S. to Singapore is carried on SingTel local access facilities.

<sup>20</sup> **CONFIDENTIAL INFORMATION REMOVED.**

<sup>21</sup> BT at 6.

<sup>22</sup> "Regulatory Scorecard" (June 2, 2005) ("CompTel-ALTS Study").

<sup>23</sup> *Id.* Of course, as explained above, even if BT and SingTel could show that U.S. access prices were near or above comparable levels in Singapore, that would still not be sufficient to support their position. As discussed above, the cost of access in the SBC region constitutes only a small fraction of the costs of GTS. There is thus no way that SBC could "leverage" such a trivial cost advantage to foreclose GTS competitors – particularly those such as SingTel and BT that also have substantial incumbent service territories.

<sup>24</sup> Teligen, *Local Access Circuit Pricing for Key Asia-Pacific Countries vs. Each Other, the European Union & OECD Countries* (Nov. 2003), at Figures 5, 8 & 9.

3.3.3 Even as to the issues the report does address, it is submitted that the report's findings are flawed. The study cited by BT was not, as BT misleadingly suggests,<sup>25</sup> an extension of an earlier study conducted by the European Competitive Telecom Association ("ECTA").<sup>26</sup> It was instead sponsored recently by a consortium of U.S.-based carriers (CompTel-ALTS) that are advocating changes to U.S. regulation in an ongoing FCC proceeding. While the Applicants believe that the original ECTA Study provides accurate and useful assessment of the relative effectiveness of European regulation,<sup>27</sup> the subsequent and notably different "addendum" sponsored by CompTel-ALTS does not permit a meaningful comparison between U.S. and European regulators.

3.3.4 Unlike the original ECTA Study, the methodology used in the CompTel-ALTS Study appears intended to reach a predetermined outcome – that U.S. telecommunications regulation is "inferior" to European telecommunications regulation. For example, CompTel-ALTS assigned the U.S. regulation a score of 0 (out of 5) for "automatic suspensive effect of appeal."<sup>28</sup> In the supporting documentation, CompTel-ALTS notes that an appeal of an FCC order does not automatically suspend the order, but that the party must separately request a stay from a court.<sup>29</sup> This standard ensures that courts will not lightly stay the effectiveness of FCC orders – which under any reasonable and unbiased view would support a high score. Indeed, that is the (correct) view taken in the original ECTA study. In that study, a country received the highest possible score of "+5" which, as is the case in the U.S., an appeal of a regulator's decision has "no automatic suspensive effect."<sup>30</sup> CompTel-ALTS provides no explanation for this change in methodology.

3.3.5 Likewise, in attempting to explain the low score for "percentage of decisions appealed," CompTel-ALTS concedes that it has no data whatsoever on the extent to which FCC decisions are appealed, let alone any data that would allow one to conclude that the U.S. is "better" or "worse" than any European country in this regard.<sup>31</sup> Nonetheless, the U.S. regulation was given a score of 1 (out of 5).<sup>32</sup> Similarly unexplained is the "0" score given to the U.S. for the "timeframe for an appeal."<sup>33</sup>

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<sup>25</sup> BT at 6.

<sup>26</sup> ECTA "Regulatory Scorecard" ("ECTA Study").

<sup>27</sup> AT&T is a member of ECTA.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 23.

<sup>30</sup> ECTA Study at 13.

<sup>31</sup> CompTel-ALTS Study at 23.

<sup>32</sup> *Id.*, Annex A.

<sup>33</sup> *Id.* These scores had a particularly strong influence on the outcome because "effectiveness of appeal procedure" statistics were counted twice. *Id.*

3.3.6 Although useful in other contexts, many of the other criteria used to generate a relatively low U.S. score have little direct bearing on whether access prices in the U.S. are as effectively regulated as in Europe. For example, among the criteria judged in the study were the "timeframe for an appeal procedure"; the ability of the regulator "to impose effective interim measures" and the "[o]bjectives given to the [regulatory agency]."<sup>34</sup>

3.3.7 But even with regard to the criteria that are directly relevant to the effectiveness of local access regulation, it is clear that CompTel-ALTS simply disregarded the facts. For example, while giving a low score with regard to the FCC's authority to prevent price squeezes, the report acknowledges that SBC and other carriers are required to keep detailed regulatory accounts of their costs, and that private and public enforcement mechanisms exist.<sup>35</sup> Similarly, the study assigns a "0" score to the U.S. with respect to regulation of discriminatory access provisioning, despite acknowledging that such discrimination has been declared unlawful by the FCC and that the agency is currently undertaking a comprehensive assessment of whether additional safeguards are necessary.<sup>36</sup> And the U.S. is given a very low score for "publication of accounts" despite the fact that detailed accounts of SBC's local access related-costs are made publicly available and the fact that the original ECTA study states that the highest possible score of "10" should be given in such instances.<sup>37</sup>

3.3.8 Perhaps most egregious is the CompTel-ALTS study's conclusion that U.S. local access rates are higher than rates in several other European countries. This claim appears to be based entirely on the "fact" that the average price for a DS1 circuit with an average distance of 2 km in the U.S. is \$6,972.<sup>38</sup> Critically, CompTel-ALTS does not provide the access prices used in the comparison. But even assuming the unstated European access prices that were (supposedly) used by CompTel-ALTS in the comparisons were accurate, the price CompTel-ALTS claims to be representative of U.S. access charges is grossly exaggerated. According to Teligen, the average price for such a circuit is approximately \$300 per month – or \$3600 per annum.<sup>39</sup>

#### ***4. Even Viewed Together, The AT&T-SBC And The MCI-Verizon Mergers Will Not Detrimentially Impact Competition In The Singapore Telecommunications Market***

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 33. Further, under U.S. law, SBC is required to 'impute' the costs of its special access into its retail sales. See 47 U.S.C. § 272(e). Pursuant to its statutory authority, the FCC has required SBC and other carriers to keep detailed accounting records and has the right to audit those records. See 47 U.S.C. § 220. For a discussion of this and other relevant aspects of U.S. access regulation, see Annex 4 of our Application.

<sup>36</sup> CompTel-ALTS Study at 34. The Communications Act generally forbids any carrier from engaging in "unreasonable discrimination" (47 U.S.C. §202(a)) and specifically forbids SBC and other Bell companies from discriminating in favor of any affiliate (which AT&T would be after the merger) with respect to "the provision or procurement of goods, services, facilities and information, or establishment of standards." U.S.C. 272(e)(1). For a discussion of this and other relevant aspects of U.S. access regulation, see Annex 4 of our Application.

<sup>37</sup> Compare CompTel-ALTS Study, Annex A with ECTA Study at 17.

<sup>38</sup> CompTel-ALTS Study at 34.

<sup>39</sup> Teligen's figure presumably reflects the discounts available to SBC special access customers. Notably, the Teligen figure matches the average DS1 prices that SBC has previously cited in FCC proceedings. See Comments of SBC, Carto Dec., Graph B (filed before the FCC, WC Docket No. 04-313, Oct 4 2004).

- 4.1 SingTel asserts that this transaction must be reviewed "simultaneously" with the Verizon-MCI transaction because SBC and Verizon will effectively conspire.<sup>40</sup> The notion that there will be post-merger co-ordination between the merged companies defies common sense.
- 4.2 AT&T's principal assets are its national and international customer base and the facilities it uses to serve these customers. It is these assets that are the driving force behind the AT&T-SBC merger in: SBC is investing \$16 billion to acquire AT&T precisely because it seeks to compete *more* effectively for businesses with national and international operations, including those with operations in the 30% of the country served by Verizon. Large and small customers alike located outside SBC's region – including GTS customers – constitute profitable customer segments, and SBC has every intention of making the most of its considerable investment by aggressively pursuing them.
- 4.3 In addition, numerous characteristics of today's business marketplace make coordination or collusion at the retail level highly unlikely. First, the needs of GTS customers are heterogeneous.<sup>41</sup> Second, the stakes are high on each bid, with customers making the most of competition by confidentially negotiating with suppliers, combining or dividing requirements and using long contract terms (with "reopeners," benchmarking, or other clauses).<sup>42</sup> Third, the type of collusion hypothesized by the complainants simply makes no economic sense in this context. AT&T and MCI are only two of many established GTS providers. Any attempt by these two companies to charge supracompetitive prices for GTS would simply divert customers to one of the many alternative GTS providers with the capacity and incentive to provide competitive rates.

## 5. *The Market For IASP Services Will Remain Highly Competitive Post Merger*

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<sup>40</sup> SingTel ¶¶ 4.13, 5.2.

<sup>41</sup> See generally U.K. Office of Fair Trading, *Mergers, Substantive Assessment Guidance*, § 4.14 (May 2003) ("product homogeneity" is a "key element[]" in giving the firms the ability to align on terms of coordination"); *Guidelines on the Assessment of Horizontal Mergers Under the Council Regulation on the Control of Concentration Between Undertakings* (2004/C 31/03) § 45 ("It is also easier to coordinate on a price for a single, homogenous product, than on hundreds of prices in a market with many differentiated products."); United States Department of Justice/Federal Trade Commission, *Horizontal Merger Guidelines* § 2.11 ("[R]eaching terms of coordination may be limited or impeded by product heterogeneity or by firms having substantially incomplete information about the conditions and prospects of their rivals' businesses, perhaps because of important differences among their current business operations. In addition, reaching terms of coordination may be limited or impeded by firm heterogeneity, for example, differences in vertical integration or the production of another product that tends to be used together with the relevant product.").

<sup>42</sup> See generally U.K. Office of Fair Trading, *Mergers, Substantive Assessment Guidance*, § 4.14 (May 2003) ("Market transparency . . . stability and symmetry (of size and cost) of the relevant firms are key elements in giving the firms the ability to align on terms of coordination"); *Guidelines on the Assessment of Horizontal Mergers Under the Council Regulation on the Control of Concentration Between Undertakings* (2004/C 31/03) § 50 ("[T]ransparency may be low in a market where transactions are confidentially negotiated between buyers and sellers on a bilateral basis."); United States Department of Justice/Federal Trade Commission, *Horizontal Merger Guidelines* § 2.12 ("If orders for the relevant product are frequent, regular and small relative to the total output of firm in a market, it may be difficult for the firm to deviate in a substantial way without the knowledge of rivals and without the opportunity for rivals to react. If demand or cost fluctuations are relatively infrequent and small, deviations may be relatively easy to deter. . . . Where large buyers likely would engage in long-term contracting, so that the sales covered by such contracts can be large relative to the total output of a firm in the market, firms may have the incentive to deviate.").



5.1 The comments submitted by BT and SingTel do not provide any factual basis that would warrant the IDA conducting any detailed investigation into post-merger competitive conditions in the provision of Internet Backbone/Internet Access Service Provider ("IASP") services. The merger will have no adverse competitive effects in the provision of IASP services, or in the provision of ISP services, either in the U.S. or globally. The Consolidation will not result in competitive harm in the U.S., which is the only region in which the Applicants are horizontal competitors in the provision of IASP services. It then follows that there can be no competitive harm within a larger regional or global market, where numerous other significant competitors exist, where the Applicants are *not* horizontal competitors, and where the market shares of the Applicants are thus even lower than the relatively low shares they have, based on North American traffic data.

5.2 BT and SingTel make unsubstantiated, and erroneous, assertions that the transaction will adversely affect competition among IASPs. As discussed and demonstrated below Internet connectivity is not concentrated today, and will remain unconcentrated after the SBC/AT&T transaction; moreover, the Verizon/MCI transaction only marginally changes the analysis, given the low shares of North American traffic by those merging parties. While these facts are not "Singapore specific" they nonetheless are relevant to IDA's analysis of the claims that have been made in the public comments because the Applicants' Internet connectivity services are primarily U.S.-centric.

### 5.3 *The Merger Does Not Alter The Number of Tier 1 Competitors*

5.3.1 SingTel asserts that there will be a "contraction of Tier 1 IASP status reveals a significant contraction in players in the Internet access provider market" by virtue of the SBC/AT&T transaction as well as the Verizon/MCI transaction.<sup>43</sup> Under the generally accepted understanding of "Tier 1" – that is, an IASP that does not pay any other IASP for connectivity at a specific set of network access points, this statement is simply not true – there will be *no* reduction in the number of Tier 1 providers of IASP services. SBC is not a Tier 1 IASP, as it is not peered with many of the major U.S./Global IBPs – Qwest; Sprint; MCI; Global Crossing; AT&T. Rather, SBC continues to pay Sprint for transit services so that SBC customers may reach those portions of the Internet that they cannot reach through SBC's peering relationships. Verizon likewise is a transit customer of two Internet backbones, and therefore it, too, cannot be considered a Tier 1 IASP.<sup>44</sup>

5.3.2 Thus, the SBC/AT&T transaction, whether considered alone or in conjunction with the Verizon/MCI transaction, leaves unchanged the number of Tier 1 IASPs. As a consequence, the "contraction" asserted by SingTel simply will not occur.

### 5.4 *The IASP Market Structure Will Remain Unconcentrated Post Merger*

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<sup>43</sup> SingTel Comments, p. 10, ¶ 4.11

<sup>44</sup> Kende Declaration, submitted by Verizon in WC Docket 05-75, [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6517495231](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517495231), at ¶ 3.

5.4.1 The Applicants have calculated a theoretical "maximum" measure of concentration, using North American shares of Internet traffic carried. Following the U.S. Department of Justice and Federal Trade Commission Merger Guidelines, the Applicants have calculated the Herfindahl-Hirschman Index ("HHI") to be approximately 750 points today. With the SBC/AT&T transaction, the HHI would increase to about 900 points, still below the very low 1000 point threshold that delineates an unconcentrated market.<sup>45</sup> The Applicants are therefore perplexed how SingTel can claim that the "market for IASP services is far more concentrated in the United States than anywhere else in the world."<sup>46</sup>

5.4.2 Moreover, there will not be two "super Tier 1" IBPs from this transaction, as the combined Verizon/MCI will not even be the second or third largest carrier of Internet traffic in North America. SBC/AT&T combined will account for less than 20% of North American traffic, and Verizon/MCI would be significantly smaller – less than 10%, based on information contained in their FCC filings.<sup>47</sup> Thus, whether IDA considers the share of SBC/AT&T alone (18.5%), or cumulates it with the share of Verizon/MCI (less than 10%), at roughly 28% of North American traffic, their total combined share will be far less than the 50% share necessary to credibly threaten global de-peering. It is thus wholly incorrect for BT to claim, as it does, that the transaction would create one or more "Super Tier 1's".

5.4.3 There are at least 6 fully peered backbones: AT&T, Global Crossing, Level 3, MCI, Qwest and Sprint. In addition there are at least 7 other significant backbones that are all fully peered today with AT&T: Cogent, Deutsche Telekom, France Telecom/Equant, NTT/Verio, Savvis, Teleglobe and Telia. There are, in addition, numerous non-U.S. based IASPs, such as BT/Infonet, Cable & Wireless, Telstra/Reach, Telefonica, and SingTel that carry significant amounts of traffic within their home regions, and between those regions and the rest of the world, including Asia.

#### 5.5 *The Addition of SBC Traffic to the AT&T Backbone Will Not Create Any Ability To Refuse, Degrade or Raise the Price of Internet Connectivity*

5.5.1 The Applicants, post merger, will not have the ability to engage in either widespread ("global") or specific ("targeted") de-peering of IASPs that are currently peered with AT&T.

##### *De-Peering Against All IASPs Is Not Feasible*

5.5.2 Post-merger, the market share of the Applicants in the provision of Internet Backbone services will be far too low to enable the combined company to engage in widespread, or "global", de-peering of all other IASPs. The theory of such "global" de-peering requires, as a necessary condition, that the de-peering backbone control a *majority* of uniquely-accessible end-users. If

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<sup>45</sup> Schwartz Declaration submitted by SBC in WC Docket 05-65, [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6517309104](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517309104), at ¶ 22 and Table 2. Given Verizon's and MCI's small shares of North American traffic, the post-merger HHI remains below 1000 even after accounting for the Verizon/MCI combination.

<sup>46</sup> SingTel Comments, at 20, ¶5.30.

<sup>47</sup> Reply Declaration of Dr. Michael Kende filed in Docket WC 05-75, [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6517615583](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517615583), at ¶8 and Annex A.

that backbone controls less than 50% of such end-users, its quality would suffer more than rivals from global de-peering and it would thus lose market share. Thus, any attempt at global de-peering would not be profitable and, correspondingly, the threat to engage in global de-peering would not be credible. By the same analysis, conduct that approaches global de-peering likewise would not be credible – given the low shares of the Applicants, there will be numerous Tier 1 IASPs, who will simply have too large a share of total Internet traffic to be de-peered. Further, both now and post-merger, Tier 1 IASPs in the U.S. such as AT&T require peering and transit services from IASPs outside the U.S., where AT&T is a relatively small IASP. The commercial dependency, and the attendant risk of retaliation for any threat to de-peer, also eliminates the incentive and ability for any party to engage in global de-peering.

5.5.3 While SingTel correctly notes that the U.S. and the EU have rejected or modified prior Internet Backbone/IASP mergers, those prior mergers presented vastly different facts. In *WorldCom/Sprint*, for example, the regulators were presented with the merger of the number 1 and 2 Internet backbones at that time, with individual shares of 37% and 16%, respectively, and thus a combined share over 50%.<sup>48</sup> Today, however, the leading backbone has a mere 12.5% share of traffic, and the number two backbone is of roughly equal size.<sup>49</sup> Combined, SBC/AT&T would have under 20% share of North American traffic.

*De-Peering Against Selected IASPs Is Not Feasible*

5.5.4 It is likewise not credible for the Applicants, post-merger, to threaten to de-peer selected IASPs that are, today, peered with AT&T.

5.5.5 The economic theory of de-peering selected competitors ("targeted de-peering") has, as a necessary condition, that the supposed victim not be able to reach the de-peering IASP via another route. Where the supposed victim can reach the de-peering IASP's customers via a transit agreement with another Tier 1 IASP that is peered with the de-peering IASP, targeted de-peering cannot be successful. It is undisputed that only a single, competitively priced, transit agreement with a Tier 1 IASP is required to achieve universal connectivity. As demonstrated above, the transaction has no impact at all on the number of Tier 1 IASPs. Further, because there will remain, post-merger, numerous significant-sized Tier 1 providers that will have to be peers of the Applicants (because, as explained, near-global de-peering cannot credibly be threatened), all of whom can provide universal connectivity, multiple transit opportunities will continue to exist and therefore transit will remain competitively priced.

5.5.6 As a second point, the Applicants note that targeted de-peering requires the de-peering backbone to enjoy a position of dominance vis-à-vis its rivals, otherwise the loss of quality suffered by the de-peering backbone relative to the remaining *non-degraded backbones* is likely to outweigh the quality gained vis-à-vis the degraded/de-peered target. As the European Commission noted in *WorldCom/Sprint*, "a non-dominant network would need its competitors and their customer base too much to risk degrading the quality of its connectivity offering."<sup>50</sup> SBC/AT&T, at less than 20% share of North American Internet traffic (and at an estimated 10%

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<sup>48</sup> U.S. v. WorldCom and Sprint, Complaint ¶ 32.

<sup>49</sup> AT&T and Level 3 have been alternating the top spot over the past two years.

<sup>50</sup> *MCI WorldCom/Sprint* Decision ¶154.

of global Internet traffic) is simply too small to undertake the risk of selectively degrading connectivity. This is amply demonstrated by AT&T's own experiences pre-acquisition.

5.5.7 AT&T today peers settlement-free with 15 other IASPs, including some 1/10th its size (as measured by capacity of peering connection), or 1/13<sup>th</sup> its size (as measured by volume of traffic exchanged). If it were profitable for AT&T to charge these smaller rivals for connectivity, it would have done so<sup>51</sup>. Indeed, even with 37% share at the time of the Sprint transaction, MCI WorldCom found it economically necessary to accept at least 11 other IBPs as peers.<sup>52</sup> Again, even if the IDA were to assume some form of "coordination" by SBC/AT&T with Verizon/MCI, (a wholly-inappropriate assumption), the four companies' combined share of less than 30% is still too small to enable them to credibly threaten smaller IASPs with selective de-peering. The transaction simply does not create a dominant position, and thus any attempt at targeted de-peering would not be profitable.

## 5.6 *Transit Prices Will Not Increase*

5.6.1 SingTel notes that the price for Internet transit services has declined markedly over the past few years. This observation is consistent with data available to the Applicants, and is also consistent with the availability of transit services from multiple, large Tier 1 IASPs, who compete effectively against one another for customers such as SingTel. Given the total lack of impact on Tier 1 IASPs from this transaction, there can be no potential that transit prices could increase as a consequence of the transaction.

## 5.7 *SBC Cannot Leverage Its Position In Its Thirteen State Region In The U.S. As A Provider Of Local Access Lines (Special Access) To Discriminate In The Provision Of IBP Services*

5.7.1 With respect to the issue of leveraging by SBC of its position in the U.S. as provider of special access, the concerns expressed to the IDA are simply not relevant when the customer has significant levels of traffic, whether that customer is an ISP, a content provider, or a business with significant voice and data requirements. Such customers are likely to have bandwidth requirements justifying the deployment of an OC-n level loop (155 Mbps). There are multiple fibre facility providers who operate networks within reach of the majority of such high-bandwidth-demand traffic throughout SBC's 13-state service region. The FCC has determined that any of these multiple fibre-based providers can profitably deploy OC-n loops to reach customers with OC-n levels of demand.

5.7.2 Thus, neither SBC nor a combined SBC/AT&T could succeed in discriminating in favour of its own backbone services for such customers. Further, as SBC and AT&T have demonstrated in their Public Interest Statement and Joint Opposition filed at the FCC, applying the FCC's own analysis demonstrates that in the large majority of cases, there is sufficient alternative competitive supply (both actual and potential) of T-3 (45 Mbps) and even T-1 (1.5 Mbps)

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<sup>51</sup> See generally, Schwartz Reply Declaration, [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6517601199](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517601199), at ¶¶ 27-32.

<sup>52</sup> This number is derived by subtracting from the 17 "top level" networks identified by the Commission, the 4 the Commission added and the 2 merging parties. (EC *WorldCom/Sprint* decision, ¶¶ 104-105)

connectivity to constrain SBC's ability to discriminate in favour of an affiliated entity<sup>53</sup>. Finally, in the remaining, minority situations, SBC's conduct and prices in provisioning special access remain fully subject to FCC regulatory control, including whatever rules the FCC adopts in the two pending proceedings that are examining these issues.<sup>54</sup>

## 5.8 *Other Claims Are Not Related to the Transaction*

5.8.1 Both BT and SingTel make several additional arguments about Internet connectivity that have nothing at all to do with the transaction. SingTel, for example, complains that non-U.S. ISPs today are required to acquire the full international leased circuit to the U.S. and bear the cost of the entire connection.<sup>55</sup> This, however, is a complaint about pre-merger commercial issues, in relation to which the merger will have no impact. When an IASP brings a low ratio of traffic to an Internet Exchange Point, normal commercial practices dictate that the IASP should pay for its bandwidth and transit costs. Thus, it is appropriate for SingTel, which brings a low ratio of traffic to the U.S., where it is a relatively small ISP, to pay for such costs. Indeed, the reverse is just as true for AT&T Singapore, which brings a low ratio of traffic to Singapore because it is a relatively small ISP here. Consequently, AT&T Singapore pays for transit arrangements to [CONFIDENTIAL INFORMATION REMOVED] in Singapore [CONFIDENTIAL INFORMATION REMOVED], and pays the full international circuit costs on its network to bring the traffic to these IXPs.<sup>56</sup> Thus, AT&T Singapore faces the same commercial requirement in Singapore as SingTel complains of in the U.S.. Similarly, when AT&T Australia connects at the IXP of Optus (a 100% owned subsidiary of SingTel), AT&T pays its full international circuit cost plus a transit cost. Worthy of note is that SingTel uses the same industry-standard commercial practices vis-à-vis its customers that it claims to be an abuse of market power in the U.S.

5.8.2 Similarly, SingTel's unremarkable comment that a non-U.S. ISP must pay to U.S. Tier 1 IASPs a transit fee for traffic delivered to U.S. POPs is likewise a statement of pre-existing facts, in relation to which the merger will have no affect. As SingTel itself notes, transit prices have been dropping steadily and dramatically, and thus paying transit is simply nothing more than the classic "make vs. buy" decision that every company weighs in determining how to allocate its resources. Where, as here, the "buy" alternative is attractively priced as a result of competition,

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<sup>53</sup> See discussion in Paragraph 3.6 above, and accompany notes.

<sup>54</sup> See *In re 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*, Order and Notice of Proposed Rulemaking, WC Dkt. No. 05-25, 2005 WL 235782 (rel. Jan. 31, 2005) ("*Special Access NPRM*"). See also, *In re Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, 16 FCC Rcd. 20896, 20897, ¶ 1, n.3 (2001) ("*Special Access Performance Measures NPRM*") (we will examine whether incumbent LECs are discriminating in "favor of [their] own retail operations" with respect to "special access provisioning").

<sup>55</sup> SingTel Comments at 4-5.

<sup>56</sup> [CONFIDENTIAL INFORMATION REMOVED] SBC has no immediate plans to alter its peering arrangements post-closing. See Declaration of Christopher Rice. [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6517601189](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517601189) at ¶ 10

and the transaction itself will not reduce that competition, there is no basis for regulatory intervention.

## 5.9 *The Transaction Will Not Result in Market Share over 25% In Any Internet Market*

5.9.1 BT accepts that the Applicants combined share of both North American and global Internet traffic is well below the 25% threshold, but asserts, without substantiation, that "2005 forward looking calculations of AT&T/SBC combined market shares for Internet Connectivity/Internet Backbone services show that it is above 25%".<sup>57</sup> The Applicants are unaware of any data sources that would support BT's contention; to the contrary the data available to the Applicants show:

1. AT&T's share of North American Internet traffic was approximately 12.5% at the end of both 2003 and 2004;<sup>58</sup>
2. As of the end of 2004, SBC's actual North American Internet traffic was approximately 0.46 as large as AT&T's actual traffic, which means that SBC's share of North American Internet traffic was approximately 5.8%;
3. The resulting combination of SBC and AT&T will be under 20% of North American Internet traffic, and thus is, and will remain, well under 25% of North American traffic.
4. It is not evident that shares of North American Internet traffic are relevant to an analysis of the potential impact of the transaction on customers accessing the Internet in Singapore, as such customers presumably will desire access to the entire Internet, not just the portion of websites and email addresses in North America. Thus, the more relevant measure would be the Applicants' share of global Internet traffic. While the Applicants' do not have any data on traffic shares on a global basis, their combined share of *global* Internet traffic will be far less than their combined shares of *North American* traffic, as both SBC and AT&T are U.S.-centric providers of Internet Backbone services, and there are many large non-U.S. centric providers of such services. The Applicants' estimate that their combined share of global Internet Backbone traffic is estimated to be in the range of 10% or less.

Thus, at least as to markets for IASP services, the Applicants' combined shares will be well below the 25% threshold indicated for Long Form filing. At this low level the presumption is that the Applicants do not have market power for IASP services in the U.S. nor could they in Singapore. The Applicants submit that there is no credible basis on which this presumption may be questioned.

## 6. *Rationale for Exemption from the Long Form Filing*

6.1 Sub-section 3.5 of the Consolidation Guidelines provides that an applicant may request an exemption, among others, when compliance with the requirements of the Long Form

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<sup>57</sup> Comments of BT, p. 7.

<sup>58</sup> The 2003 share is based on RHK traffic study data, as referred to in the ¶22 and Table 2 of the Schwartz Declaration, *supra*. The 2004 share data were submitted by Verizon/MCI in the FCC's WC Docket No. 05-75 and are based on a separate RHK traffic study, as reflected in ¶8 and Annex A of the Kende Reply Declaration, *supra*.

Consolidation Application is not necessary to ensure that a Consolidation would not substantially lessen competition in Singapore (Sub-section 3.5(c)) or would be unreasonably burdensome (Sub-section 3.5(b)).

- 6.2 In relation to a Non-horizontal Consolidation, IDA's policy rationale for requiring the Applicants who have a greater than 25% market share in any telecommunication market whether or not located in Singapore, to use the Long Form Consolidation Application is to ensure that the post-Consolidation entity is not able to leverage its market power outside of Singapore to substantially lessen competition in any telecommunication market in Singapore.
- 6.3 As demonstrated in our submission of June 10<sup>th</sup> 2005 and in this submission, there will be no possibility for the merged entity to leverage any market position outside Singapore into any market in which the Applicants operate in Singapore.
- 6.4 We submit that the information provided to IDA pursuant to the Short Form Consolidation Application will allow IDA to make a determination that the proposed transaction will not substantially lessen competition in any telecommunications market in Singapore and will not harm public interest; and, on this basis, a requirement to complete the Long Form Consolidation Application would be unreasonably burdensome in relation to both the information required to be submitted and the time that the IDA will be required to dedicate to the review of the Consolidation.
- 6.5 We submit that the proper approach is for IDA to balance the burden involved in requiring the Applicant to provide the extensive information required for the Long Form Consolidation Application against the likelihood, or probability, of the Consolidation having an anti-competitive impact on the telecommunications market in Singapore. When this test is applied, it is clear that it is inappropriate to require the filing of a Long Form Consolidation Application.
- 6.6 Further we submit that unnecessarily burdensome procedures only disserve the IDA's goals of making Singapore the preferred hub of ASEAN telecommunications and commerce, and potentially create an environment of regulatory uncertainty which will discourage investment.

## 7. ***Conclusion***

- 7.1 In light of the foregoing and the information the Applicants' submitted in their original Application and the further information submitted on 13 July 2005, we submit that the information provided to IDA pursuant to the Short Form Consolidation will be sufficient to enable IDA to make a determination that the proposed Consolidation will not substantially lessen competition in any telecommunication market in Singapore and will not harm the public interest.
- 7.2 Accordingly, we respectively request IDA to exercise its discretion under section 26(5) of the Telecommunications Act (Chapter 323), sub-section 1.7(a) of the Telecom Competition Code 2005 ("Code 2005") and sub-section 3.5 of the Telecom Consolidation Guidelines to grant the parties exemption from filing the Long Form Consolidation Application, and to grant consent to their filing of the Short Form Consolidation Application.

We express our gratitude to IDA for considering our application and any assistance that it may render in this regard. If you require any further information, please do not hesitate to contact us.

Yours faithfully

**Vincent Ma**  
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**Services Singapore Pte. Ltd.**