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10 June 2005

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

Dear Sir/Madam,

APPLICATION UNDER SECTION 26(5) OF THE TELECOMMUNICATIONS ACT, SUB-SECTION 1.7(a) OF THE TELECOM COMPETITION CODE 2005 AND SUB-SECTION 3.5 OF THE TELECOM CONSOLIDATION GUIDELINES:

(1) REQUEST FOR EXEMPTION FROM FILING LONG FORM CONSOLIDATION APPLICATION

(2) REQUEST FOR CONSENT TO FILING SHORT FORM CONSOLIDATION APPLICATION

1. This application is filed by AT&T Worldwide Telecommunication 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").

2. Item 9 of the Short Form Consolidation Application indicates that in cases where an Applicant has a greater than 25% market share in any telecommunication market whether or not located in Singapore, the Long Form Consolidation Application should be used.[1] In this respect, the Applicants do not have greater than 25% market share in any telecommunication market in Singapore. Depending on the geographic and product market definition, SBC may have a greater than 25% market share in certain telecommunication markets *outside* of Singapore. However, all markets served by AT&T and SBC are competitive. Therefore, it is submitted

[1] See Annex 2 of the Telecom Consolidation Guidelines.

that there is no possibility of leveraging any foreign market power to substantially lessen competition in any telecommunication market in Singapore; thus the Consolidation does not raise any competition concern in any telecommunication market in Singapore.

3. Pursuant to 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, we hereby apply to IDA for an exemption from filing the Long Form Consolidation Application and request IDA's consent to file a Short Form Consolidation Application on the basis that compliance with the requirements of the Long Form Consolidation Application:

   (a) will not be necessary to ensure that the Consolidation does not substantially lessen competition in any telecommunication market in Singapore (see Sub-section 3.5(c) of the Telecom Consolidation Guidelines); and

   (b) will be unreasonably burdensome to the Applicants (see Sub-section 3.5(b) of the Telecom Consolidation Guidelines).

As demonstrated below, the Short Form Consolidation Application will provide the IDA with all information the IDA requires to substantively determine that the proposed Consolidation raises no risks of substantially lessening competition in any Singapore telecommunications market, and that it will be procedurally correct to grant this exemption request.

4. Description of the Consolidation

4.1. The Consolidation results in a change in the Indirect Ownership Interest of AT&T Singapore. The following is a description of the Consolidation.

4.2. SBC is a public-listed telecommunication service provider incorporated under the laws of the State of Delaware, USA. SBC, through its affiliates and partners, is a provider of voice and data telecommunication services for consumers and businesses including local, long-distance, DSL, wireless, data networks and satellite television primarily within its 13-state region in the USA.[2] SBC also holds a 60% economic and 50% voting interest in Cingular Wireless, which owns a mobile telephone network in the USA. Neither SBC nor any of its affiliates hold any licence issued by IDA in Singapore.

4.3. AT&T is a public-listed company incorporated under the laws of New York, USA. AT&T is a global provider of telecommunication services. AT&T Singapore is AT&T's operating company in Singapore. AT&T Singapore holds a Facilities-Based Operator Licence ("FBO Licence") issued by IDA. AT&T indirectly owns 100% of AT&T Singapore.

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[2] Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin. As discussed further below, SBC has multiple competitors in each of these 13 states, and is not the incumbent provider in important portions of certain states such as California, where, for example, Verizon is the incumbent provider in many parts of Los Angeles.

4.4. Under the terms of an agreement concluded between SBC and AT&T on 30 January 2005, SBC proposes to acquire the entire share capital of AT&T. As a result of the transaction, AT&T will become a wholly-owned subsidiary of SBC.

4.5. Upon completion of the acquisition by SBC of AT&T, SBC will hold 100% Indirect Ownership Interest in AT&T Singapore. (Please see chart for proposed structure.) As such, in relation to Singapore, the transaction will constitute a Consolidation under Sub-section 10.4.3(b)(i) of the Code 2005. For more information on the Consolidation, please see http://sbc.merger-news.com/.

5. Markets in Singapore in which the Applicants participate

5.1. The following is a description of the telecommunication markets in which the Applicants participate in Singapore, with data on market share.[3] Section 7 of this application contains an explanation of why the Consolidation will not give rise to any competition concerns in these markets in Singapore.

5.2. Global Telecommunication Services

5.2.1 In Singapore, AT&T, through its subsidiary, AT&T Singapore, provides global telecommunication services ("GTS"), primarily to multinational corporate customers. AT&T does not have precise information about its share of the global telecommunication services market in Singapore, a product market that by definition includes the provision of managed end-to-end services in multiple countries. However, for the reasons described below, AT&T believes that its share of the GTS market is certainly below **[Confidential Information]**, and likely below **[Confidential Information]**.

5.2.2 The Consolidation will not strengthen AT&T's position in relation to the GTS market in Singapore, as SBC does not participate in such market. Further, as described in Section 7 below, there is strong competition in the GTS market from large competing service providers operating on a global basis, including SingTel, BT-Infonet, FT-Equant, T-Systems, Cable & Wireless, MCI, Sprint, Global Crossing, Qwest, Colt, StarHub, Telecom Italia, Telstra and NTT.

5.3. International Communication Services

5.3.1 International communication services ("ICS") are the wholesale bilateral services provided by AT&T in the US (*i.e.*, AT&T Corp.) to carriers on a global basis. AT&T Singapore does not

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[3] Neither Applicant routinely collects comprehensive data on market share. In their filing with the US Federal Communications Commission ("FCC") related to this transaction, the Applicants said the following:

> [A] precise definition of the relevant markets and detailed analysis of the participants in those markets has not been made...as it is not necessary where the Commission can accurately assess the competitive impact of the merger without such a detailed analysis...This is particularly true where, as here, a merger party's present market share [is] an inaccurate reflection of its future competitive strength and a traditional analysis of market definitions and static market shares aimed at identifying potential anti-competitive effects of market 'concentration' therefore simply cannot measure the true impact of the merger on competition.

Merger of SBC Communications Inc. and AT&T Corp., Description of the Transaction, Public Interest Showing, and Related Documentation, FCC Docket No. 05-65, filed 21 February 2005, p.48.

provide such bilateral services in Singapore. AT&T provides ICS through correspondent relationships with Singapore international carriers for the delivery in the US of bilateral voice and data service between the US and Singapore. It is difficult to provide a figure for AT&T's share of ICS between Singapore and the US, given the highly competitive status of the route at the US end and the Singapore end, the ease of market entry, and the global availability of alternate routing options. Due to the increasing availability of these alternative routing arrangements, and as discussed further in Section 7, the ICS market is properly viewed as having a global geographic dimension.

5.3.2 The Consolidation will not strengthen AT&T's position in relation to the ICS market in Singapore, as SBC does not participate in such market. International traffic origination and termination services are provided through intermediary international carriers.

5.3.3 Further, as described more fully below in Section 7, focusing solely on services between the US and Singapore, there is clearly substantial competition and no barriers to entry at both the US end of the route and at the Singapore end. This is evident from the fact that AT&T has several major competitors on this route, including, among others, MCI, Sprint and IDT.

5.3.4 In any event, IDA has found this market in Singapore to be substantially competitive when it relieved the incumbent, Singapore Telecommunications Limited, from its dominant licensee obligation in respect of the markets in which AT&T participates in Singapore.[4] The Consolidation will not provide any basis on its own to alter IDA's conclusion that this market is substantially competitive.

5.4. <u>Enterprise Application Software Services</u>

5.4.1. SBC provides enterprise application software in Singapore through its subsidiary, Sterling Commerce (Singapore) Pte Ltd ("Sterling Commerce"). Enterprise application software can be defined as software that supports the business functions needed to manage a business effectively, such as supply chain management, business integration and trading in an e-commerce environment. Sterling Commerce also provides supporting services such as system management services and consulting services. None of these are licensable telecommunication services.

5.4.2. There is no overlap in Singapore between the services provided by Sterling Commerce and the telecommunication services provided by AT&T. In any event, none of the services provided by Sterling Commerce are licensable telecommunication services and this market falls outside of IDA's review jurisdiction.

5.5 <u>Roaming Services</u>

5.5.1 Through its wireless joint venture, Cingular Wireless, SBC has arrangements with Singaporean mobile phone operators which allow the customers of those companies to roam

[4] *See* IDA's decision dated 12 November 2003, concluding that the wholesale International Telephone Services Market is effectively competitive and that the retail International Telephone Services market is substantially competitive.

on Cingular mobile phone networks when in the US. The roaming agreements are negotiated with these operators on a global basis. AT&T does not provide roaming services.

5.5.2 SBC does not have data which would allow it to provide an accurate estimate of its share of roaming services provided to mobile operators in Singapore. Instead, the estimate of the market share is based on its share of the total number of domestic wireless subscribers in the United States in 2004. SBC estimates that there were approximately 175 million domestic wireless subscribers in the US in 2004, of which Cingular served 49 million, or approximately 28%. This estimate, and by extension SBC's share of this market, is by necessity only a rough approximation of what SBC's share of roaming services provided to Singaporean mobile phone operators might be, and should therefore be treated with some caution. In any event, given that there is no overlap between the Applicants' activities in this respect, there is, as a practical matter, no reason for concern about an impact on competition.

6. Markets outside of Singapore in which the Applicants may have more than 25% market share

6.1. AT&T does not have more than 25% market share in any market outside of Singapore.[5] The following is a description of the telecommunication markets outside of Singapore in which SBC may have more than 25% market share. In Section 7 we explain why the Applicants' participation in these markets will not give rise to any competition concern in Singapore.

6.2 US Domestic Wireline Services

6.2.1 AT&T provides a variety of telecommunications services in the US.[6] AT&T was declared non-dominant by the FCC in 1995.

6.2.2 SBC provides local exchange services in the US, mostly in a thirteen-state region. It serves approximately 45.8 million retail switched access lines in the US.[7] This figure represents approximately 25% of the total number of end-user switched access lines nationally.[8] More details concerning SBC's shares of access lines in its region are provided in Annex 1.[9]

[5] In the US domestic long distance wireline market, whereas AT&T had over 90% of the market in 1984, in 2005 AT&T's market share has fallen well below the 25% notification threshold set forth in Item 9 of the Short Form Application. In 2004, AT&T made the unilateral and irreversible decision to stop marketing long distance mass market services. There has been a predictable decline in AT&T's customer base, which has declined to about 20 million, as compared to over 38 million in 2003. AT&T's current long distance customer base is a fraction of over 105 million US households with telephone service. FCC, Wireline Competition Bureau, *Telephone Subscribership in the United States (Data through March 2005)* (rel. May 2005).

Additionally, both AT&T and SBC provide Internet Connectivity service, which include transit arrangements and peering arrangements with other Internet Backbone Providers on a global basis. As measured by Petabytes per month of Internet traffic at the end of 2004, a combined SBC/AT&T share of North America Internet traffic would be less than **[Confidential Information]**, and a combined SBC/AT&T share of Global Internet traffic would be less than **[Confidential Information]**. Under either measure, the Internet Connectivity activity of the parties in aggregate is well below the 25% notification threshold set forth in Item 9 of the Short Form Application.

[6] *See AT&T Non-Dominance Order,* 11 FCC Rcd. at 3294-95, 3303-05 ¶¶ 40, 58-62.

[7] As of June 30, 2004.

[8] The FCC reports that, as of June 30, 2004, there were 180.1 million end-user switched access lines in the US: *Local Telephone Competition: Status as of 30 June 2004*, at p. 1.

[9] This information is produced for the use of IDA only and not for the public record. Presentation of data in this way should not be taken to imply that individual states constitute a relevant product market.

6.2.3 The FCC has ruled that all the local markets in SBC's region are irreversibly open to competition.[10] SBC's competitors in local exchange service include competitive local exchange carriers, wireless providers, cable television operators providing voice telephony, and Voice over Internet Protocol services providers. Information regarding SBC's main competitors is attached in Annex 2.

6.3 US Domestic Wireless Services

6.3.1 AT&T has no wireless network in the US and participates in this market only through resale to a few thousand customers under a now-expired agreement.

6.3.2 Cingular has approximately 50 million subscribers, or approximately 28% of US domestic wireless subscribers. In addition, SBC estimates that the revenue with respect to domestic wireless services in the United States during 2004 was approximately $103 billion. Cingular had approximately $28.8 billion in domestic wireless service revenue in the United States during 2004,[11] which also gives Cingular an approximate share of 28% of domestic wireless services revenue in the United States. Cingular does not operate outside of the North America - Caribbean region.

7. **No Substantial Lessening of Competition in Singapore**

7.1 Premised on the facts set out in paragraphs 5 and 6, and for the reasons set out below, the Applicants submit that it is not necessary to comply with the requirements of the Long Form Consolidation Application in order for the IDA to adequately assess that the Consolidation does not substantially lessen competition in any telecommunication market in Singapore.

To summarise:

- Neither AT&T nor SBC has a greater than 25% market share in any Singapore telecommunications market, and as the IDA has recently concluded, these GTS and ICS markets in Singapore are competitive.[12]

- There is no overlap between the activities of the parties in Singapore and therefore the Consolidation will not result in an increase in market share in any of the markets in which the Applicants operate in Singapore.

- AT&T does not have a greater than 25% market share in any telecommunications market outside Singapore.

[10] *See, e.g., In re Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization to Provide In-Region, Interlata Services in California,* Memorandum Opinion and Order, 17 FCC Rcd. 25650 ¶¶ 1, 20, 12, 145 (2002).
[11] Based on 2004 pro forma unaudited financial statements (including AT&T Wireless revenues for all of 2004).
[12] *See* IDA's decision dated 12 November 2003 regarding Sin Tel's exemption request for the provision of International Telephony Services; IDA's decision dated 12 April 2005 regarding SingTel's exemption request for the provision of International Capacity Services.

- Although SBC has a 25% share or greater in certain US domestic wireline and wireless areas, there is no indication that post-merger it would have the ability or the incentive to use its market position in the US to advantage itself or AT&T unfairly in Singapore markets. All of SBC's markets are irrevocably competitive; further, federal statutes and FCC regulations explicitly prevent SBC from discriminating against unaffiliated carriers.

- Because AT&T has only a small share of the intensely competitive ICS and GTS markets in which it competes in Singapore and indeed globally, and because both competition and regulation for local access services in the US prevent SBC from conferring discriminatory preferences in favor of its affiliate operations, there is no foreseeable or immediate possibility for the merged parties to leverage any market position outside of Singapore to substantially lessen competition in any telecommunications market in Singapore.

Accordingly, we submit that the criteria set out in Sub-section 3.5(c) of the Telecom Consolidation Guidelines for grant of the exemption are therefore satisfied.

7.2 In the following paragraphs, we explain in more detail why SBC will not be able to leverage its position in relation to its 13-state region in any of the markets in which AT&T operates in Singapore, in particular, GTS and ICS services.

The Post-Consolidation Entity Will Not Be Able to Leverage SBC's Position in Its Thirteen-State Region in the US To Affect Competition in Singapore For GTS

7.3 *First,* the global GTS market is "very competitive, with operators competing hard on prices as well as improving their service offers."[13] GTS "go beyond the provision of simple services" such as international voice and data transport, and typically include high-valued "managed" services.[14] The multi-national corporations that purchase GTS are the most sophisticated of buyers and typically award contracts through rigorous "international tendering processes."[15]

7.4 Numerous carriers with substantial resources and established reputations – including SingTel, BT-Infonet, FT-Equant, T-Systems, Cable & Wireless, MCI, Sprint, Global Crossing, Qwest, Colt, StarHub, Telecom Italia, Telstra and NTT – compete for the business of these sophisticated multi-national corporations.[16] Each of these competitors can lay claim to certain advantages (and disadvantages) relative to the others, but no GTS provider is in a position to provide its services on the basis of just its own infrastructure. Although many competitors (including BT, Cable & Wireless, France Telecom-Equant, NTT, SingTel and T-Systems) are vertically integrated incumbent local access providers in their home markets, none owns local access facilities in all or even a significant minority of the locations needed to provide GTS. Such vertical integration has never in the past been thought to disable GTS suppliers that are not vertically integrated in a particular country from competing effectively for GTS business, and the merger of SBC and AT&T will not change that. Indeed, some successful competitors

[13] BRC Consultancy, *World Data Networks*, at 16 (Feb. 2004).
[14] *Id.*; *see also France Telecom/Equant*, Case No. Comp/M.2257 (Mar 21, 2001), ¶ 21 (*"France Telecom-Equant Decision"*).
[15] *France Telecom-Equant Decision*, ¶ 19.
[16] *See France Telecom-Equant Decision*, ¶ 37; *BT/Infonet*, Case No. Comp/M.3641 (25 January 2005), ¶¶ 12-13 (*"BT-Infonet Decision"*).

own *no* significant local access facilities in any country, and instead purchase all or virtually all local access from other carriers (including their GTS rivals).[17]

7.5 In this environment, regulators have consistently recognised that mergers of the type proposed by SBC and AT&T in no way threaten the breadth, vigour and durability of GTS competition. Thus, for example, the European Commission approved the mergers of France Telecom-Equant and BT-Infonet, rejecting claims that these firms would "leverage [their] alleged dominant position in [their] incumbent markets to engage in discriminatory behaviour when providing transatlantic connectivity services to competing suppliers."[18] Likewise, the 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 UK.[19]

7.6 *Second*, AT&T has only a small share of the GTS market. As described below, AT&T estimates that its share is below **[Confidential Information]**, and likely below **[Confidential Information]**. There are few third-party sources that attempt to estimate shares in the GTS market, and although the European Commission recently referred to a 2004 report issued by Ovum, the Commission noted that numerous competitors questioned the data and offered far lower estimates of market share.[20] An awareness of the Report's limitations can help provide an understanding of AT&T's estimate of its share of the GTS market.

7.7 The Ovum Report acknowledges that, because of data limitations, it cannot be used as a reliable indicator of AT&T's GTS market share.[21] Ovum reports as "GTS" revenues for AT&T *all* of AT&T's business services revenues (*i.e.,* approximately US $25 billion), including entirely domestic US services that are not provided to multi-national customers and that account for the vast majority of AT&T's business services revenues.[22] Because of this acknowledged over-inclusiveness, the Ovum report included the revenues that AT&T earns from its wholesale segments, government segments, and home market small business segments. AT&T estimates that its true GTS revenues (based upon EU and FCC GTS market definitions) are less than **[Confidential Information]** of the figure used in the Ovum report. In addition to grossly overstating AT&T's GTS revenues, the Ovum report acknowledges that it understates total industry GTS revenues, because it expressly considered only a regional European view of GTS revenues and did not include the GTS revenues of such prominent providers as Sprint, NTT, SingTel, China Netcom, Telefonica, and Telstra. Taking these factors into account, a realistic assessment of AT&T's share of GTS would be substantially under **[Confidential Information]** which accords with AT&T's own estimate of its presence on the market.

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[17] *See BT-Infonet Merger Decision*, ¶ 15 (noting that with increased emphasis on "managed" services, system integrators and other "virtual" operators have become increasingly active).

[18] *BT-Infonet Decision*, ¶ 18; *see also France Telecom-Equant Decision*, ¶¶ 41-49.

[19] *In re AT&T Corp., British Telecomm, et al.*, 14 FCC Rcd. 19140 ¶ 63 (FCC 1999) ("*AT&T-BT JV Order*") ("Market conditions make it highly unlikely that AT&T and BT could successfully engage in a strategy to raise rivals' costs.").

[20] *BT-Infonet Decision*, ¶ 14.

[21] *See. e.g.*, Ovum, *MNC Providers in Europe – 2004*, at 22 (Oct. 2004)("the Ovum Report") ("The [revenue] figure for Cable & Wireless includes significant amounts of non-MNC business, as does the figure for AT&T; consequently these are not directly comparable with the others.").

[22] *See also id.* at 18 ("because not all of the providers analyzed in this report are 'pure MNC' providers, we have attempted to use the numbers which most closely reflect the MNC business of these providers. However, in some cases [including AT&T], such a breakdown is not available and so the figures shown here do not fully reflect the MNC business of these providers").

7.8 Moreover, in Asia, local GTS providers such as SingTel have a competitive advantage as a result of cultural and linguistic differences, as well as an increasing regional preference for IP-VPN services in which SingTel is advanced.[23]

7.9 *Third,* the costs of obtaining access in SBC's 13-state region in the US constitutes only a small fraction of the overall costs of providing GTS. Only a small fraction of the global costs of local access for GTS are associated with the 13 SBC states, and the FCC actively regulates SBC's local access services. Indeed, the regulatory regime in place in the US provide an additional effective check on use of market position by US operators which would prevent SBC from advantaging AT&T at the expense of other global operators. A more fulsome description of the regulatory oversight in SBC's 13-state region is contained in Annex 4.

7.10 GTS involve customer locations "in at least two different continents and across a larger number of different countries."[24] In many instances, the customer seeking to purchase GTS – including US-based multi-nationals and non-US-based multi-nationals with US locations – has *no* need for connectivity in SBC's 13-state local access service areas. Unlike other GTS providers with nationwide home market local access facilities, including BT, Deutsche Telecom, France Telecom, and NTT, SBC is the incumbent local access provider in a minority of the locations in the United States (namely, parts of 13 states).

7.11 From a vertical integration perspective, the merger of SBC and AT&T presents no threat to competition and is, indeed, very similar to previously approved mergers such as BT-Infonet and FT-Equant, which not only involved incumbent local carriers but also combined actual GTS competitors. The facts bear this out. By one estimate, there are at least 6,600 companies worldwide that fit even a conservative GTS customer profile.[25] Overall, these 6,600 companies have approximately 1.55 million office locations that potentially need to be connected to a global network. Of these 1.55 million office locations, only about 295,000 are in SBC states.[26] This amounts to less than 19% of GTS-eligible locations, a statistic that is not materially different from percentage of GTS-eligible locations in the home markets of other vertically integrated GTS suppliers. For example, about 232,000 (or 15%) of GTS-eligible locations are in the UK, where BT is the incumbent local access provider, and about 173,000 (or 11%) are in France, where France Telecom-Equant is the incumbent provider.

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[23] http://www.telecomtv.com/news.asp?cd_id=5389

[24] *BT-Infonet Decision*, ¶ 8.

[25] AT&T obtained these figures from Dun & Bradstreet's Worldbase Database (March 2004). For US-headquartered companies, AT&T extracted from the database the companies that operate in at least *two* different countries and have more than 20 sites. For non-US-headquartered companies, AT&T extracted from the database the companies that operate in at least *three* different countries and that have at least 20 sites. If anything, this lower qualifying threshold over-weights the amount of US-headquartered companies on the list, and US-headquartered companies tend to have more sites in the US than outside the US. As such, this analysis is highly conservative as a proxy for global MNC site distribution because it does not include many non-US-headquartered companies that purchase GTS services to connect multiple locations in only two countries, and non-US headquartered companies tend to have more sites outside the US than in the US.

[26] This overstates the number of locations actually in SBC's incumbent local service territories, because a number of large cities in states otherwise served by SBC are not within SBC's service territories but instead are served by other incumbent carriers. This is particularly significant with respect to California, where Verizon serves much of Los Angeles, for example. Similarly, in Nevada, SBC services only a minority of access lines and is not the incumbent local carrier in Las Vegas, the major metropolitan area of the state.

7.12 In addition to the vertical integration impacts of this merger being indistinguishable from prior approved mergers, it also has a strikingly limited impact on GTS customers headquartered in Singapore. Singapore headquartered GTS customers have a greater number of sites within the AsiaPac region, and fewer sites within the US. Indeed, less than 4% of GTS eligible locations of Singapore-headquartered companies are in SBC states.[27] This reflects a minor component of a contract to meet the needs of a Singapore-headquartered GTS customer.

7.13 Further, of course, SBC is not the sole provider of local access even in the areas where it is the incumbent provider of local access. SBC faces substantial competition for special access service in the densest business districts where large multi-national GTS customers are most commonly located and for the types of very high bandwidth services typically purchased by GTS customers to serve their major facilities. There are literally 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. And even where bypass facilities do not exist today, that does not mean that rival GTS providers have no economic choice but to purchase local access from SBC. Rather, the FCC has found that it is economically feasible for competitive carriers to bypass SBC and deploy facilities to serve high-demand locations.[28] 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 US; it may terminate traffic via ISR at very low rates; and it may build its own facilities in the US and self-correspond."[29]

The Post-Consolidation Entity Will Not Be Able to Leverage SBC's Position in Its Thirteen-State Region in the US To Affect Competition in Singapore For ICS

7.14 ICS are the wholesale bilateral services provided by AT&T Corp. in the US to carriers on a global basis, including to bilateral correspondents in Singapore such as SingTel, StarHub and Mobile One. As stated above, AT&T Singapore does not provide any wholesale bilateral services.[30]

7.15 By contrast, AT&T Corp. does provide ICS through correspondent relationships with Singapore international carriers for the delivery of wholesale voice and data service between the US and Singapore, and countries beyond in either direction. The European Commission has recognized that due to the increasing importance of switched transit, dedicated transit, re-origination services, least-cost routing, VoIP and hubbing arrangements, ICS is properly analyzed without reference to a distinct origin and destination pair.[31] This is because it is often difficult to discern whether traffic is originating or terminating in a particular country, or

[27] AT&T obtained these figures from the Dun & Bradstreet Worldbase Database, applying the methodology described *supra* at note 25.
[28] *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*").
[29] *AT&T-BT JV Order*, ¶ 63.
[30] AT&T Singapore does not terminate ICS traffic from the US. AT&T Singapore does not originate ICS traffic to the US. AT&T Singapore has no plans to provide ICS services. Thus, there is no immediate or foreseeable manner in which the merger of SBC and AT&T could be leveraged to impact the non-existent and unplanned ICS activity of AT&T Singapore.
[31] *BT/AT&T*, Case No. IV/JV.15 (March 1999), ¶ 74.

merely routing through that country as a means of economic efficiency or quality optimization. In reflection of the vast array of alternative routing arrangements available for carrying traffic between two countries and often beyond, the EC has concluded that the proper geographic dimension of the ICS market is global.[32]

7.16 This range of competitive routing options is particularly apparent in the US and Singapore, both fully liberalized countries where there is intense competition for ICS at both ends. Singapore correspondents of AT&T can and do select from many substitutes when seeking to terminate traffic to any part of the US. First, there are the multiple US-based bilateral correspondents, the most established of which include MCI, Sprint, IDT, Teleglobe and Primus. Second, there are several carriers with well established ICS business that can hub traffic through their core network to the US, which include without limitation Telstra, Optus, KDDI, PCCW, BT and FT. Third, the Singapore carrier can utilize a spot-market rate to terminate traffic in the US from the many online traffic commodity traders, including Arbinet, Band-X or Omniface. Finally, given the low regulatory barriers to market entry in the US and the low cost of international bandwidth to the US, Singapore carriers can self-terminate international traffic in the US and establish interconnection arrangements for domestic US termination. SingTel USA, for example, holds a Section 214 license from the FCC authorizing it to do just that, should it so choose. With all these competitive choices, any Singapore carrier's routing decisions will be based on multiple factors, including network reliability, price and quality metrics.

7.17 It is difficult to provide an estimate of AT&T's share of the Global ICS market given the various traditional and non-traditional market participants, but one appropriate estimate is **[Confidential Information]**, based on AT&T's portion of total global traffic.[33] Similarly, given the range of market participants and routing options in the global ICS market, it is very difficult to provide a meaningful measurement for AT&T's provision of ICS solely between the US and Singapore. For example, any measurement will over-include ASEAN-country traffic that hubs through a Singapore correspondent en route to termination the US, and will under-include Singapore correspondent traffic that uses one of the many alternative routing options described above to reach the US.

7.18 The vertical integration of SBC's in-region switched access lines with AT&T's ICS service will have no harmful competitive impact on Singapore consumers or Singapore carriers that seek to terminate traffic in the US. Presently, when a Singapore correspondent of AT&T seeks to terminate traffic in the US, AT&T negotiates a nationwide averaged rate for the settlement of any imbalanced traffic coming to the US, effectively averaging termination in low cost and high cost regions. AT&T does not offer region-specific termination rates to its correspondents, neither to the regions where SBC operates nor to any other region. For many correspondents, the availability of a nationwide average rate is satisfactory and convenient for managing unit costs and customer billing systems. For correspondents who do seek de-averaged rates on a regional basis, other ICS competitors of AT&T do offer this option. Strikingly, route termination clearinghouses such as Arbinet or Omniface offer an ability to

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[32] *BT/Concert*, Case No. Comp/M.2642 (December 2001), ¶ 10.

[33] This is derived by dividing the **[Confidential Information]** minutes of traffic AT&T sent worldwide to correspondents in 2003, by the 198.3 billion minutes of traffic that Telegeography reports to have been sent worldwide in FY2003/4. *Telegeography 2005, Global Telecommunications Traffic Statistics and Commentary* at p. 12 (November 2004)

terminate traffic in major SBC-served cities such as Los Angeles, Chicago and Houston at rates as low as $.005/minute.[34]

7.19 Additionally, as described in Annex 4, the regulatory regime applicable to SBC in its 13-state region is effective to prevent discrimination in relation to call termination services.

7.20 With current ICS traffic termination supply options in SBC-region offering termination rates at a fraction of one cent per minute, and with robust competition at every segment of the communications path between the US and Singapore, there is no question that market forces will continue to ensure that Singapore carriers can terminate traffic in the US at a very favorable price and level of quality. There is no evidence of concern that the integration of SBC and AT&T will have a harmful impact on competition for ICS services in Singapore.

8. Rationale for Exemption from the Long Form Filing

There will be no ability for the merged entity to leverage its position in SBC's 13-state Region into the GTS or ICS markets in Singapore

8.1 In relation to a Non-horizontal Consolidation, IDA's policy rationale for requiring 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.

8.2 The Applicants recognise that IDA has authority to analyze all components of a merger reasonably related to the activities of a licensee under its jurisdiction. Nevertheless, the Applicants understand that IDA has discretion pursuant to an Exemption Request to determine that detailed review of specific components of a merger through a Long Form review is warranted only where the likelihood of anti-competitive effect is objectively "foreseeable and immediate," and not based on theoretical concerns. This proposition must be correct, for the competition authority should only be concerned with what is probable, and not with what is theoretically possible. It is IDA's established and laudable practice to intervene with regulation only where necessary, and by corollary, to refrain from regulatory intervention when the facts demonstrate that competition is not at risk.

8.3 There is a guiding standard concerning whether detailed review of certain components of a merger is necessary. In the June 2000 EC decision on the MCI WorldCom/Sprint Merger,[35] the European Commission held that in order for a merger in the US market to have an anti-competitive effect on a particular market in Europe, in addition to the existence of market power in one discrete US market, it must further be demonstrated that it is foreseeable and immediate that the merged entity will be able to extend that market power in the US market to a particular market in Europe[36]. In that decision, when examining the post-Consolidation US long distance market and the potential to extend any market power into a European international voice service market, the Commission concluded that "an extension [of a

[34] See, e.g., www.omniface.com/telecom.html; www.arbinet.com/voice.
[35] *MCI Worldcom/Sprint*, Case No. Comp/M.1741 (2000), ¶¶ 303-15.
[36] *Id.* at ¶ 313.

potentially joint-dominant position between AT&T and MCI Worldcom/ Sprint in a US long distance market] do not appear to be ***sufficiently foreseeable and immediate*** to grant the Commission jurisdiction under the Merger Regulation over this aspect of the transaction" (emphasis added). Although IDA operates pursuant to a Code that allows jurisdiction, the underlying rationale of the EC's decision is directly relevant to IDA's exercise of discretion to exempt: because from the preliminary review, it was not apparent that a high market share in the discrete US long distance market could translate and extend in any "foreseeable or immediate" way to a European market, there was no substantive basis for the European Commission to conduct a detailed review.

8.4 If IDA follows this established standard, and reasonably concludes that it is not "***sufficiently foreseeable and immediate***" that, post-Consolidation, AT&T Singapore will be able to leverage on the merged entity's greater than 25% market share in a discrete market outside of Singapore to substantially lessen competition in any telecommunication market in Singapore, then IDA should accordingly grant the exemption from use of the Long Form Consolidation Application.

8.5 As demonstrated in Section 7 above, 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.

8.6 The Applicant's are respectful of all countries' regulations relating to merger control and have submitted to the jurisdiction of the relevant national authorities where so required. Individual regulators are taking all steps to ensure that there are no competition concerns arising in their own national jurisdiction. (For example, competition authorities in Austria, Estonia, Norway, Germany, Russia and South Africa have now given their approval to the Consolidation.) In a case where the transaction clearly does not give rise to any competition concern in any telecommunication market in Singapore and there is no possibility of leveraging any foreign market power to substantially lessen competition in any telecommunication market in Singapore, there is no need for the IDA to conduct a Long Form examination of markets outside Singapore in order to ensure that the interests of the public in Singapore are protected.

8.7 In essence, the Consolidation only represents a change in the Indirect Ownership Interest in AT&T Singapore. To the extent that there is any indirect competitive impact that results from this transaction, it is only positive, in that AT&T Singapore (a non-dominant Licensee) will be in a financially stronger position to compete actively in the Singapore market to the benefit of Singapore end users. Moreover, the Consolidation will result in a combined entity that has greater financial and technical resources to innovate and create new products and services for consumers without any negative impact on competition or on the public interest in Singapore.

Submission of a Long Form Consolidation application will impose an Undue Burden on IDA and the Parties

8.8 For the reasons set out below, we submit that requiring submission of the Long Form Consolidation Application is unreasonably burdensome to the Applicants, thereby satisfying the criteria set out in Sub-section 3.5(b) of the Telecom Consolidation Guidelines for grant of the exemption.

8.9 We submit that the proper approach is for IDA to balance the burden involved in requiring the Applicants 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 telecommunication markets in Singapore.

8.10 Collectively, AT&T and SBC operate in more than 60 countries world-wide, none of which are relevant to IDA's review of the Consolidation for the reasons discussed above. Therefore, the collation of extensive information for the Long Form Consolidation Application can be expected to be a protracted and costly exercise for both the Applicants and IDA. A requirement that the Applicants submit the Long Form Consolidation Application will only lend undue and unnecessary delay to the process of obtaining IDA's approval, and at the same time, require IDA to expend unnecessary resources to review the Long Form Consolidation Application in a case where it is apparent from the facts that the transaction will not substantially lessen competition in any telecommunication market in Singapore or harm the public interest.

8.11 Further, these unnecessarily burdensome procedures will only disserve 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.

9. Conclusion

9.1 In light of the foregoing, 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.

9.2 Accordingly, we respectfully 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

Yours faithfully,

Vincent Ma
Senior Regulatory Affairs Manager
For AT&T Worldwide Telecommunications Services Singapore Pte. Ltd.

ANNEX 1

SBC does not have data available to provide a precise measure of its share of supply of fixed line telecommunications services in its 13-state region. It competes with a variety of competitive local exchange carriers ("CLECs"), including cable television providers who offer telephone service using either circuit-switched or Internet protocol; VoIP providers; wireless carriers; and, for business customers, a variety of systems integrators and others offering the suites of services required by such customers. A description of SBC's main competitors is attached above as Annex 2.

SBC has attempted to estimate the share of access lines in its service areas in the 13 states in which it provides services as an incumbent local exchange carrier ("ILEC") by estimating the total number of lines served by CLECs and then estimating its share of the total number of lines. CLEC shares are estimated by adding the number of lines it provides CLECs on a wholesale basis (as part of total service resale or as an unbundled network element) to the number of lines CLECs provision themselves. The latter number is based on either the number of interconnection trunks the CLEC uses **[Confidential Information]** or the number of E911 listings obtained by the CLEC. Estimates using such methods, for the fourth quarter of 2004, indicated that, region-wide, SBC's share was **[Confidential Information]**. For business customers SBC's share was **[Confidential Information]** and for residential customers it was **[Confidential Information]**.

It is important to note that the information below – presented state-by-state – overestimates SBC's market share. SBC measures its share only in those portions of each state where it is present. There are significant portions of some states, including large cities in those states, that are not within SBC's service area and that are supplied by other incumbent carriers. This is particularly significant with respect to California, for example, where Verizon serves much of Los Angeles. Similarly, in Nevada, SBC services only a minority of access lines and is not the incumbent local carrier in Las Vegas, the major metropolitan area of the state.

The respective estimates by state within the SBC region were as follows:

State	Total Share	Business	Residential
Arkansas	**[Confidential Information]**		
California	**[Confidential Information]**		
Connecticut	**[Confidential Information]**		
Illinois	**[Confidential Information]**		
Indiana	**[Confidential Information]**		
Kansas	**[Confidential Information]**		
Michigan	**[Confidential Information]**		
Missouri	**[Confidential Information]**		
Nevada	**[Confidential Information]**		
Ohio	**[Confidential Information]**		
Oklahoma	**[Confidential Information]**		
Texas	**[Confidential Information]**		
Wisconsin	**[Confidential Information]**		

ANNEX 2

As mentioned above in Section 6.2.2, SBC faces vigorous competition within its service region from various providers of telephony services, including Competitive Local Exchange Carriers (CLECs), wireless providers, Incumbent Local Exchange Providers (ILECs), Inter-Exchange Carriers (IXCs), cable television operators providing voice telephony, Data/IP Network Providers offering voiceover Internet Protocol (VoIP) services, and foreign-based carriers extending their footprint into the US. A complete enumeration of these competitors is not possible due to the large number of participants; however, the following are among SBC's major competitors for access service in the US. Post-transaction, these entities will continue to compete with SBC/AT&T, preventing the combined company from leveraging its position in local access in the US to substantially lessen competition in any telecommunications market in Singapore.

A) <u>CLECs</u>

XO Communications is the largest facilities-based CLEC in the US, with substantial coverage of SBC's in-region territory, as well SBC's out-of-region service areas. Its network features direct connections to thousands of buildings, multiple data centers, over 100 peering POPs, and a footprint of fixed wireless licenses covering 95% of the top U.S. businesses. XO offers a broad portfolio of voice products, dedicated Internet, scalable private data networking, IP VPN, web hosting services, and integrated product bundling.

Time Warner Telecom provides data and voice services to businesses of all sizes via a nationwide fiber network. Its network extends to 44 metropolitan areas and it competes in numerous parts of SBC's in-region area, including California, Illinois, and Texas. Its services include a wide array of voice and data services, from simple network transport to advanced network management services. The company reports more than 10,000 customers, and over $650 million in annual revenue. Time Warner Telecom plans in 2005 to aggressively push a VoIP solution aimed at larger business customers.

McLeodUSA is one of the largest CLECs in the U.S., catering to small and medium businesses. It offers local service in 25 Midwest, Northwest, Southwest and Rocky Mountain states, and it also provides Internet services throughout most of the continental US. It offers a host of voice and data products, from traditional local and long distance to VoIP on the voice side, and everything from dial-up and broadband Internet access to public and private VPNs, web hosting, and managed services on the data side. In terms of VoIP, McLeod has completed customer trials for VoIP in four of its cities – Denver, Dallas, Detroit and Chicago – and is launching a business VoIP offering in those immediately. There are plans to expand the offer to 35 metropolitan areas within the company's 25-state footprint by the end of second quarter 2005.

Covad provides a host of broadband services, including DSL, VoIP, T-1, hosting, managed security, and bundled voice and data. Its broadband services are available in 44 states and 235 metropolitan areas, reaching over 50% of US homes and businesses. The company's focus is on small to medium-sized business and home consumers, but it plans to offer VoIP to "distributed enterprises," especially franchise businesses and retail stores with multiple locations. To support its VoIP service, Covad recently purchased GoBeam, a VoIP provider and completed a nationwide roll-out of business-class VoIP, with availability in 125 major metropolitan areas, covering 900 cities. This new service will provide Covad a means to transform itself from a broadband company into an integrated voice and data communications provider.

Birch Telecom targets small and mid-sized businesses, with 140,000 customers in more than 50 metropolitan areas across 12 states in the South and lower Midwest, including Texas, Missouri, Oklahoma, and Kansas. Birch owns and operates an integrated voice and data network, and offers a broad portfolio of local, long distance and Internet services. The company positions itself as being a low-cost provider. For example, it offers a low-cost IP-based VPN service, called "Teleworker," that is designed to be simple to use and inexpensive.

Sage Telecom is the fourth largest provider of local service and fifth largest provider of long distance service to consumers in SBC's 13-state region, serving more than 500,000 subscribers in SBC's territory. Sage has a seven-year agreement (signed in 2004) with SBC for wholesale local service throughout SBC's territory.

MCI is also a significant competitor in this category. See discussion in Section C below.

B) **ILECs**

Verizon offers services in its incumbent region and out-of-region through CLEC Verizon Avenue, a subsidiary. The strategy of Verizon's Enterprise Solution Group (ESG) has focused on serving the out-of-region network requirements of its in-region enterprise customers. This is particularly true in the Northeast US, but Verizon has customers throughout the US as well.

BellSouth has offered VoIP services of some form to business customers since 2001. Although most of these customers are headquartered in BellSouth's nine-state region, some operate nationally. BellSouth has also focused on small-medium businesses by offering a VoIP package that includes network transport and integration and managed services.

C) **IXCs**

Having recently emerged from bankruptcy with a new financial footing, **MCI**'s principal strength correlates with one of SBC's most significant weaknesses: its robust national and international network. MCI has the largest and most interconnected IP backbone in the world, in terms of company-owned points-of-presence ("POPs"), with over 4,500 POPs; 2,400 ATM, frame relay, and voice switches; and 130 data centers in 22 countries. It has been repeatedly recognized as the most connected network in the world, and its service level agreements lead the industry. MCI has been very aggressive in preserving its customer base.

Sprint also has a robust national network, complementing its wireline and IP offerings with its wireless services. Sprint is one of the largest carriers of Internet traffic; is the third-largest provider of long distance services (based on revenue); provides local service through its own access lines in 18 states, local service through leased facilities in 18 others; and provides wireless services nationwide, a network that will only be made stronger and broader by its proposed merger with Nextel.

Sprint has dedicated approximately $1.6 billion to capital expenditures in its business divisions, primarily to support the growth in demand for enterprise services. It also has expanded its international reach, most recently through offering MPLS VPN to over 100 countries, and expanding its global network into India. Sprint now has 1,100 global POPs across six continents. Sprint has begun offering business customers products once reserved for the government, such as "peerless" IP VPN systems, which are not connected to the public Internet. Sprint was the first to offer such a closed, native IP intranet to government and business customers, and the security of this type of network has attracted interest from a variety of industries, such as manufacturing, financial institutions, and insurance companies, as well as government agencies.

Similarly, **Qwest** offers everything from local service – for those businesses based within its 14-state region – to long distance, data, Internet access, and managed solutions. It also offers wireless service, with nationwide coverage, through a wholesale arrangement with Sprint. Qwest's most notable asset, however, may be its worldwide fiber optic network, extending over 180,000 miles. Qwest offers a variety of network-based products, including hosting, managed VPN, integrated access, and security services. In terms of innovation, the company recently offered a nationwide commercial VoIP service to business customers, which is now offered in more than 100 cities.

D) **Cable Operators**

Time Warner Cable offers customers a national IP network and extensive local fiber networks in its territory. In attracting enterprise customers, the company highlights its expertise in establishing Metro Ethernet networks within the 22 states and 44 cities in which it has a presence. Time Warner's broadband network offerings feature point-to-point connectivity, point-to-multipoint connectivity, teleworker aggregation, or Internet access to business customers, and it currently offers teleworker connectivity to approximately 500 enterprise customers, connecting remote workers and branch offices to their main facilities.

Time Warner's products take advantage of its extensive metropolitan fiber networks, which are independent of existing telecom providers. Cable companies like Time Warner are increasingly seen by others in the industry as viable competitors, especially for business data. The company's broadband networking products are already serving hundreds of enterprise customers, providing remote access for connecting remote workers and branch offices to the main locations.

Similarly, **Cox Communications** competes to supply voice and data services through its Cox Business Solutions organizations. It provides local and long distance voice, toll-free services, data services (including Internet access) to over 100,000 businesses. While it has traditionally focused on small and mid-sized business customers, it has increasingly focused on larger customers. Like others, Cox plans to use VoIP as a way to leverage its network to provide competitive voice services to business.

Comcast's business offerings focus solely on its network capability. It offers Internet access, managed network services, VPN to connect smaller offices, branch locations, and off-site employees. Comcast delivers service in 41 states, including presence in 22 of the top 25 US metropolitan areas, and has over 90,000 miles of fiber-optic cable nationwide in the US.

E) **Data/IP, VoIP, Providers**

Savvis Communications is a leading Managed Services Provider that delivers private IP VPNs, hosting, IP voice, and application services to enterprises. The company operates a global IP network delivering IP VPN, voice services, managed hosting, and managed Internet solutions. Its network spans 110 cities in 45 countries. Savvis has been ranked as #2 provider in the provision of VPNs, and it has won awards for network reliability, customer service, and for innovation. The company has been able to acquire network assets inexpensively, and it is enjoying rapid growth.

Broadwing owns a technologically advanced fiber-optic network that connects 137 cities nationwide and spans the continental United States. Through this network, it offers data, Internet, broadband transport, and voice services to business customers. Broadwing has expanded its service offering through the recent acquisition of Focal Communications Corp., a CLEC, on September 1, 2004. Focal competes in a number of SBC local areas, including California, Texas, and Chicago, and offers metropolitan fiber in nine major metropolitan areas. Once Focal is fully integrated into the company, Broadwing expects a number of benefits, including an expanded customer base, greater network reach, lower network and transport costs, and the ability to offer a single supplier for a strong suite of voice, data, and video services. Broadwing currently offers a range of products, including traditional voice, VoIP, WAN, Media transport, and public and private IP networking.

While it offers legacy services such as private line, frame/ATM and direct dial, **Global Crossing** has focused on delivering IP-based products, such as IP VPN, VoIP Services, Managed Services, and Collaboration Services (Audio, Video and Web). Global Crossing has a large worldwide network, with over 100,000 route miles of optical cable, directly connecting more than 300 cities in 30 countries. The network has approximately 800 POPs in 200 major cities throughout the world. Global Crossing has approximately 19,000 route miles of fiber in the United States and Canada, together with 170 POPs, 22 integrated service platform sites, three submarine cable landing stations, and three international voice gateway sites.

Level 3 has built an advanced, IP backbone with reach throughout the United States and Europe, with a network that includes nearly 1 million miles of metro fiber in 99 metro areas. Level 3 is a leading wholesale provider of IP services, carrying data and increasing VoIP traffic for, among others, the 6 largest U.S. cable companies and the 10 largest Internet service providers in the United States. Level 3 is a wholesale VoIP leader, reporting that it carries over 30 billion minutes of VoIP traffic per month, and that it can offer a local connection to over 300 metro areas and 93% of U.S. population. More than 20 resellers use Level 3's technical capabilities to offer VoIP service. Moreover, Level 3's network is used frequently by systems integrators in providing outsourced telecommunications needs.

F) **Foreign-Based Carriers**

Equant, part of the France Telecom Group, asserts that it is the world leader in communications solutions for multinational business. It claims to operate the world's largest global network in terms of geographic coverage, extending to 220 counties and territories, and 1,100 cities and towns throughout the world. Although Equant's network density is greatest in Europe, greater penetration of the North American marketplace is one of the company's top priorities. Equant offers a host of managed services, VPN, Internet connectivity, security, and consulting products. Because of its global reach, Equant is an attractive option for an enterprise business with international needs.

British Telecom ("BT") is one of Europe's leading providers of telecommunications services. It is a vertically integrated incumbent telecommunications provider whose principal services include local, national, and international telecommunications, higher-value broadband and Internet products and services, and IT solutions. BT's global network operates in over 200 countries across five continents, and it owns POPs in 14 major U.S. metropolitan areas (as well as Toronto and Mexico City), with planned expansion to seven more in 2005. BT's efforts to capture a greater share of the U.S. marketplace have been aided by its acquisition of Infonet, one of the world's leading providers of international managed voice and data network services.

Deutsche Telekom (DT), a Fortune Global 100 company, is Europe's largest telecommunications company and asserts that it has a presence in about 65 countries on six continents, and in all major markets, including Europe, the Middle East, Asia, and North and South America. Although DT's network density is greatest in Europe, it has achieved significant penetration of the North American marketplace with its **T-Systems Inc.** (T-Systems) and **T-Mobile** subsidiaries.

T-Systems offers many managed information and communications technology services tailored to the specific needs of Global and Enterprise customers within and without North America, including infrastructure, industry-specific solutions or entire business processes. Because of its global reach, financial security and U.S. customers' name brand recognition, DT is an attractive option for U.S. business customers with international needs, or for international business customers with locations in the United States.

Nippon Telegraph and Telephone (NTT) is the largest telecommunications company in the world, with presence in the U.S. through two subsidiaries in the United States: NTT America, and Verio. NTT/Verio provides traditional business telecommunications services, such as voice, frame relay, ATM, and VPN, together with IP services, such as hosting and high-bandwidth connectivity. NTT/Verio is expanding its U.S. operations, creating a U.S. to Asia ATM network and offering new IP VPN nodes, and it currently is the world's largest operator of websites for business, through its world-class global IP network.

Singapore Telecom ("SingTel") is the second largest telecommunications provider in the Asia-Pacific region, providing voice and data services over fixed-line, wireless and Internet platforms in more that 20 countries around the world. The company's main footprint is in Southeast Asia and Australia (through its wholly-owned subsidiary SingTel Optus); however, it has the ability to support MNCs globally through its network of local offices, found in 34 cities in 16 countries and territories across Asia Pacific, Europe and the United States. SingTel penetrated the United States telecommunications marketplace in 1993 through the establishment of its subsidiary **SingTel USA**, which provides direct links from the U.S. to countries throughout the Asia Pacific and Europe and offers an extensive suite of telecommunications services to U.S. business customers, including International Toll-Free Service (ITFS), International Private Leased Circuit, Frame Relay, ATM, IP-VPN, Internet access and Managed Hosting Services. SingTel is an attractive option for U.S. companies seeking seamless, single-carrier connections to Asia.

ANNEX 3

Extract from SBC filing with the FCC entitled "Merger of SBC Communications Inc. and AT&T Corp., Description of the Transaction, Public Interest Showing, and Related Demonstrations, February 21, 2005

EXECUTIVE SUMMARY

...

C. The Merger Will Enhance and Not Reduce Competition.

The merger will enhance and not reduce competition. That is so regardless of how the Commission analyzes the merger. To be sure, it is by no means clear that the market definitions the Commission has traditionally applied in merger proceedings are still valid in this era of rapidly converging services. In an IP world, voice and data services are both merely the transmission of bits over the same network. These IP-based services are rapidly becoming available to mass market and larger business customers. Likewise, with wireless communications becoming increasingly widespread, assessment of the effect of the merger on competition cannot ignore the growing substitution of wireless for wireline service by both consumers and businesses. Indeed, in 2005, for the first time, there will be more wireless than wireline connections in the United States. Substitution of wireless minutes for wireline usage has been growing at a rapid pace, and an increasing number of consumers are pulling their second lines or even completely "cutting the cord." The introduction of 3G wireless services will intensify this trend. In an environment where wireline carriers compete with cable operators, other VoIP providers, wireless carriers and others, this transaction will not reduce competition. Rather, by pairing the complementary strengths of the two companies, it will enhance competition and benefit all types of customers.

That same conclusion results from applying the market definitions the Commission has used in past transactions. The operations of the two companies are largely complementary – AT&T is focused primarily on serving national and global enterprise customers with sophisticated needs, while SBC chiefly addresses the needs of residential customers and smaller and regional businesses whose operations are primarily inside SBC's 13 state region. Moreover, in each segment in which the companies compete, there are numerous other competitors and no likelihood of either unilateral or coordinated anti-competitive effects.

The merger will not diminish competition for mass market customers. AT&T made an irreversible pre-merger decision to discontinue actively marketing local and long distance service to residential and small business customers. AT&T has already dismantled infrastructure required to recruit new mass market customers by shutting call centers, dismissing marketing personnel, and terminating vendor contracts. Not only will AT&T no longer be an active competitor for mass market customers, but increasingly the competition for such customers is coming from cable operators, VoIP providers, and wireless carriers, in addition to traditional competitors such as ILECs and CLECs. For all these reasons, the merger will have no adverse effect on mass market competition. Rather, increased investment and innovation and broader deployment of new services made possible by the merger will benefit mass market customers.

Nor will the proposed transaction adversely affect competition in the provision of services to large and medium-sized businesses. This segment of the communications industry has long been vigorously competitive, with numerous competitors and sophisticated customers. Coordinated interaction is unlikely because (1) customer requirements are largely heterogeneous; (2) many competitors with different strategies and competitive strengths are competing, making coordination virtually impossible; and (3) bids are often for large contracts of relatively long duration. Additionally, unilateral effects are unlikely because SBC and AT&T are not each other's closest competitors for a significant segment of these customers. Moreover, other competitors could replace either SBC or AT&T in the competition for any business customer.

Indeed, SBC and AT&T typically sell different services to business customers and typically succeed with different types of business customers. SBC's strength is in the sale of services to small and medium-sized businesses with a high percentage of their facilities in SBC's 13 in-region states. AT&T's strength is in the sale of services nationwide and globally to large multi-location businesses with generally more sophisticated telecommunications requirements. The combined company will be better able to offer a portfolio of services suitable for any customer.

The merger also raises no competitive issues for Internet, wireless, or international services. With respect to Internet services, where the companies compete against each other (the Internet backbone and retail narrowband sector), the level of concentration is low today, and the increase in concentration that would result from this transaction will not be material. AT&T does not compete in the provision of retail broadband mass market services. Likewise, AT&T has no present or planned facilities-based mobile wireless service operations and resells wireless services to only a few thousand residential consumers under a legacy arrangement with AT&T Wireless that was terminated last year. Finally, SBC has only very limited, resale-based retail international operations. Therefore, the combination of SBC and AT&T will not significantly increase concentration in the retail provision of service on U.S. international routes, which are, in any event, today served by numerous large facilities-based and resale providers. [footnotes omitted]

ANNEX 4

Access to local exchange networks in the United States is heavily regulated on both the federal and state levels. The Federal Communications Commission ("FCC" or "Commission") controls the terms and conditions under which interexchange carriers gain access for interstate and foreign telecommunications services; State regulators control the terms of access for intrastate toll services.[37] In addition, as a Bell Operating Company ("BOC"), SBC is subject to specific statutory requirements to assure that the local exchanges in the thirteen States in which SBC is the incumbent local exchange carrier ("ILEC") are as accessible to competitors as they are to any interexchange carrier owned, operated or controlled by SBC.[38] Finally, except for certain limits on foreign ownership of carriers, the regulatory barriers to entry into either the local exchange or the interexchange business are essentially administrative filings. FCC rules afford blanket authorization for any domestic interstate telecommunications offering[39] and no State or local municipality may prohibit or have the effect of prohibiting the ability of a carrier from providing any interstate or intrastate telecommunications services.[40]

The regulatory regime governing access to local exchanges in the United States is an outgrowth of the conditions imposed on the Bell Operating Companies ("BOCs") in the antitrust decree (the "MFJ") that broke up the former integrated Bell System.[41] Under the MFJ, the BOCs were limited to the provision of local exchange and some short long distance services, called "intraLATA" services in the Plan of Reorganization that implemented the MFJ,[42] and were required to provide all interexchange carriers with equal access to their exchanges. In connection with the changes wrought by the MFJ, the FCC adopted an elaborate regulatory system which required that all local exchange carriers provide access services under tariff, specified the rate elements, and the manner in which the access rates were to be calculated.[43]

The Telecommunications Act of 1996[44] built on the regulatory approach of the MFJ, but was designed to foster competition in the provision of telecommunications services at all levels and provided for the gradual withdrawal of regulation where competition served to regulate the marketplace.[45] Thus, Congress required all ILECs to allow competitors to resell local exchange service and to purchase from the ILEC local exchange network elements that the FCC found were

[37] Access to the local network by competitive local exchange carriers is regulated by both the FCC and the state public utility commissions. *See* 47 U.S.C. §§ 251 & 252.
[38] 47 U.S.C. § 272(e).
[39] 47 C.F.R. § 63.01(a).
[40] 47 U.S.C. § 253(a); *see also In re Public Utility Commission of Texas, Memorandum Opinion and Order*, 13 FCC Rcd. 3460, 3463 ¶ 3 (1997), *review denied sub nom., City of Abilene v. FCC*, 164 F.3d 49 (D.C. Cir. 1999). Municipalities and States may require new carriers to obtain franchises for the right to use the rights of way, but such authorizations are not required for entry as a resale carrier.
[41] *U.S. v. AT&T Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. U.S.*, 460 U.S. 1001 (1983).
[42] *U.S. v. Western Elec. Co., Inc.*, 569 F. Supp. 1057 (D.D.C.), *aff'd sub nom., California v. U.S.*, 464 U.S. 1013 (1983); *see also* 47 USC. § 153(25).
[43] *See* 47 C.F.R. §§ 69.1-69.731; *see also In re MTS & WATS Market Structure Phase I*, Third Report and Order, 93 F.C.C.2d 241 (1983), *modified on recon.*, Memorandum Opinion and Order, 97 F.C.C.2d 682 (1983), *modified on recon.*, Memorandum Opinion and Order, 97 F.C.C.2d 834 (1984); *In re MTS & WATS Market Structure Phase III*, Report and Order, 100 F.C.C.2d 860 (1985).
[44] Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified in scattered sections of 47 U.S.C.).
[45] *See Report of the Committee on Commerce, Science and Transportation of the US Senate on S. 652*, S. Rpt. 104-23, 104th Cong. 1st Sess. 1-6 (1995); *Conference Report*, H. Rep. 104-458, 104th Cong. 2d Sess. 117-28, 144-55 (1996).

essential for those entities to compete effectively with the ILEC.[46] Congress also allowed the BOCs to enter the interexchange market once they demonstrated that they had fully opened their local exchanges to competition,[47] and directed the FCC to review its regulations biennially to determine whether they are still necessary in light of the competitive nature of the marketplace.[48]

Under this regulatory regime, supplemented by Commission regulations, all ILECs, including SBC, are required to provide all interexchange carriers equal access to their local exchanges and customers,[49] to provide local access services under tariff,[50] and to interconnect with interexchange carriers on nondiscriminatory terms.[51] The access rate elements are specified in the Commission's rules[52] as is the manner in which the rates must be set.[53] For larger carriers, such as SBC, the rates must be set using a price cap methodology specified in the Commission's rules,[54] subject to limited exceptions discussed below.[55] In addition to these rules, Section 272(e) of the Communications Act sets forth specific antidiscrimination or equal access provisions which require BOCs to (a) make facilities and services available to unrelated interexchange carriers in the same period of time as it makes facilities or services available to an affiliated interexchange carrier, (b) make available to any unaffiliated interexchange carrier the same facilities and services made available to any affiliate of the BOC, (c) impute any local exchange access charges as an expense of any affiliated interexchange carrier, and (d) make local access services and facilities available to an unaffiliated interexchange carrier at the same rates, terms and conditions as those services and facilities are made available to any affiliated interexchange carrier.[56]

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[46] 47 U.S.C. § 251.
[47] 47 U.S.C. § 271.
[48] 47 U.S.C. § 161(a).
[49] 47 U.S.C. § 251(g).
[50] 47 C.F.R. §69.3(a). In addition, the FCC's rules require ILECs to give interexchange carriers who also provide local exchange service the right to collocate in ILEC central offices (subject to certain capacity, security and related limitations) and to purchase certain unbundled network elements found by the Commission to be essential for them to compete in the local exchange business. *See* 47 C.F.R. §51.201 et. seq.; *In re Unbundled Access to Network Elements*, Order on Remand, CC Docket No. 01-338, 2005 WL 289015 (rel. Feb. 4, 2005).
[51] 47 USC. §§ 201, 202 & 251(g); 47 C.F.R. § 53.201.
[52] 47 C.F.R. §§ 69.4, 69.110, et. seq.
[53] 47 C.F.R. Part 61.
[54] 47 C.F.R. §§ 69.151 et seq. Large ILECs, including SBC, are also required to provide the FCC annually with detailed costs data in a prescribed format concerning with respect to their local access services so that the Commission can evaluate the reasonableness of the rates. *See In re Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31,43,67 and 69 of the FCC's Rules)*, 2 FCC Rcd. 6283 (1987), *modified on recon.* 9 FCC Rcd. 6464 (1988). And, they are required to develop and file with the Commission Cost Allocation Manuals which establish the procedures by which common costs are allocated between regulated and non-regulated services so that the regulated services do not subsidize the competitive services. 47 C.F.R. § 43.201(d). The ILEC's compliance with their cost accounting manual must be audited every two years. *See* 47 C.F.R. §69.901 et seq.
[55] *See* 47 C.F.R. § 69.701.
[56] 47 U.S.C. § 272(e). Section 272(e) reads as follows:

> (1) shall fulfill any requests from an unaffiliated entity for telephone exchange service and telephone access within a period no longer than period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;
>
> (2) shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate [that provides interLATA interexchange service] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions;

Consistent with Congress' goal to replace regulation with competition where possible, the Commission allows local exchange carriers pricing flexibility in areas in which the Commission has found competitive.[57] An ILEC seeking pricing flexibility must file a petition with the FCC showing that the area in which it wants pricing flexibility meets certain criteria established by the FCC as evidence that the area is competitive.[58] Carriers who meet these criteria may offer volume and term discounts and enter into contract tariffs with interexchange carriers provided that the contract tariff services are made generally available to all similarly situated customers.[59] Further, BOCs may not offer contract tariffs to affiliated interexchange carriers unless the BOC "certifies to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer."[60]

These pricing flexibility rules are under review now by the FCC in light of claims by a number of interexchange carriers and their customers that the triggers do not accurately reflect the circumstances in which a market is competitive, and thus, rather than leading to lower special access rates, have resulted in higher rates.[61] The FCC has a long history of active supervision of local access markets, and has made it clear in the ongoing proceedings that it will revise the triggers or make other appropriate modifications to its pricing flexibility rules in order to preclude predatory behavior by the ILECs and to assure the ILECs cannot leverage whatever market power they might have to benefit their interexchange affiliates.[62]

This regulatory regime effectively precludes SBC from favoring AT&T in SBC's region. SBC is required to treat other interexchange carriers in the same manner as AT&T and to afford access to other carriers, not only for exchange access services, but also for local exchange services, should they wish to provide it. Indeed, the Commission has made it clear that it views the antidiscrimination provisions of Section 272 as "imposing a flat prohibition against discrimination ... [and that] the BOCs must treat all other entities in the same manner as they treat their section 272 affiliates."[63] In its decision in *AT&T Corp. v. BellSouth Telecommunications, Inc.*,[64] granting, in part,

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> (3) shall charge the affiliate (providing interLATA service], or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service; and
>
> (4) may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

[57] 47 C.F.R. § 69.701 et seq.

[58] 47 C.F.R. §§ 69.709 & 69.711. *See In re Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-262, 14 FCC Rcd 14221 (1999).

[59] 47 C.F.R. § 69.727(a)(2)(i).

[60] 47 C.F.R. § 69.727(a)(2)(iii). A BOC can achieve greater price flexibility and less regulatory oversight if competitors have collocated in a large percentage of its central offices or in central offices representing a majority of the BOC's revenues for special access services. *Id.* at §§ 69.727(b), 69.709(c) & 69.711(c).

[61] *In re Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking in WC Docket No. 05-25, FCC 05-18 (rel. Jan. 31, 2005).

[62] *Id. 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").

[63] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 21905, 21914 ¶ 16 (1996).

AT&T's complaint against BellSouth's volume discount Transport Savings Plan ("TSP"), the Commission held:

section 272 requires, at a minimum, that the BOC 'must provide to unaffiliated entities the same goods, services, facilities and information it provides to its [long distance affiliate] at the same rate, terms, and conditions.' The Commission further recognizes that even a facially neutral practice may have an unlawful discriminatory impact under section 272.[65]

The Commission further held that "section 272 imposes an 'unqualified prohibition' on BOC discrimination that favors the BOC affiliate, ...[that] section 272's prohibition on discrimination favoring a BOC affiliate is 'flat,' 'unqualified,' and 'stringent' ..." [66] and that "liability under section 272 hinges on effect, not intent .... Thus, whether BellSouth designed the TSP intentionally to benefit BellSouth Long Distance is irrelevant."[67] This rigid view as to the obligations imposed by Section 272 clearly demonstrates that SBC will not be able to leverage any market power it might have in its 13 states to benefit AT&T and disadvantage competitive carriers.

Moreover, SBC currently provides interexchange access to several hundred interexchange carriers in its region and offers its local exchange customers the option of selecting any long distance carrier in the market as their preferred interexchange carrier. It offers special access services to over 500 customers, many of whom are carriers serving enterprise businesses. In the major metropolitan areas within its 13 states, there are more than 25 interexchange and competitive local exchange carries offering interstate and foreign exchange access services. The merger will not affect any market power SBC may have in those 13 states, nor alter any incentive it might currently have to favor its long distance affiliate. In short, the regulatory regime in place in the United States effectively precludes SBC from favoring its current interexchange affiliate and will work as effectively to preclude SBC from favoring AT&T to the prejudice of other global telecommunications carriers.

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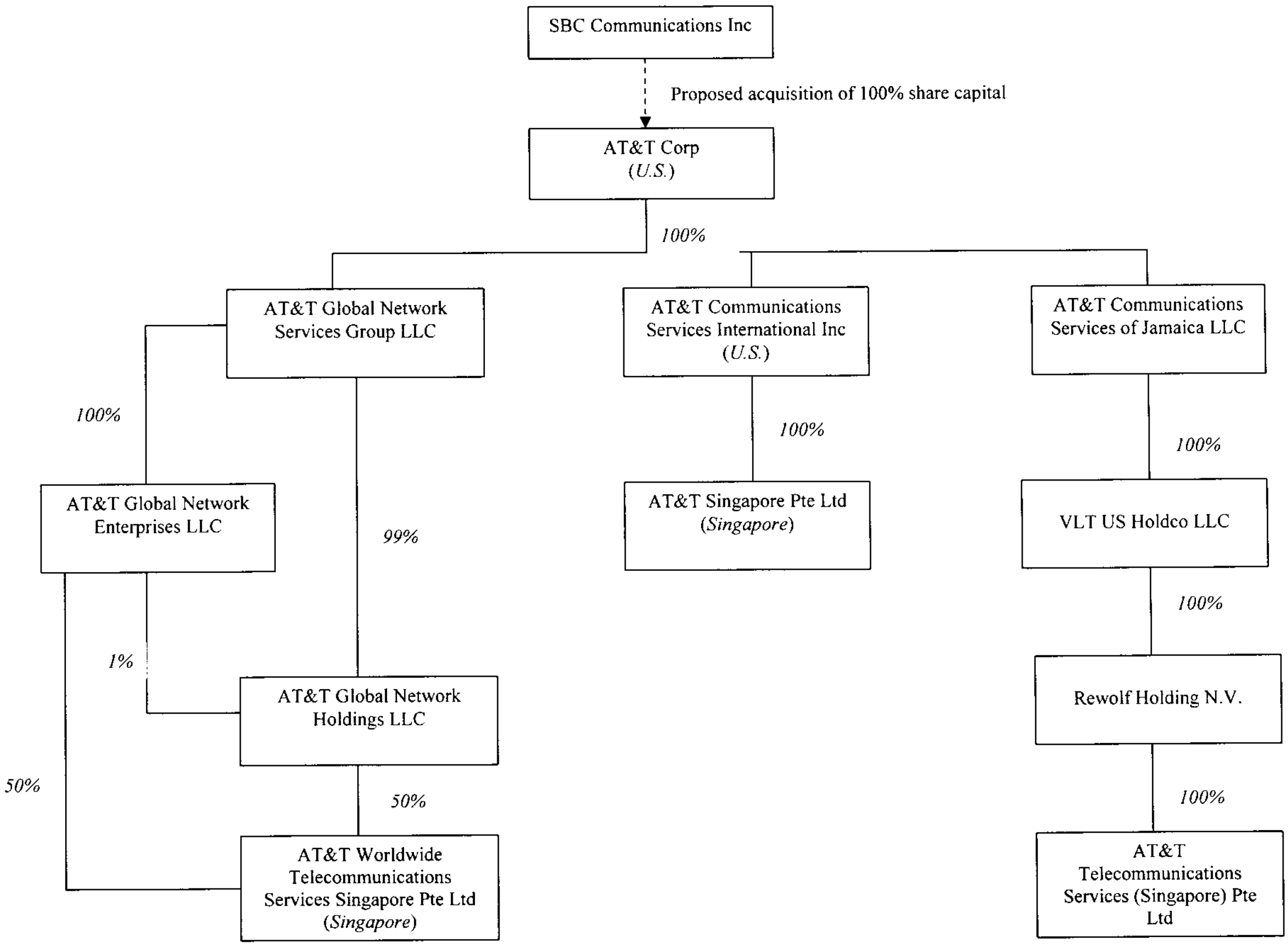
[64] 19 FCC Rcd 23898 (2004).

[65] *Id.* at 23904-05 ¶ 19 (footnotes omitted).

[66] *Id.* at 23909 ¶ 30.

[67] *Id.* at 23913 ¶ 39.


SBC Communications Inc
Proposed acquisition of 100% share capital
AT&T Corp (U.S.)
100%
AT&T Global Network Services Group LLC
AT&T Communications Services International Inc (U.S.)
AT&T Communications Services of Jamaica LLC
100%
AT&T Global Network Enterprises LLC
99%
100%
AT&T Singapore Pte Ltd (Singapore)
100%
VLT US Holdco LLC
100%
1%
AT&T Global Network Holdings LLC
Rewolf Holding N.V.
50%
50%
100%
AT&T Worldwide Telecommunications Services Singapore Pte Ltd (Singapore)
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