




Further Analysis of the Competitive Effects of the Proposed Mergers of SBC/AT&T and VZ/MCI

Professor Simon J. Wilkie

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...to the extent that one of the two major wholesale services providers is being absorbed by the largest wholesale provider, the anti-competitive aspect of the merger appears obvious.

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Rebuttal to Applicants' Allegations

Applicants' Claim: AT&T and MCI Don't Participate Actively in the Local Wholesale Market

The Reality...

“...many of the carriers...expressly admitted in the states that they are currently providing or offering high-capacity transmission facilities to other carriers. Moreover, those carriers that resisted such candor...were ultimately forced to admit that they do in fact provide high-capacity service on a wholesale basis. MCI, for example, admitted that it makes transport facilities available...And AT&T's admissions in this respect are most telling. Though insisting to the bitter end that it does not provide wholesale “loops” to other carriers, AT&T ultimately conceded that it does provide wholesale ‘service’...over AT&T's last mile facilities.”

Reply Comments of SBC Communications, #04-313.

Rebuttals to Applicants' Allegations

Applicants' Claim: AT&T and MCI Don't Participate Actively in the Local Wholesale Market

The Reality...

In response to Verizon's RFP for high-capacity facilities in 28 out-of-region territories, it received "proposals from at least 9 carriers, including AT&T...MCI...The carriers that we selected...had in common their ability to offer facilities ...by relying on their own networks...by acting as aggregators of other carriers' facilities. In some cases, that may also include the ILEC special access service."

Comments of Verizon, Declaration of Claudia P. Cuddy, Vice President, Verizon Network Services Group, #04-313

Rebuttals to Applicants' Allegations

Applicants' Claim: AT&T and MCI Don't Participate Actively in the Local Wholesale Market

The Reality...

- 1. In their own filings, SBC and VZ claim that AT&T and MCI are major wholesale providers of local circuits. (See for instance the Yankee Group study prepared for SBC detailing the wholesale private line revenues of AT&T.)**
- 2. Building Lists supplied by AT&T and MCI show they are willing to provide on a wholesale basis circuits to a large number of high-bandwidth buildings.**
- 3. Data from bids to provide circuits to CLECs demonstrate that AT&T and MCI are very active participants. In two auctions last year for transport circuits in SBC and VZ territories, using Type I and II circuits, AT&T bid to provide 80% of the total number of circuits in SBC territory and 69% in Verizon, and MCI bid for 91% of the total in SBC territory and 80% in Verizon.**
- 4. AT&T and MCI regularly offer prices for wholesale circuits at anywhere between 35% and 90% below ILEC Special Access "Rack" Rates.**
- 5. Regression analyses of the bid data from CLECs demonstrates that the removal of AT&T from SBC territory and MCI from VZ territory would result in bid prices increasing by anywhere between 11% and 400% depending on the type of circuit.**

Rebuttals to Applicants' Allegations

Applicants' Claim: AT&T and MCI Use of Type II Facilities to Wholesale Circuits is of No Significant Competitive Consequence

The Reality....

- 1. AT&T and MCI admit in their filings that they use Type II facilities to wholesale circuits.**
- 2. In their own filings, SBC and VZ claim that AT&T and MCI are major wholesale providers of local circuits over Type II facilities.**
- 3. Building Lists supplied by AT&T and MCI show they are willing to provide on a wholesale basis circuits to a large number of high-bandwidth buildings.**
- 4. CLEC Bid Data demonstrates that AT&T and MCI offer to provide service over Type II facilities.**
- 5. Because of their ability to obtain ILEC Special Access services at discounts beyond the reach of other CLECs, AT&T and MCI have a significant real and potential competitive presence through use of Type II facilities. (See Verizon's TRRO Comments describing special access discounts ranging from 35-70%.)**

Rebuttals to Applicants' Allegations

Applicants' Claim: The Type I Facilities of AT&T and MCI are Not Extensive and are Indistinguishable from other CLECs

The Reality..

- 1. By purchasing Teleport and Brooks/MFS, respectively, and then spending billions to expand these networks, AT&T and MCI have local network facilities far surpassing that of any other CLEC or group of CLECs. (According to the UNE Fact Report 2004 submitted by the Bells, AT&T and MCI combined have about 50% of local CLEC fiber route miles nationwide and have deployed in 70 and 63 MSAs respectively.)**
- 2. AT&T and MCI's facilities are not only extensive, but as SBC and VZ often have indicated, these two firms have the most extensive CLEC network in areas of highest demand.**
- 3. The Building List and GeoResults data support the fact that AT&T and MCI are the CLECs that have located terminating equipment in the most buildings and are capable of serving the most end users on-net. (See chart on next page.)**

Capacity-Based Market Shares of the Competitive Firms

MSA	AT&T & MCI Market Share	CLEC #3 Mkt Share	CLEC#4 Mkt Share	CLEC #5 Mkt Share
Chicago				
All Bldgs	71%	13%	5%	4%
T3 Bldgs	78%	12%	6%	2%
OC3 Bldgs	75%	14%	8%	1%
LA/Verizon				
All Bldgs	96%	3%	1%	.3%
T3 Bldgs	100%	0%	0%	0%
OC3 Bldgs	100%	0%	0%	0%
LA/SBC				
All Bldgs	87%	4%	3%	3%
T3 Bldgs	91%	3%	1%	1%
OC3 Bldgs	100%	0%	0%	0%

Data Source: GeoResults/Building Lists
 Note: Market Shares are calculated on a capacity basis.

Rebuttals to Applicants' Allegations

Applicants' Claim: The HHIs Calculated by the CLECs are Wrong, and, in any event, HHI Calculations are Irrelevant

The Reality...

- 1. CLEC HHI calculations rely on the very same data used by SBC and VZ in the TRRO and for their own commercial purposes.**
- 2. Applicants excoriate data underlying CLEC calculations, yet refuse to offer HHIs based on data they claim to be correct.**
- 3. CLEC HHI calculations demonstrate that the increases in concentrations from the proposed mergers are similar for the many markets reviewed and post-merger increase exceeds DOJ thresholds in all instances. (See chart on page 10.)**
- 4. The HHIs calculated by the NY PSC staff support the CLEC calculations. (See chart on page 11.)**
- 5. The DOJ has relied on HHI calculations for mergers in industries far more dynamic than telecommunications.**

Capacity-Based Loop HHIs for 6 MSAs

MSA	HHI/All Bldgs	Change in HHI	HHI/OC3 Bldgs	Change in HHI
	Pre-Merger	Post-Merger	Pre-Merger	Post-Merger
New York (VZ)	7,128	332	5,024	801
Philadelphia (VZ)	8,433	210	5,149	580
Los Angeles (VZ)	9,340	411	7,290	2,710
Chicago (SBC)	7,005	795	3,240	1,597
Los Angeles (SBC)	8,427	415	5,345	1,449
Cleveland (SBC)	7,839	297	5,911	613

Data Source: GeoResults/Building Lists
 Note: HHIs are calculated on a capacity basis.

NY PSC Staff Transport Pre/Post Merger HHI

	HHI Before Merger	HHI After Merger	Change in HHI
MCI/VZ Merger using Information on Transports In All LATAs for All Routes (assuming 2004 customer counts as is)	8,896	9,209	313
MCI/VZ Merger Only Routes Having 2 or More Competitive Transports in LATA 132	1,662	2,622	959
MCI/VZ transport analysis On TRRO triggered routes	2,077	3,486	1,410

NY PSC Staff Transport Route Overlap Analysis

	Total TRRO Unimpaired Transport Routes	Percent of Competitive Transport Routes
Competitive transport routes Per TRRO methodology	487	100.00%
Routes on which a combination Of VZ, MCI, AT&T and SBC are the only transport competitors	337	69.20%
Routes where VZ, MCI, and AT&T are the only three transport providers	72	14.78%

Rebuttals to Applicants' Allegations








Applicants' Claim: Tacit Collusion Between SBC and VZ Post-Merger is Preposterous

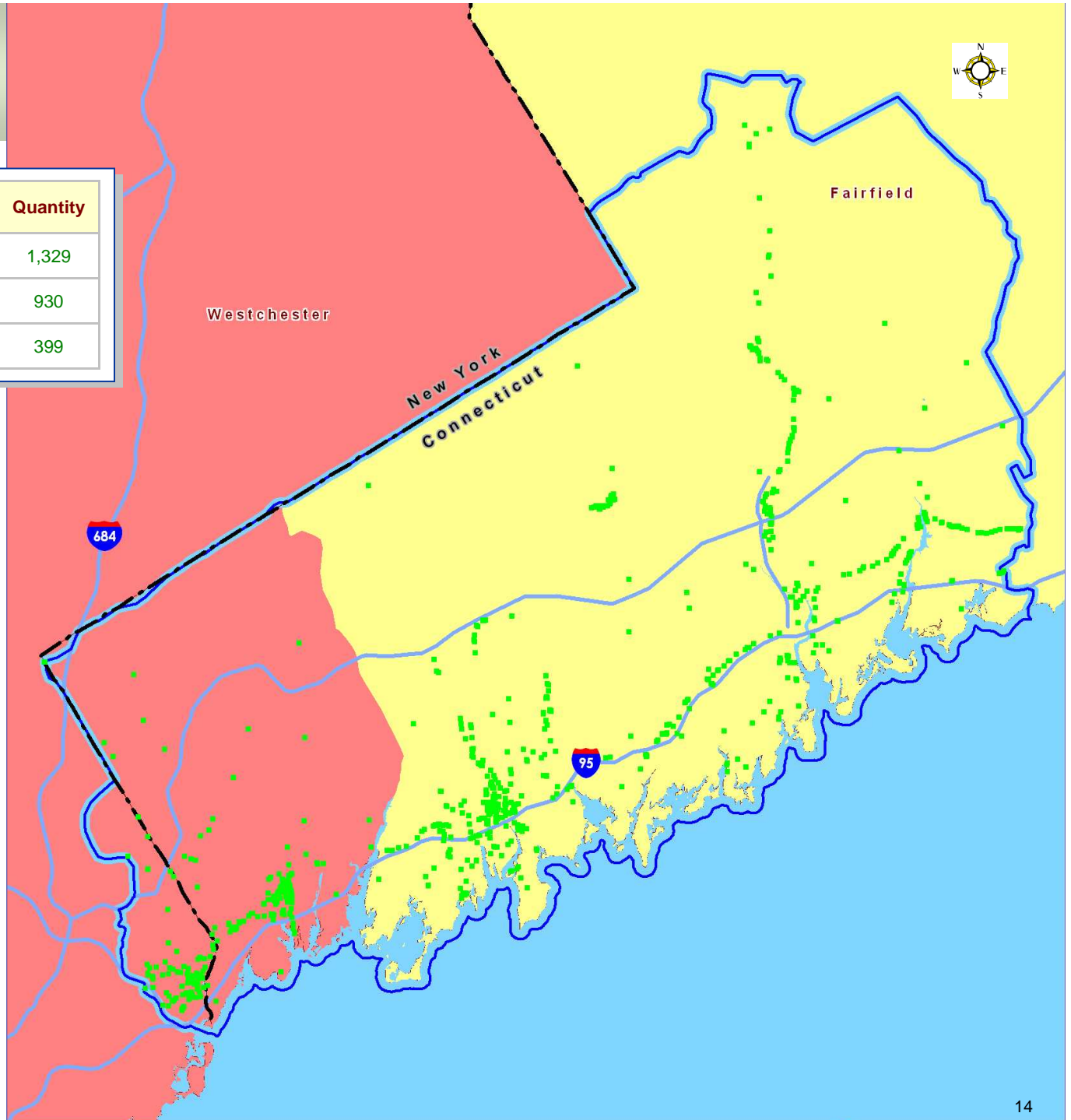
The Reality...

- 1. Economic theory provides ample rationale for tacit collusion between SBC and VZ post-merger to limit expanding service to retail customers and terminate the provision of wholesale service.**
- 2. Past promises of SBC and VZ to compete out-of-region have proven hollow.**
- 3. The evidence from current competition in areas where both SBC and VZ own in-territory operations shows that a decade after the 1996 Act neither is a significant competitor in the other's territory despite having fewer entry barriers than unaffiliated CLECs.**

CLEC Appearances – Stamford CT MSA

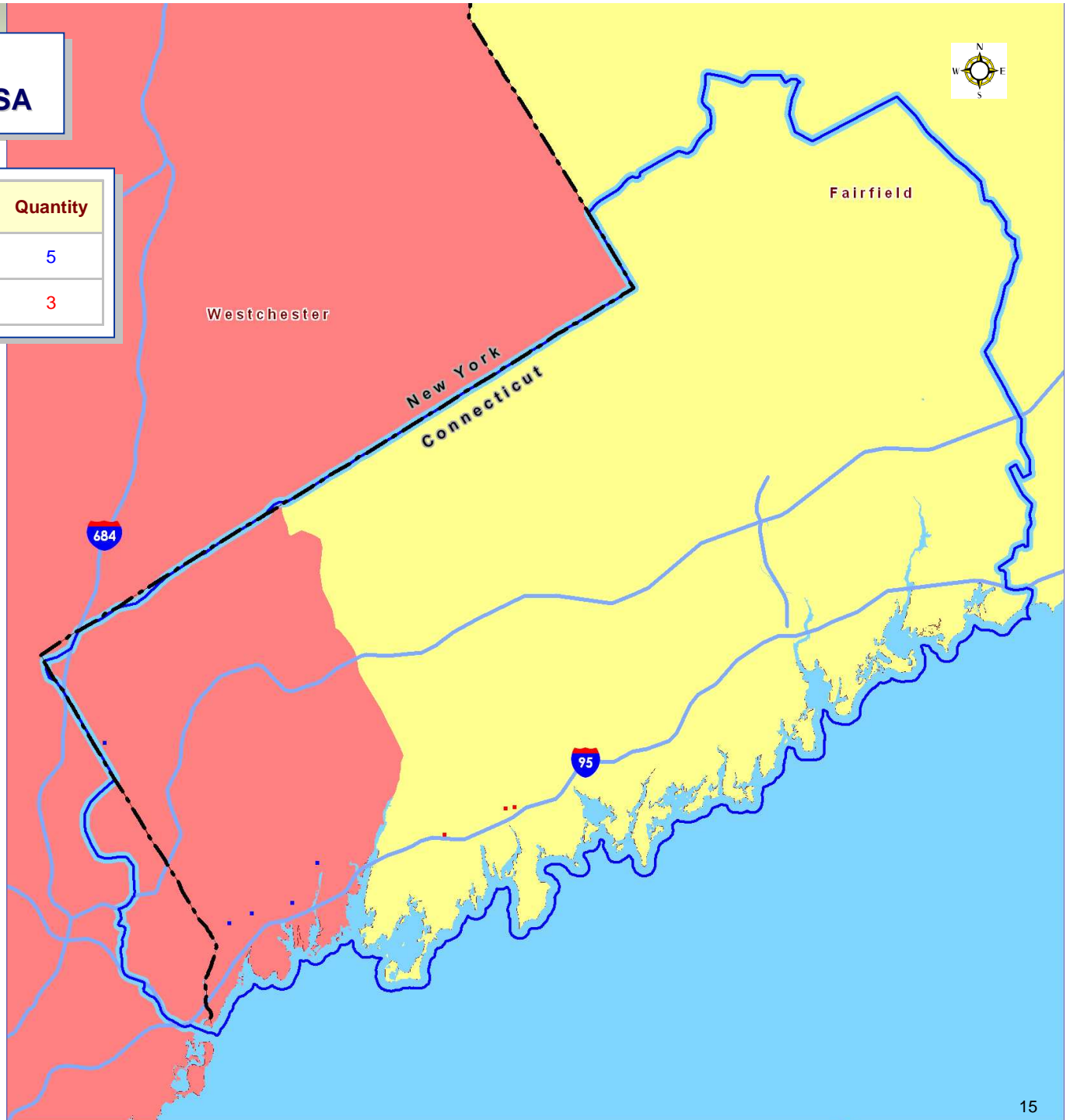
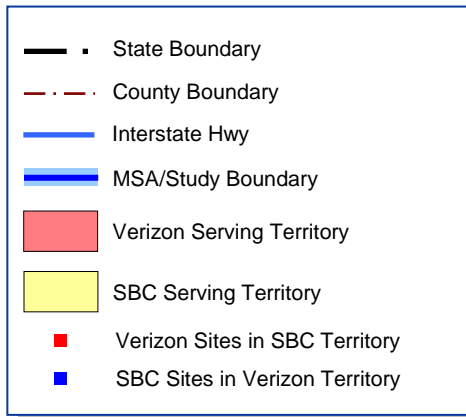
Category	Quantity
CLEC appearances	1,329
CLEC appearances in SBC Territory	930
CLEC appearances in Verizon Territory	399

-  State Boundary
-  County Boundary
-  Interstate Hwy
-  MSA/Study Boundary
-  Verizon Serving Territory
-  SBC Serving Territory
-  Building with any CLEC appearance



SBC and Verizon CLEC Appearances - Stamford MSA

Category	Quantity
SBC CLEC appearances in Verizon Territory	5
Verizon CLEC appearances in SBC Territory	3



Rebuttals to Applicants' Allegations

Applicants' Claim: Post-Merger, CLECs will Rapidly Replicate AT&T's and MCI's Competitive Presence

The Reality...

- 1. There is a fundamental difference between “competitive harm” as determined by the antitrust laws and the FCC’s “impairment standard”. Just because the “impairment standard” is cleared does not mean that the competitive harm from the proposed mergers will be ameliorated.**
- 2. The competitive presence of AT&T and MCI in local markets is much more than their network facilities – it includes their large customer base, tremendous traffic volume, and substantial financial resources.**
- 3. In Triennial Review proceedings, AT&T and MCI have detailed the enormous barriers to construction of local network infrastructure.**
- 4. CLEC growth post-merger will be even more problematic because prices for circuits will increase when the two largest non-ILEC wholesalers exit the market.**