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Ms. Eileen Chia
Director (Economic Regulation)
Info-communications Development Authority of Singapore
8 Temasek Boulevard, 14-00 Suntec Tower Three
Singapore 038988

Re: Comments on the Proposed Advisory Guidelines Governing Applications For License Assignments or Changes in Ownership of a Licensee in Connection with a Proposed Consolidation.

Dear Ms. Chia:

On behalf of AT&T Asia/Pacific Group Ltd. and its parent, AT&T Corp. ("AT&T"), I am pleased to submit the following comments on the Info-communications Development Authority of Singapore ("IDA") *Proposed Advisory Guidelines Governing Applications For License Assignments or Changes in Ownership of a Licensee in Connection with a Proposed Consolidation*, issued on 16 October 2001 ("*Proposed Guidelines*"). AT&T applauds the Singapore government and the IDA for its progressive market-opening policies and for continuing to solicit input from the industry and the public to provide guidance on important telecom decisions. AT&T's subsidiary, AT&T Worldwide Telecommunications Services Singapore Pte Ltd., provides Managed Data Network Services and other value-added network services in Singapore. Additionally, Concert Global Networks (Singapore) Pte Ltd., a subsidiary of Concert B.V., a global venture of AT&T and BT, holds a Facilities-Based Operator license to operate and provide telecommunications services in Singapore.

Mergers, consolidations and other changes of control are a normal and necessary aspect of the operation of competitive markets. As the *Proposed Guidelines* recognize, they "generally result in the production of the optimal quantity of each product, push prices toward cost, and promote the most efficient methods of production." (Section 2.1.) While prior regulatory review is required to ensure that those limited consolidations that are likely to harm competition are identified and addressed, the large majority of consolidations are wholly beneficial in their effects and require no regulatory intervention. Moreover, a major priority in today's highly dynamic global telecommunications marketplace should be the avoidance of unnecessary regulation.

Accordingly, to ensure that Singapore remains attractive to telecommunications investment, transactions should not be delayed or impeded by unnecessary prior review or by unreasonably burdensome information requests.

While the Proposed Guidelines achieve many of their stated objectives of reflecting the "best practices" of the United States, the European Union ("EU") and Australia with regard to telecommunications industry merger review and enforcement (Section 3.1), there are certain elements that would require an onerous and lengthy review of transactions that could have no possible adverse impact on competition. AT&T therefore describes below several proposed amendments that would exempt *pro forma* transactions and those involving licensees with *de minimis* revenues, and reduce the information and documentation required for all applicants. AT&T also urges the IDA to revise the presumption that a 35 per cent market share is sufficient to confer market power. This low threshold is not supported by antitrust precedent and would provide more onerous treatment of U.S. carriers and their affiliates in the Singapore market than is applicable to Singapore carriers and their affiliates in the U.S. market.

The IDA Should Include a *De Minimis* Exception: The *Proposed Guidelines* apply to *all* consolidations involving a license assignment or change in ownership, with no exception for licensees having *de minimis* revenues in Singapore. Although waivers of filing requirements may be requested under Section 3.5, the proposed requirement for "specific and compelling" justification for such a request indicates that such waivers would not be widely available.

In contrast, U.S. merger pre-notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. Section 18a, apply only where the acquired stock or assets are worth more than $U.S. 200 million, or where one party has at least $U.S.10 million and the other at least $U.S.100 million in annual net sales or total assets and the acquired stock or assets are worth at least $U.S. 50 million. Similarly, EU notification requirements apply to mergers involving parties with combined worldwide sales of 5 billion Euros ($US 4.6 billion), at least 250 million Euros ($US 234.5 million) sales each within the EU and not more than two-thirds of each party's EU sales coming from within the same EU Member State.[1] While U.S. transfers of control of telecommunications licensees also require approval by the Federal Communications Commission (FCC), the FCC does not require the submission of the extensive information and documents that the IDA proposes here.

The IDA should avoid hampering competition by imposing unnecessary filing and approval requirements on small new entrant licensees that have no ability to cause competitive harm through consolidation. The burden and delay caused by such regulation would far outweigh any possible benefit to the public interest. AT&T suggests that a *de minimis* exception should allow consolidations involving licensees with annual revenues in Singapore under $U.S. 25 million to be consummated without any IDA pre-approval requirement. Instead, the parties should be required to provide notification of the transaction within 30 days.

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[1] Alternatively, the EU requires (i) combined worldwide sales of the parties of more than 2.5 billion Euros ($US 2.3 billion), (ii) each of the two parties to have EU sales of more than 100 million Euros ($US 92.2 million); (iii) in each of at least three EU Member States the parties combined turnover exceeds 100 million Euros, (iv) in each of the same three EU Member States each of at least two parties has individual revenues exceeding 25 million Euros, and (v) not more than two-thirds of each party's EU sales come from within the same EU Member State.

The IDA Should Not Require Prior Approval for *Pro Forma* Assignments and Transfers of Control: To avoid subjecting license assignments that have no possible adverse impact on competition to unnecessary review, the *Proposed Guidelines* also should include a clear exception for *pro forma* assignments and transfers of control. In the United States, the FCC allows *pro forma* assignments and transfers of control of international carriers without any prior approval requirement. Instead, assignees are required to provide notification of the transfer or assignment within 30 days. These *pro forma* assignments and transfers, as set forth in 47 C.F.R. Section 63.24(a), involve no change in the carrier's ultimate control.[2] On November 8, 2001, the FCC announced that it will similarly allow *pro forma* assignments and transfers of control of U.S. submarine cable landing licenses without any requirement for prior regulatory approval.[3]

Consolidation Applications Should be Less Burdensome: The IDA should also narrow the scope of the extensive information and documents that are required to be submitted with all applications. Required documents include the consolidation agreement and ancillary agreements (Sections 3.2.2, 3.2.3), a description, competitive assessment and public interest statement (Section 3.2.4), and various documentation, including "the Applicants' business plans for the current and two previous years; and a copy of any reports, studies or analyses prepared for the owners, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the economic entity . . .." (Section 3.2.5.)

Because the IDA can obtain any further information to review a particular transaction under the supplemental information procedures set forth in Section 5.1, the information and documents required from all applicants subject to the filing requirement should be the minimum necessary to identify the existence of a potential competitive concern. To this end, there should be no requirement for a competitive assessment where the parties are not horizontal competitors and neither party has market power. In such circumstances, as indicated by Sections 6.2 and 6.3, there is no potential harm to competition, and the IDA likely will wish to review such a transaction in more detail only in rare circumstances, if at all. Accordingly, if the IDA wishes to review a particular transaction of this type, it should request such information under the Section 5.1 supplemental procedures and thus avoid burdening all applicants with this requirement.

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[2] Section 63.24 (a) of the FCC rules treats the following transactions as *pro forma*: "(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; (2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; (3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; (4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including reincorporation in a different jurisdiction or change in form of the business entity); (5) Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or (6) Assignment of less than a controlling interest in a partnership."

[3] *See* FCC News Release, *Commission Adopts Streamlining Procedures for Submarine Cable Licenses*, Nov. 8, 2001.

There also is no reason to request business plans, reports, studies or analyses from any applicant, including those prepared for the owners, directors and executive officers, unless they concern competitive issues related to the transaction, which is the key criterion used by U.S. premerger notification rules. As presently drafted, the *Proposed Guidelines* would require the filing of extensive, irrelevant documentation that would be highly burdensome both for applicants to produce and for the IDA to review.

Confidential Treatment Routinely Should be Available When Information or Documents are Designated as Confidential: A further significant concern is that documents and information submitted in connection with applications routinely should be accorded confidential treatment and be exempt from public disclosure when they are designated by an applicant as being proprietary, or containing commercially sensitive information, or that disclosure would otherwise have a material adverse impact. This is the practice followed by the U.S. Department of Justice and Federal Trade Commission, which share merger enforcement authority in the United States, by the FCC, which also reviews U.S. telecommunications industry mergers, by the European Commission, and by merger enforcement authorities in other countries. Indeed, this is the only practical way to facilitate the expeditious production and review under tight deadlines of extensive documentation that is almost always commercially sensitive because it is not publicly available and describes such matters as business procedures, plans and assessment of market conditions. Any requirement for a specific demonstration that each item of information for which confidential treatment is sought merits such designation would greatly slow the review process and would be highly burdensome for applicants and the IDA alike.

Market Share Thresholds Should Not Impede Efficient Consolidation: As noted by the *Proposed Guidelines*, market share is only the starting point in any competitive analysis. (Section 6.2.3.) Market shares, by themselves, are not the sole determining factor of whether a firm possesses market power (*i.e.*, "the ability to unilaterally restrict output and raise prices") (Section 6.2.3.1.). Other factors, such as demand and supply elasticities, conditions of entry, and other market conditions, must be examined to define a relevant market, and to determine whether a particular firm can exercise market power in the relevant market.

Most importantly, the IDA should revise the presumption that a 35 per cent market share is sufficient to confer market power (Sections 6.2.3.1., 6.3.1.) The FCC has concluded, based on a review of extensive antitrust precedent, that no such presumption is warranted where market share is under 50 percent. (*See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23,891, 23,960 (1997) (creating "a rebuttable presumption that a foreign carrier with less than 50 percent market share in each of the relevant markets on the foreign end of a U.S. international route lacks sufficient market power to affect competition adversely in the U.S. market.").)

Thus, Singapore carriers with market shares under 50 percent in Singapore are eligible for nondominant treatment in the U.S. market. There is no basis for more onerous treatment of U.S. carriers and their affiliates in the Singapore market.

Thank you for the opportunity to submit our views on this matter. We would be pleased to respond to any questions concerning these comments.

Respectfully submitted,
C. A. Barton