

claim that MCI is one of the largest local fiber providers in Verizon's region and that it is therefore in a unique position to discipline Verizon's provision of special access services. They argue that the loss of MCI as an independent firm will lead to the removal of its capacity as a source of supply.

In connection with these arguments, opponents claim that it is necessary to analyze the effects of the transaction at various levels of geographic granularity. On the one hand, they claim that competition should be analyzed for each of the individual routes and individual buildings where MCI has deployed fiber. Using this analysis, opponents claim that the transaction reduces the number of actual competitors to anticompetitive levels. On the other hand, opponents claim that this granular geographic approach must be supplemented by a region-wide market analysis. The premise of this argument is that Verizon does not price special access at a granular route-specific or building-specific level, but instead offers substantial discounts in exchange for region-wide commitments to give Verizon a large amount of business. Opponents argue that, because of this region-wide pricing structure, it is important to consider the ability of a provider to compete at multiple locations in the aggregate.

In a related vein, some opponents have argued that it is necessary to evaluate MCI's reach not only in terms of its local facilities, but also in terms of its ability to extend the reach of those facilities by purchasing special access from Verizon. This argument rests on the assumption that MCI, because of its large base of customers, is able to obtain larger discounts from Verizon than other competitive providers who purchase special access and is therefore in a unique position to pass those discounts on to smaller providers seeking to purchase special access.

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Finally, in an effort to prove that the removal of MCI as an independent source of supply will lead to higher special access prices, some opponents attempt to measure the effect of removing MCI by performing a regression analysis of bidding data. The opponents claim that according to these data, MCI is both a frequent participant in bids to supply special access and is often one of the lowest price bidders, whereas Verizon's prices are generally the highest. As a result, these opponents claim that removing MCI will result in increased prices by enabling other competitive providers to bid closer to the ILEC prices, without the threat of losing the bid to MCI.

As demonstrated below, none of these arguments withstands scrutiny and Verizon's acquisition of MCI's local fiber networks will not substantially lessen competition for special access services. First, MCI's local fiber networks in Verizon's region are limited in scope and are capable of serving only a small portion of demand for special access services. Second, in virtually all of the locations where MCI has deployed fiber there are other competitive fiber suppliers that are either already serving those exact locations, or that have nearby fiber facilities that could readily be extended to such locations. Third, even though this may not be the case for a limited number of locations, such locations are so geographically dispersed and account for such a small percentage of overall capacity and demand that they are not economically meaningful. Finally, federal regulation addresses any residual concern about Verizon's special access prices.

**A. MCI's Local Fiber Networks Are of Limited Competitive Significance**

MCI's local fiber facilities in Verizon's region are limited in scope. The extent to which MCI actually uses those facilities to compete for Verizon's core special access customers – other

carriers – is more limited still, representing no more than a few percent of total special access revenues in Verizon’s region generated from wholesale customers.

*1. MCI’s Local Fiber Networks Are Limited in Scope*

Although MCI may have deployed more local fiber in Verizon’s region than many other individual carriers, when viewed against all competitive local fiber in the aggregate, MCI’s local fiber networks are limited in competitive significance. The comparisons below are based on data that Verizon and MCI have been able to obtain from their own records or from third-party consultants. Unfortunately, these data understate, probably significantly, the extent to which competing providers other than MCI have deployed fiber, because there is no reliable way for Verizon, MCI, or outside consultants to identify all the competitive fiber that has been deployed.

First, Verizon obtained from GeoTel, a leading provider of information related to telecommunications geography, data that identify competitive fiber routes in various MSAs. As GeoTel itself recognizes, however, these data, while extensive, are not comprehensive because they exclude the fiber from certain suppliers and do not include all the fiber that has been deployed by the carriers that are included. Second, Verizon compiled data on fiber-based collocation based on physical inspections of its central offices. These data are derived from inspections of only a small number of Verizon’s wire centers, however, and therefore count only a subset of the fiber-based collocations that competing carriers have obtained.<sup>42</sup> Verizon’s collocation data also do not include instances where competing providers have bypassed Verizon’s network facilities altogether.

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<sup>42</sup> Indeed, when MCI provided Verizon with its list of fiber-based collocations in Verizon’s region, it was considerably more extensive than the MCI fiber-based collocations that Verizon on its own identified as belonging to MCI.

Even based on these incomplete data, it is clear that competing carriers have collectively deployed considerably more fiber than MCI. Excluding MCI, competing carriers in Verizon's region have deployed known local facilities in at least 72 Verizon MSAs (compared to MCI's 30), and have obtained fiber-based collocation in at least 416 central offices (compared to MCI's [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]). These other competing suppliers have deployed known fiber in 415 of the 532 wire centers that account for 80 percent of Verizon's high-capacity special access demand (compared to MCI's [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]), and have obtained fiber-based collocation in 299 of those wire centers. Even within the 30 MSAs in which MCI has deployed fiber, the networks of other competing carriers are more extensive. Competing carriers have obtained at least 359 fiber-based collocations in these 30 MSAs (compared to MCI's [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]), and have deployed at least 20,000 route miles of fiber (compared to MCI's [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] route miles). See Figure 4.

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2. *MCI's Local Fiber Is Used To Compete for Verizon's Core Special Access Customers to a Very Limited Extent*

The competitive significance of MCI's local fiber facilities is further diminished by the fact that, to the extent such facilities are used to provide special access to other carriers, which are the main purchasers of special access from Verizon, they account for a minute fraction – no more than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] – of those customers' total demand for special access in Verizon's region. Indeed, other CLECs have acknowledged that when they put out bids, MCI is able to serve only a very small portion of those bids.<sup>43</sup>

As an initial matter, MCI's facilities simply are not extensive enough to satisfy the needs of carrier customers. For example, while MCI operates local facilities in just [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Verizon MSAs, Verizon provides special access in approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] MSAs, plus a number of locations that are not part of an MSA.<sup>44</sup> Although Verizon's special access is heavily concentrated in a limited number of MSAs and an even smaller subset of the wire centers in those MSAs, MCI operates local fiber in only [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of the 532 wire centers that account for 80 percent of Verizon's high-capacity special access demand.<sup>45</sup> MCI has obtained fiber-based collocation arrangements in only [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of these 532 wire centers.

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<sup>43</sup> See Opposition of Broadwing Communications and SAAVIS Communications to the Merger Application Filed by Verizon and MCI at 25 & Declaration of Mark Pietro Filed on behalf of Broadwing-SAAVIS ¶¶ 12-16, WC Docket No. 05-75 (FCC filed May 9, 2005).

<sup>44</sup> See Verizon Response to FCC Specifications, Exhibits 5.A.3, 5.A.6 & 5.C.2.

<sup>45</sup> These wire centers accounted for approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of Verizon's high-capacity special access revenue in 2003.

MCI's approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] fiber-lit office buildings represent less than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of the total commercial office buildings in Verizon's region.<sup>46</sup>

In 2004, MCI earned a total of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] from the provision of wholesale Metro Private Line services in the Verizon East region. Roughly [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of this total (or [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]) was provided entirely using MCI's facilities (*i.e.*, through Type I circuits), with most of the remainder provided using Type II circuits where MCI uses ILEC special access to extend MCI's network to an off-net building. MCI's wholesale Metro Private Line revenues represent just four percent of Verizon's total wholesale special access revenues. Moreover, a disproportionate amount of MCI's Metro Private Line revenues are earned from very high capacity services (DS3 and above), which, as discussed below, are the most competitive segment of wholesale special access services. MCI's wholesale Metro Private Line revenues provided at the DS1 level represent just two percent of Verizon's wholesale DS1 special access revenues. *See* Figure 5.

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<sup>46</sup> This assumes that Verizon's region contains approximately one-third of the 739,000 commercial office buildings nationwide. *See* U.S. Dep't of Commerce, *Statistical Abstract of the United States* at 624 (2004-2005 ed.).

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Of course, these comparisons ignore the fact that other competing carriers provide special access to carrier customers. According to data that competing carriers report to the FCC, they earned \$954 million in the provision of wholesale special access nationwide in 2003, the latest year for which such data are available.<sup>47</sup> Assuming that one-third of this was earned in Verizon's region and that wholesale special access revenues grew from 2003 to 2004 at the same pace as in the previous year,<sup>48</sup> that would mean that competing carriers account for an additional

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[END CONFIDENTIAL] in wholesale special

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<sup>47</sup> Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Telecommunications Industry Revenues 2003* at Table 5, Line 305 (Mar. 2005).

<sup>48</sup> This is a reasonable assumption because, although special access prices are declining, demand is increasing, and there is no reason to suspect the net effect of these two trends was different from 2003 to 2004 than it was from 2002 to 2003.

access revenues.<sup>49</sup> MCI's share of total special access revenues from carrier customers, therefore, is less than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent.

A comparison of the special access purchases of individual customers provides further evidence of MCI's relative insignificance as a wholesale supplier. Verizon's [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL] and [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL] largest customers of wholesale special access – [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL] and [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL] – spend [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL] and [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL], respectively, on special access from Verizon. By contrast, these two companies respectively spend only [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL] and [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL] nationwide with MCI for Metro Private Line service, only a part of which is for Verizon's region.

**B. There Is Extensive Competition for Special Access in the Areas Where MCI Operates Local Fiber Networks**

As demonstrated above, MCI's local fiber facilities in Verizon's region are limited and MCI's use of those facilities to compete for Verizon's core special access customers is more limited still. With respect to each of the geographic areas and services for which the two companies do compete head-to-head, however, there are multiple other competing carriers.

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<sup>49</sup> See *id.*; Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Telecommunications Industry Revenues 2002* at Table 5, Line 305 (Mar. 2004).

There is accordingly no realistic possibility that the transaction will result in an increase in special access prices.

***1. There Are Multiple Competitors with Local Fiber Facilities in the Areas Where MCI Has Deployed Fiber***

MCI is just one of nearly 100 competing carriers that has deployed local fiber facilities in Verizon's region. Like MCI, these other competitive fiber providers have chosen to deploy networks in the areas where the demand for high-capacity facilities is most heavily concentrated, such as downtown areas and suburban office parks. As a consequence, and as demonstrated in the attached maps, there are now multiple competitive fiber providers in the same geographic areas where MCI operates local fiber networks. See Attachment 1.

To evaluate the extent to which these competitors provide an alternative to MCI, it is first necessary to identify the geographic areas where MCI itself operates local fiber facilities. As described above, MCI has deployed local fiber networks in 30 MSAs in which Verizon operates as the ILEC in some part of the MSA, but has invariably concentrated its fiber within small portions of those MSAs. There are 39 clusters or groupings of contiguous wire centers in Verizon's region in which MCI operates local fiber networks. In most cases, there is only a single cluster within a given MSA. In a few cases, there may be multiple clusters within an MSA. For example, there are several different clusters in the Los Angeles MSA (one in Santa Monica, one in South Los Angeles, one in Long Beach, one in North Long Beach, and one in Redondo Beach).

Each of these clusters roughly defines the area in which MCI uses its own local fiber facilities to compete with Verizon. When MCI or any competing carrier deploys fiber in a given area, they typically deploy a fiber ring that connects to the major points of traffic concentration

in that area – such as carrier POPs, central offices, carrier hotels, and large office buildings.<sup>50</sup> As customers in new locations are won, the carrier will serve these customers either by extending its fiber to that location by deploying a “lateral” fiber from its ring, or by leasing a facility from a third party, such as ILEC special access, to connect that location to the CLEC’s ring.<sup>51</sup> Although a CLEC may be willing to serve customers a considerable distance from its ring, most of the customers the CLEC will serve will be in fairly close proximity to the ring.<sup>52</sup>

There is no golden rule for how far a CLEC will be willing to extend its fiber – it depends on the costs and revenues associated with building the extension. As a general matter, however, the FCC has found that once a competing carrier deploys fiber in a wire center or obtains fiber-based collocation in that wire center, the competitor is likely to serve customers throughout that wire center.<sup>53</sup> Consistent with these findings, the boundaries of the clusters have been defined fairly narrowly, as the boundaries of the wire center serving areas in which MCI has deployed fiber. Although it may be possible for MCI to extend its fiber to serve customers in additional wire centers outside of the cluster, these wire center boundaries represent the smallest geographic unit in which such fiber is likely to be used.

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<sup>50</sup> See *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 69 (2005) (“*Triennial Review Remand Order*”).

<sup>51</sup> See *Triennial Review Remand Order* ¶¶ 69, 154 & fn.430.

<sup>52</sup> See *Triennial Review Remand Order* ¶ 154.

<sup>53</sup> See, e.g., *Pricing Flexibility Order* ¶ 104 (“[I]t seems likely that a new market entrant would provide channel terminations through collocation and leased LEC facilities only on a transitional basis and will eventually extend its own facilities to reach its customers. It also seems likely, therefore, that the extent to which competitors have collocation arrangements in an MSA is probative of the degree of sunk investment by competitors in channel terminations between the end office and the customer premises throughout the MSA.”); *Triennial Review Order* ¶ 370 (“fiber rings are often deployed to maximize the ability of competitors eventually to deploy loop facilities to connect directly buildings and customers to the transport fiber ring, without accessing unbundled loops at an incumbent LEC central office.”).

Verizon's data show that, in each of these 39 clusters of contiguous wire centers, there is extensive competition from multiple competitive fiber providers. As noted above, these data understate, probably significantly, the extent to which competing providers have deployed fiber, because neither Verizon nor MCI nor the other sources on which the two companies rely has a way to identify all the competitive fiber that has been deployed. Nonetheless, the available data show that, in these 39 areas, there are a total of 92 known providers with fiber facilities in addition to Verizon and MCI.<sup>54</sup> In 79 percent of these 39 areas, three or more known competitive suppliers compete with Verizon and MCI.<sup>55</sup> In 92 percent of these areas, two or more known suppliers compete with Verizon and MCI using self-deployed fiber, and there is at least one such competitor in all but one of these areas.<sup>56</sup>

Looking even at just the individual wire centers within the geographic areas served by MCI's local fiber networks, there is at least one additional competitor in 89 percent of the wire centers (and in 96 percent of the wire centers where MCI has established fiber-based collocation); an average of nearly six competitors per wire center; and in some wire centers as many as 20 competitors. At least 70 percent of the wire centers in which MCI operates fiber have three or more other known competitive fiber suppliers.<sup>57</sup>

Competition is equally robust looking at the areas in which MCI has deployed fiber to individual buildings. Based on the lit-building lists provided by the subset of nine CLECs that provide dedicated access services to MCI, those nine CLECs alone provide fiber to more than

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<sup>54</sup> Declaration of Quintin Lew and Ronald H. Lataille ¶ 22 ("Lew/Lataille Decl."), attached to Public Interest Statement, WC Docket No. 05-75 (FCC filed Mar. 11, 2005).

<sup>55</sup> Lew/Lataille Decl. Exhibit 10A.

<sup>56</sup> That one area is in Carbondale, Ill., where MCI's local fiber network overlaps with only a single Verizon wire center. See Lew/Lataille Decl. ¶ 22; Lew/Lataille Decl. Exhibit 10A.

<sup>57</sup> See Lew/Lataille Decl. Exhibit 10A.

[BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of MCI's on-net buildings in the Verizon-East (*i.e.*, former Bell Atlantic) footprint, or [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] out of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] such buildings. The actual number is undoubtedly higher, as this total does not include other CLECs known by MCI to have lit buildings in the Verizon-East footprint, such as [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL], or the extensive fiber networks that have been constructed by utilities and other fiber wholesalers.<sup>58</sup>

The overlap analysis also must take into account that in the locations where MCI has deployed fiber, it is using that fiber predominantly to provide services for only limited types of routes. MCI's Metro Private Line demand is concentrated in the subset of buildings that are most likely to be served by multiple CLECs or fiber providers. Specifically, MCI's Metro Private Line business has been focused on the provision of high-capacity entrance facilities between "carrier" buildings such as IXC POPs, wireless POPs, ISP POPs, carrier hotels, and ILEC central offices. For example, the Metro Private Line circuits that MCI sells to wholesale customers at the 60 Hudson Street and 111 8th Avenue carrier hotels in New York are typically OCn level circuits. Because those carrier hotels and other carrier buildings are very high traffic locations, they are also the locations in which MCI faces the most competition for its wholesale business. For example, MCI faces competition at the 60 Hudson Street carrier hotel from at least AT&T, Time Warner, Level 3, and XO.

The FCC has found that the entrance facilities that comprise the bulk of MCI's Metro Private Line business are the most competitive segment of the high-capacity market segment. In

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<sup>58</sup> See Powell et al. Reply Decl. ¶¶ 17-22.

the *Triennial Review Remand Order*, the Commission determined that ILECs should not be required to unbundle entrance facilities in light of their “unique operational and economic characteristics: they are less costly to build, are more widely available from alternative providers, and have greater revenue potential than dedicated transport between incumbent LEC central offices.”<sup>59</sup> In reaching this conclusion, the Commission relied on data provided by Verizon that demonstrated that between early 2003 and mid-2004 alone, it migrated more than 32,000 entrance facility circuits to non-Verizon facilities.<sup>60</sup> The Commission further noted that “[n]o commenters in this proceeding have disputed this evidence, which indicates that wholesale alternatives to entrance facilities provided by incumbent LECs are widely available.”<sup>61</sup>

Finally, there is no basis to exclude AT&T’s local fiber networks from the overlap analysis. Some merger opponents have argued that, following the Verizon/MCI and SBC/AT&T mergers, Verizon and SBC will stop competing with each other and that AT&T’s local fiber should therefore be ignored as a competitive constraint. Such claims should be rejected for multiple reasons.<sup>62</sup> First, the claim is economically illogical. It assumes that Verizon or SBC would purchase MCI’s and AT&T’s nationwide businesses and then choose to withdraw from competition in large parts of the country, including extensive areas where their enterprise customers have multiple locations. But a key purpose and benefit of the Verizon/MCI transaction is the increased ability of the combined company to compete on a national and global

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<sup>59</sup> *Triennial Review Remand Order* ¶ 141.

<sup>60</sup> *Triennial Review Remand Order* ¶ 139.

<sup>61</sup> *Triennial Review Remand Order* ¶ 139.

<sup>62</sup> There is likewise no merit to the claim that Verizon/MCI and SBC/AT&T will sell each other special access at uniquely low prices. As an initial matter, this argument runs contrary to the parallel claim that Verizon/MCI and SBC/AT&T will stop competing against each other. In any event, given regulatory requirements, any discount that Verizon/MCI and SBC/AT&T made with each other would have to be made available to other similarly situated carriers as well. And there is no basis to believe that only Verizon/MCI and SBC/AT&T will qualify for each others’ highest discounts, given that this not in fact what occurs today with respect to any of these companies.

scale. It is simply not credible to suggest that Verizon and MCI would combine and then abandon their business in the extensive SBC region. In addition, any attempt at tacit collusion with SBC would result in both companies losing business to competitors willing and able to provide service in both Verizon's and SBC's regions.

In addition, the argument that Verizon and SBC will not compete going forward hinges on the assumption that the two companies have a history of mutual forbearance. But this is demonstrably false. For example, to support their argument of mutual forbearance, the opponents cite the example of a single metropolitan area, Los Angeles, where Verizon and SBC operate side-by-side. But the reality is that Verizon and SBC compete extensively in Los Angeles. For example, Verizon has deployed 300 miles of optical network facilities in SBC's territory in Los Angeles to compete directly with SBC.<sup>63</sup> See Attachment 2. And SBC has obtained fiber-based collocation arrangements in central offices that contain 70 percent of Verizon's business lines in the Los Angeles MSA.<sup>64</sup>

And Los Angeles is not, of course, the only place where Verizon and SBC compete. Verizon competes for enterprise customers in 28 out-of-franchise areas, 17 of which are in SBC's service area. SBC has obtained fiber-based collocation arrangements in [BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL] MSAs in addition to Los Angeles. SBC has recently won a number of major enterprise contracts such as the Red Cross, VHA, Maritz, Bob Evans Farms, all of which involve the provision of service in parts of Verizon's

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<sup>63</sup> See Reply Declaration of Eric J. Bruno, Kathy Koelle, Veronica Pellizzi, and Judy K. Verses ¶ 15, attached to Joint Opposition of Verizon Communications Inc. and MCI, Inc. to Petitions To Deny and Reply to Comments, WC Docket No. 05-75 (FCC filed May 24, 2005) ("Bruno et al. Reply Decl."). See also Verizon News Release, *Verizon Plugs in New National Broadband Network* (Apr. 14, 2004) (Verizon operates an IP/MPLS backbone with routers in several SBC cities, including Dallas-Fort Worth and Los Angeles).

<sup>64</sup> See Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, FCC, WC Docket No. 05-75 (July 1, 2005).

region. Verizon and SBC also compete directly in the provision of wireless services nationwide, and for a number of other services including VoIP, dial-up Internet access, directory services, and E911 services.<sup>65</sup>

**2. *Competing Carriers Can Readily Extend Fiber to All of the Overlapping Areas***

In addition to the fact that there are already existing competitive alternatives to MCI in the majority of overlapping areas and buildings, for all or most locations where MCI is present competing carriers can economically deploy new fiber. Virtually all of MCI's fiber has been deployed in areas of high concentration. In particular, this fiber has been deployed overwhelmingly in areas where the FCC has specifically found that it is possible for other competing carriers economically to deploy new fiber facilities.<sup>66</sup> There are in fact many competing carriers that have already deployed fiber facilities in the same general areas as MCI, which greatly facilitates the ability of these carriers to extend their networks to the specific locations that MCI currently serves.

MCI has focused on providing high-capacity circuits between "carrier" buildings such as IXC POPs, wireless POPs, ISP POPs, carrier hotels, and ILEC central offices. Because these locations generate very high-traffic volumes, they are able to attract multiple CLECs and fiber providers. Indeed, as noted above, there is at least one additional competitor in 89 percent of the wire centers with overlapping fiber, and an average of nearly six competitors per wire center.

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<sup>65</sup> In any event, even if AT&T's local fiber were removed from the analysis, there would still be extensive competition. For example, if AT&T is excluded from the analysis of the 39 cluster areas, there would still be two or more carriers other than MCI in 90 percent of these areas, as opposed to 92 percent with AT&T included. At the wire center level, even if AT&T is excluded there would still be at least one additional competitor in 88 percent of the wire centers where MCI operates fiber (and in 96 percent of the wire centers where MCI has established fiber-based collocation), as compared to 89 percent and 96 percent when AT&T is included.

<sup>66</sup> See Powell et al. Reply Decl. ¶ 31.

Competing carriers also can economically deploy fiber to the individual office buildings that MCI serves with its fiber networks. MCI's lit buildings are invariably located in highly concentrated areas where there are already many competitive fiber providers. Approximately 80 percent of MCI's lit buildings are concentrated in only 111 of the Verizon wire centers with MCI-lit buildings, and those 111 wire centers already have an average of ten other competitive fiber networks.<sup>67</sup> And in all but 10 of those 111 wire centers, there are at least three or more competitive fiber providers. Approximately 96 percent of the buildings that MCI serves "on-net" using its local fiber are located in specific wire centers where at least one other competitor has deployed fiber; 81 percent of those buildings are in wire centers where four or more other competitors have deployed fiber.<sup>68</sup>

In the vast majority of the MCI-lit buildings – at least [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent – MCI has customer demand for a single DS3 or more, which in MCI's experience generates enough revenues sufficient to recover the costs of constructing a fiber lateral.<sup>69</sup> And in at least [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of MCI's lit buildings, MCI has customer demand at the OCn or near-OCn level.<sup>70</sup> In the recent *Triennial Review Remand Order*, the FCC found that, at any location that supports OCn-level demand, there are sufficient revenues at that location to support new fiber deployment by a reasonably efficient CLEC.<sup>71</sup> In fact, at least 80 percent of MCI's lit buildings meet the "triggers" the Commission established for de-listing high-capacity DS3 loops, or have sufficient

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<sup>67</sup> See Powell et al. Reply Decl. ¶ 22. See also Lew/Lataille Decl. Exhibit 12B.

<sup>68</sup> See Lew/Lataille Decl. ¶ 24.

<sup>69</sup> See Powell et al. Reply Decl. ¶ 28.

<sup>70</sup> See *id.*

<sup>71</sup> See *Triennial Review Remand Order* ¶¶ 21, 28, 87.

demand to justify the use of OCn circuits.<sup>72</sup> Approximately 51 percent of these lit buildings are in wire centers that satisfy the DS3 trigger – that is, they are in wire centers where the Commission found that there was such high levels of competition that it was reasonable to expect that all customers in those wire centers who demand at least a DS3 would have access to competitive facilities. In another 29 percent of those buildings, MCI is providing two or more DS3s, which the Commission held is sufficient to demand to justify construction of new fiber.<sup>73</sup> And all of these figures significantly understate the extent to which competing carriers can deploy fiber to these locations because they represent only MCI's demand at the location, not total demand, which is undoubtedly higher in most or all cases.

In evaluating the ability of competing carriers to deploy fiber to the locations that MCI serves, it is important to recognize that competing carriers will not need to deploy entirely new fiber rings, but merely need to extend their existing rings. As demonstrated in Section II.B.1 above, there are already other CLECs with fiber in or near each of the areas of overlap. These alternative fiber rings already serve most of same routes as MCI, plus many additional routes that MCI itself does not serve. In fact, as demonstrated above, in all but a few of the metropolitan areas in which MCI has deployed fiber other CLEC fiber is far more extensive than MCI's, which suggests these CLECs, either individually or collectively, have the same ability as MCI to reach the locations that MCI has decided to serve. And the fact that MCI is serving those locations today proves that it is economically viable for others to do so.

Approximately two-thirds of MCI's approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] lit-buildings in Verizon's region are either already served by a

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<sup>72</sup> See Powell et al. Reply Decl. ¶ 31.

<sup>73</sup> See *id.*

competitive fiber supplier or are within one-tenth of a mile (approximately 500 feet) of an existing CLEC fiber ring. Approximately 86 percent of those buildings are within a half mile of an existing fiber ring. This analysis was performed by drawing a circle around each of MCI's lit buildings using the building itself as the center of the circle. Verizon then calculated the distance of the radius between the building and the network of the CLEC nearest to that building. The maps are provided as Attachment 3, and the results are provided as Attachment 4.

Some merger opponents have nonetheless claimed that deploying new fiber is very time-consuming and could not be accomplished within the time frame deemed relevant under the Merger Guidelines. As a result, they claim that any potential new fiber deployment is insufficient to impose competitive discipline "sufficient to return market prices to their premerger levels."<sup>74</sup> In making these claims, opponents have failed to provide any specificity regarding how long they assert it takes to deploy fiber. In other contexts, however, competing carriers have acknowledged that they are capable of deploying fiber in under a year. For example, a coalition of CLECs has stated that deploying a fiber lateral in urban areas can take as little as four to six months.<sup>75</sup> Other CLECs have suggested the minimum is 10 to 12 months.<sup>76</sup> Under the Merger Guidelines, potential entry by committed entrants is deemed sufficient "to

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<sup>74</sup> Horizontal Merger Guidelines § 3.0.

<sup>75</sup> See Declaration of Dan J. Wigger on behalf of Advanced TelCom, Inc. ¶ 22 ("Wigger (Advanced TelCom) Triennial Review Remand Decl."), attached to Initial Comments of the Loop and Transport CLEC Coalition, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (FCC filed Oct. 4, 2004); Declaration of Wil Tirado on behalf of XO Communications, Inc. ¶ 18 ("Tirado (XO) Triennial Review Remand Decl."), attached to Initial Comments of the Loop and Transport CLEC Coalition, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (FCC filed Oct. 4, 2004).

<sup>76</sup> See Declaration of James C. Falvey on behalf of Xspedius Communications, LLC ¶ 24 ("Falvey (Xspedius) Triennial Review Remand Decl."), attached to Initial Comments of the Loop and Transport CLEC Coalition, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC filed Oct. 4, 2004).

deter or counteract the competitive effects of concern” where such entry “can be achieved within two years from initial planning to significant market impact.”<sup>77</sup>

MCI’s experience demonstrates that it typically take considerably less time to deploy a fiber lateral than these other CLECs’ suggest, and provides further evidence that it is possible for CLECs to extend their fiber networks in the timeframes relevant under the Merger Guidelines. Based on MCI’s experience from the beginning of 2003 through mid-2005, deploying laterals takes approximately [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]. See Attachment 5.

The costs of deploying fiber laterals also do not present a significant barrier to entry. When fiber is deployed, competing carriers typically “pre-install several break-out points . . . to give engineers access to fiber for future lateral connections” so that lateral extensions can be added later at lower cost.<sup>78</sup> A single metropolitan network “may include a few hundred break-out points,” that “may be as close as 20 meters (65 feet) apart.”<sup>79</sup> The laterals themselves cost considerably less than the initial ring, because they can be buried just a few inches deep, rather than being laid in ducts.<sup>80</sup> In the suburban areas where many smaller businesses are located,

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<sup>77</sup> Horizontal Merger Guidelines §§ 3.0, 3.2.

<sup>78</sup> Telegeography, *MANs 2003: Metropolitan Area Networks* at 55-56 (Aug. 2002) (“*Telegeography MANs 2003*”); see also *id.* (“Break-out points consist of a junction box, usually located beneath a manhole cover or in above-ground ‘street furniture,’ and a specialized break-out distribution frame to which new fiber connections are spliced. . . . Thus, while increasing construction costs, adding more break-out points – thereby reducing the lateral lengths – allows providers to offer lower prices for connectivity to end-user buildings.”).

<sup>79</sup> *Telegeography MANs 2003* at 56.

<sup>80</sup> See, e.g., *Telegeography MANs 2003* at 56; see also Stagg Newman, McKinsey and Company, *Broadband Access Platforms, FCC Tutorial* at 28 (Apr. 14, 2002) (For a typical fiber installation, the cost per mile of deploying laterals is about 14 percent of the cost per mile of deploying the actual metro fiber ring).

cables can often be strung on utility poles or buried in a shallow earth trench – each about one-tenth the cost of trenching in urban markets.<sup>81</sup>

The costs of deploying fiber varies based on a number of factors,<sup>82</sup> but the ranges of estimates that CLECs themselves have provided in the past shows that these costs are not prohibitive. According to XO, “[t]he average XO building entry is 500 feet long and on average costs \$141,000 in outside plant construction and building access plus \$79,000 for the associated electronics, totaling \$220,000 per building.”<sup>83</sup> Advanced Telcom states that “[f]rom our operating experience, to reach a building located a 1/2 mile from an existing Advanced TelCom LSO Access Ring would typically cost approximately \$100,000 to \$150,000.”<sup>84</sup> This same CLEC further estimates the costs to deploy a fiber lateral “at just 300 feet from an existing LSO Access Ring to be approximately \$25,000 - \$30,000.”<sup>85</sup> Cavalier offers a similar estimate – between \$30,000 to \$50,000 to extend a short lateral from its ring to an individual customer.<sup>86</sup> Other CLEC estimates are consistent with these figures, typically ranging between \$20 to \$40 per foot (which translates to roughly \$110,000 to \$210,000 per mile), and in extreme cases (*e.g.*, very dense urban streets) as high as \$100 per foot.<sup>87</sup>

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<sup>81</sup> See, *e.g.*, Stagg Newman, McKinsey and Company, *Broadband Access Platforms, FCC Tutorial* at 28 (Apr. 14, 2002) (cost per mile for “burying” fiber ranges from \$20,000-\$60,000; cost for aerial deployment ranges from \$5,000 to \$10,000; cost for pull-through ranges from \$12,000 to \$25,000); see also N. Gupta, *et al.*, Citigroup Smith Barney, *Stocks Appear to Be Pricing LT Risk of RBOC Entry into Video* at 15 (June 29, 2004) (noting, in the FTTH context, that underground cable “can cost ten times as much per foot to replace as aerial plant.”).

<sup>82</sup> “The costs associated with competitive deployment of dedicated transport vary widely among geographic areas.” *Triennial Review Remand Order* ¶¶ 73-74.

<sup>83</sup> Tirado (XO) Triennial Review Remand Decl. ¶ 17.

<sup>84</sup> Wigger (Advanced TelCom) Triennial Review Remand Decl. ¶ 21.

<sup>85</sup> *Id.*

<sup>86</sup> Declaration of Brad A. Evans on behalf of Cavalier Telephone, LLC ¶ 20, *attached to* Comments of the Association for Local Telecommunications Services, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC filed Oct. 4, 2004).

<sup>87</sup> Falvey (Xspedius) Triennial Review Remand Decl. ¶ 21 (estimates the costs of deploying a lateral at “anywhere from \$21 to \$40 per foot (which translates to \$110,880 to \$211,200 per mile.)”); Joint Declaration of

MCI's own average costs of deploying fiber laterals corroborate these estimates. In MCI's experience, the all-inclusive costs of deploying a typical fiber lateral in major urban areas (where fiber deployment is typically most expensive) is approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. See Attachment 5. This includes all of the incremental costs involved in deploying the lateral itself (such as digging, placing the fiber, and the cost of the fiber and related materials); the electronics necessary to light that fiber; and the cost of deploying a riser within the building. In MCI's experience, the average lateral that it must deploy to add a new building to its network is [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]. See Attachment 5.

It is of course necessary to put these cost estimates in perspective. In order for a competing carrier to deploy fiber, it must be able to earn enough revenues to recoup the costs and earn a profit on that facility. In conducting this analysis it is of course necessary to consider all the revenues that a carrier expects to earn over a facility, not merely the revenues for the special access services alone, but also the various voice and data services that a carrier may be able to provide. In addition, it is necessary to consider the fact that a carrier will often be able to serve multiple customers at given location. MCI typically provides multiple services to its customers at most of its lit buildings. In MCI's experience, MCI will construct fiber laterals to a customer location if the committed gross revenues for all services provided to the customer over that

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Eleuterio (Teo) Galvan Jr. and Francisco Maella ¶ 90, *attached to Comments of Alpheus Communications, L.P., Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC filed Oct. 4, 2004) (in downtown Dallas, "the lateral that a CLEC needs to deploy may be from 500 feet to 5,000 feet at a cost of over \$100 per foot, and up to \$400 per foot if it is a moratorium street."); Declaration of Mark A. Jenn (on behalf of TDS Metrocom, LLC) ¶ 14, *attached to Comments of ATX et al., Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC filed Oct. 4, 2004) (TDS CLECs have found that it can cost up to \$20-\$30 per foot and up to \$150,000 per mile to lay fiber).

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facility equal or exceed the estimated costs of construction. In practical terms, this means MCI has constructed fiber laterals that have cost between [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] with a minimum revenue commitment from such customers for all services of as little as [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] per month over a two-year period.

In the past, some competing carriers have claimed that they will not be able to deploy new fiber because, since the dot-com bubble, they can no longer obtain access to capital. But the facts show otherwise. As an initial matter, an enormous amount of competitive investment occurred well before the dot-com craze. At the time of the 1996 Act, competing carriers had already deployed at least 47,000 route miles of fiber and there were at least 24,000 buildings served by this competitive fiber.<sup>88</sup> Between 1996 and 1998, facilities-based CLECs invested an additional \$12 billion in local infrastructure; competing carriers deployed another 50,000 route miles of fiber during this period.<sup>89</sup> There has also been considerable CLEC investment since the burst of the dot-com bubble.<sup>90</sup> In 2002 and 2003 alone, CLECs invested over \$10 billion in local infrastructure.<sup>91</sup> XO's capital expenditures were over \$100 million in 2004 alone. Time Warner Telecom's capital expenditures were \$167 million in 2004; Level 3's were \$288 million; ITC Deltacom's and Electric Lightwave's were around \$50 million.

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<sup>88</sup> See New Paradigm Resources Group, Inc. & Connecticut Research, *1997 Annual Report on Local Telecommunications Competition*, Ch. 2 at Table 6 (8th ed. 1996) ("1997 CLEC Report").

<sup>89</sup> See *2004 ALTS Report* at 10; *1997 CLEC Report*, Ch. 2 at Table 5; New Paradigm Resources Group, Inc., *CLEC Report 1999*, Ch. 6 at Table 5 (10th ed. 1999).

<sup>90</sup> See New Paradigm Resources Group, Inc., *CLEC Report 2005*, Ch. 2 at Chart 1 (19th ed. 2005) ("2005 CLEC Report"). See also *2004 ALTS Report* at 10 (citing New Paradigm Resources Group).

<sup>91</sup> *2005 CLEC Report*, Ch. 2 at Chart 1. See also *2004 ALTS Report* at 10 (citing New Paradigm Resources Group).

Finally, MCI is by no means unique in its ability to deploy additional fiber.<sup>92</sup>

Nationwide, MCI has deployed a total of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] local route miles of fiber. While similar data are available for only seven other CLECs, these carriers alone have deployed over 55,000 local route miles of fiber.<sup>93</sup> AT&T alone has deployed 21,000. Time Warner Telecom has deployed nearly 13,000.<sup>94</sup> And many entities other than CLECs have deployed local fiber – local fiber wholesalers such as AboveNet and NEON have deployed thousands of local route miles as have utilities such as Con Edison and Progress Telecom.<sup>95</sup> See Figure 6.

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<sup>92</sup> This is particularly true with respect to the deployment of fiber laterals from existing rings. The ability of competing carriers to deploy laterals, and not the rings themselves, is the only relevant concern here given that competing carriers have already deployed rings in the same metropolitan areas as MCI. And insofar as deploying laterals is concerned, any conceivable advantages of scale or scope that MCI may have by virtue of its larger base of enterprise customers and that may be relevant in deciding whether to deploy a ring in the first instance are irrelevant. Competing carriers, including MCI, typically do not deploy laterals unless they have a committed customer, and once they have such a customer the costs and revenues associated with deploying a lateral are not materially different for MCI than they would be for any other competing carrier.

<sup>93</sup> See Declaration of Quintin Lew App. B (“Lew Special Access Decl.”), attached to Comments of Verizon, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (FCC filed June 13, 2005).

<sup>94</sup> See AT&T, *The AT&T Advantage – First Quarter 2004*, [http://www.att.com/inside/docs/052004\\_attadvantage.pdf](http://www.att.com/inside/docs/052004_attadvantage.pdf); Time Warner Telecom Inc., *Selected Operating Statistics*, attached to Time Warner Telecom Press Release, *Time Warner Telecom Announces Solid First Quarter 2005 Results Fueled by 29% Data and Internet Growth and 16% Enterprise Revenue Growth Year over Year* (May 2, 2005).

<sup>95</sup> See *CLEC Report 2005*, Ch. 4 at Table 14 (140,300 miles have been deployed by competitive independent operating companies, utility CLECs, data, Gig-E, and other providers). A group of nine telecommunications service providers created by utility companies recently formed a marketing alliance to raise their profiles among potential carrier and enterprise customers. See UTelco Alliance, <http://www.utelcos.com/companies.html> (July 26, 2005).

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Many of the entities who have been most aggressive in deploying new fiber – such as cable companies and utilities – have considerable advantages over MCI in the ability to deploy fiber. Cable operators have, in fact, been extending their fiber to the premises of large office buildings.<sup>96</sup> In presentations to analysts, Cox Business Services announced a plan to “expand [the] capabilities of the HFC [hybrid fiber-coaxial] infrastructure,”<sup>97</sup> while Time Warner explained that “we do have an opportunity to go more aggressively after the enterprise business.”<sup>98</sup> Comcast “has been delivering service to commercial organizations since 1995 and

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<sup>96</sup> See *Triennial Review Order* ¶ 40; see also D. Chang, EVP, Finance & Strategy, Charter Communications, presentation before the JP Morgan High Yield Conference, at 23 (Feb. 2, 2004) (Charter is moving “‘up-market’ to compete in Enterprise RFP environment”).

<sup>97</sup> J. Hayes & B. Stemper, Cox Communications, presentation before the UBS Media Week Conference, at 23 (Dec. 2003).

<sup>98</sup> Thomson StreetEvents, *TWX – Q2 2004 Time Warner Inc. Earnings Conference Call Final Transcript* at 8 (July 28, 2004) (quoting Don Logan, Chairman of Media, Communications Group, Time Warner).

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has thousands of customers leveraging the Comcast network for critical business applications.”<sup>99</sup> Comcast claims that it “leverages the massive network of our parent company” whose “reach is broad and deep, with capacity in dense urban, sprawling suburban and even many rural areas others can't reach.”<sup>100</sup> Cox claims that “the commercial sector in their territories alone represents an \$8 billion to \$10 billion opportunity. Narrowing it down to firms within 100 feet of Cox's cable plant, they see a \$3 billion market.”<sup>101</sup> More than 320,000 businesses with “a total telecom spend of roughly \$3.3 billion annually” lie within 100 feet of Cox's network.<sup>102</sup>

### 3. *Intermodal Alternatives*

The scope of high-capacity competition is not limited to just competitive fiber.

Intermodal alternatives such as cable modem service and fixed wireless provide an additional special access alternative for many customers.

Cable companies are already extending fiber directly to larger business customers. But the cable modem services that these companies provide over their hybrid fiber/coax networks also can be used as a substitute for special access for some customers, particularly smaller and medium businesses.<sup>103</sup> Analysts estimate that nearly 60 percent of “small- to medium-sized

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<sup>99</sup> Comcast Commercial, *Services*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=6&Itemid=27>.

<sup>100</sup> Comcast Commercial Services, *Solutions: Telecommunications*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=33&Itemid=71>.

<sup>101</sup> M. Harris, *et al.*, *Cable Gets Down to Building Business*, *Telecommunications Magazine* (Mar. 2005).

<sup>102</sup> Jim Robbins, President and CEO, Cox Communications, presentation to the Sanford Bernstein 19th Annual Strategic Decisions Conference, at 16 (June 2003); J. Reif-Cohen, *et al.*, Merrill Lynch, *Cox Communications: Chasing Profits and the 4 Million Non-Video Homes* at 6 (July 30, 2004).

<sup>103</sup> C. Munroe, IDC, *U.S. Private Line Forecast and Analysis, 2002-2007* at Table 2 (Dec. 2003) (“Broadband [*i.e.*, cable modem and DSL] substitution for sub-T1 and T1 lines will account for over \$3 billion in lost private line revenue” between 2003 and 2007.); K. Burney, *et al.*, In-Stat/MDR, *Cash Cows Say “Bye-Bye”: The Future of Private Line Services in US Businesses* at Table 15 (Dec. 2003) (“*In-Stat/MDR Private Line Report*”) (30 percent of “enterprise” respondents and 20 percent of “middle market” respondents were considering replacing or had plans to replace their T1 line with a cable modem.). Smaller enterprise customers view cable companies as competitive options for voice and data transport and last-mile access into their facilities. Larger customers also view cable companies as viable competitors for last-mile service into their smaller regional offices. *See, e.g.*, D.