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September 30, 2005

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation – DA 05-656, WC Docket No. 05-65/ DA 05-762, WC Docket No. 05-75

Dear Ms. Dortch:

On Friday, September 30, 2005, the following individuals met with Chairman Kevin Martin, his Legal Advisor, Michelle Carey, and Tom Navin, Chief of the Wireline Competition Bureau: Carl Grivner and Heather B. Gold of XO Communications, Dr. Simon Wilkie, and Brad Mustschelknaus and Thomas Cohen of Kelley Drye & Warren LLP. The purpose of the meeting was to describe the harms arising from the proposed mergers of SBC-AT&T and Verizon-MCI and provide a series of remedies to alleviate these harms. The attached presentation was distributed at the meeting. It is filed on behalf of Conversent Communications, Eschelon Telecom, NuVox Communications, XO Communications, and Xspedius Communications.

An original and one copy of this notice of oral ex parte presentation is being filed with the Secretary's office pursuant to 47 C.F.R. 1.1206.

Sincerely,

Thomas Cohen
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KDWGP/COHET/7315.1

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Attachment: Analysis of the Competitive Effects of the Proposed Mergers of SBC/AT&T and VZ/MCI on Business Customers

cc: Chairman Kevin Martin
Daniel Gonzalez
Michelle Carey
Thomas Navin

Analysis of the Competitive Effects of the Proposed Mergers of SBC/AT&T and VZ/MCI on Business Customers

Presentation of Conversent Communications, Eschelon Telecom, NuVox Communications, XO Communications & Xspedius Communications

Dockets 05-65 & 05-75
September 30, 2005

Market Definition and Operation

- Today, there exists a *functioning* market (albeit imperfectly) for wholesale local facilities (loop and transport facilities from a POP to a customer) that enables retail customers to have a choice of competitive providers in many locations.

- This market has grown in importance because: UNEs are being delisted; ILECs continue to reluctantly provision UNEs; and ILEC special access rates are far in excess of marginal cost.

- AT&T and MCI play a critical role as the *major* suppliers of wholesale Type I and II facilities to other competitive providers at rates far below ILEC special access rates.

- Consequently, the proposed mergers involve a direct and substantial horizontal overlap in markets for wholesale local facilities.

INDUSTRY SIZE AND CONCENTRATION

The Local Wholesale Industry:

Size: Approximately $14B in Annual Revenues Nationwide (34% of the total wholesale market)

Growth Rate: 4-5% annually

Bell In-region Share: Approximately 75% for each Bell

Industry Shares of Two Largest Non-Bell Providers:

- **MCI – 10%**
- **AT&T – 9%**
- **(Most of the competitive presence of MCI and AT&T is concentrated in Tier 1 metros)**

Annual Revenues of MCI and AT&T from Local Wholesale: Approximately $1.4B each

*All statistics are from The Yankee Group's January, 2004 Report to XO Communications.

MARKET CONCENTRATION
Capacity-Based Loop 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.

MARKET CONCENTRATION
Capacity-Based Loop HHIs for 6 MSAs

MSA	HHI/All Bldgs Pre-Merger	Change in HHI Post-Merger	HHI/OC3 Bldgs Pre-Merger	Change in HHI 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.

Under the Horizontal Merger Guidelines, an increase in the HHI of more than 100 points indicates the merger is likely to enhance market power.

UNILATERAL EFFECTS

- Methodology to Evaluate Effects on Prices – Gather the Best Evidence
  - Use actual price data from competitive providers of offers received in the normal course of business for the provision of wholesale loop and transport circuits
  - Perform the conventional analysis in antitrust review of mergers, including regression and other statistical analysis to determine price effects post-mergers

- Summary of Price Data Evaluated
  - Data includes both RFPs/RFIs and Master Service Agreements
  - The sample includes availability and prices offered for over 13,000 wholesale local circuits in SBC and VZ territory procured over the past 2 years

- Summary of Results
  - AT&T and MCI are by far the most frequent bidders on-net and off-net
  - AT&T or MCI is the low price bidder most of the time
  - Even if AT&T or MCI don't win, they force the winning bid to be lower
  - More bidders produce lower prices ("5 is better than 4")
  - Winning bids are generally 30%-90% below ILEC special access charges

COLLUSIVE EFFECTS

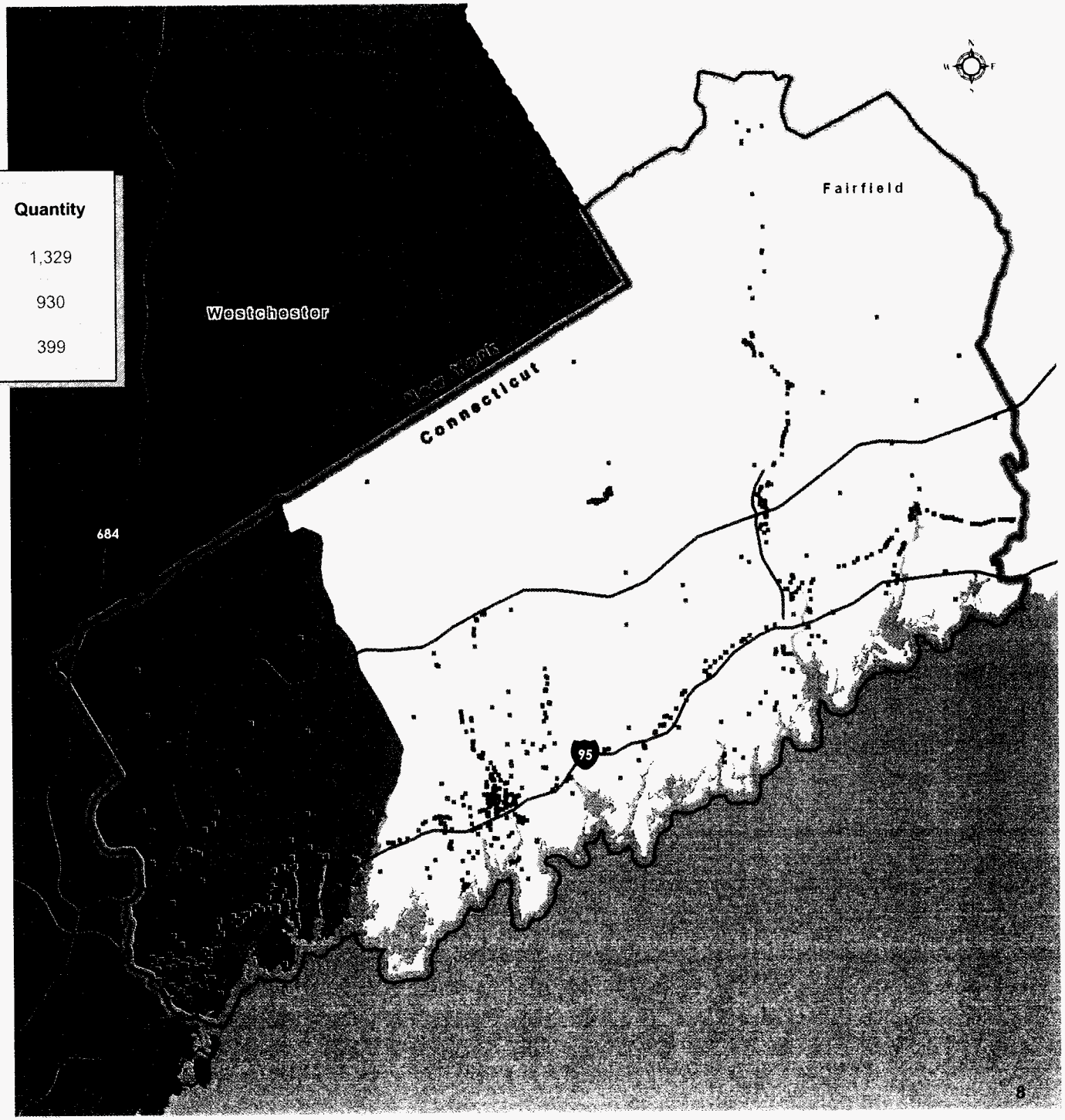
- Economic theory provides ample rationale for tacit collusion between SBC and VZ post-merger to limit expanding service to retail customers and terminate the provision of wholesale service.

- Past promises of SBC and VZ to compete out-of-region have proven hollow.

- 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

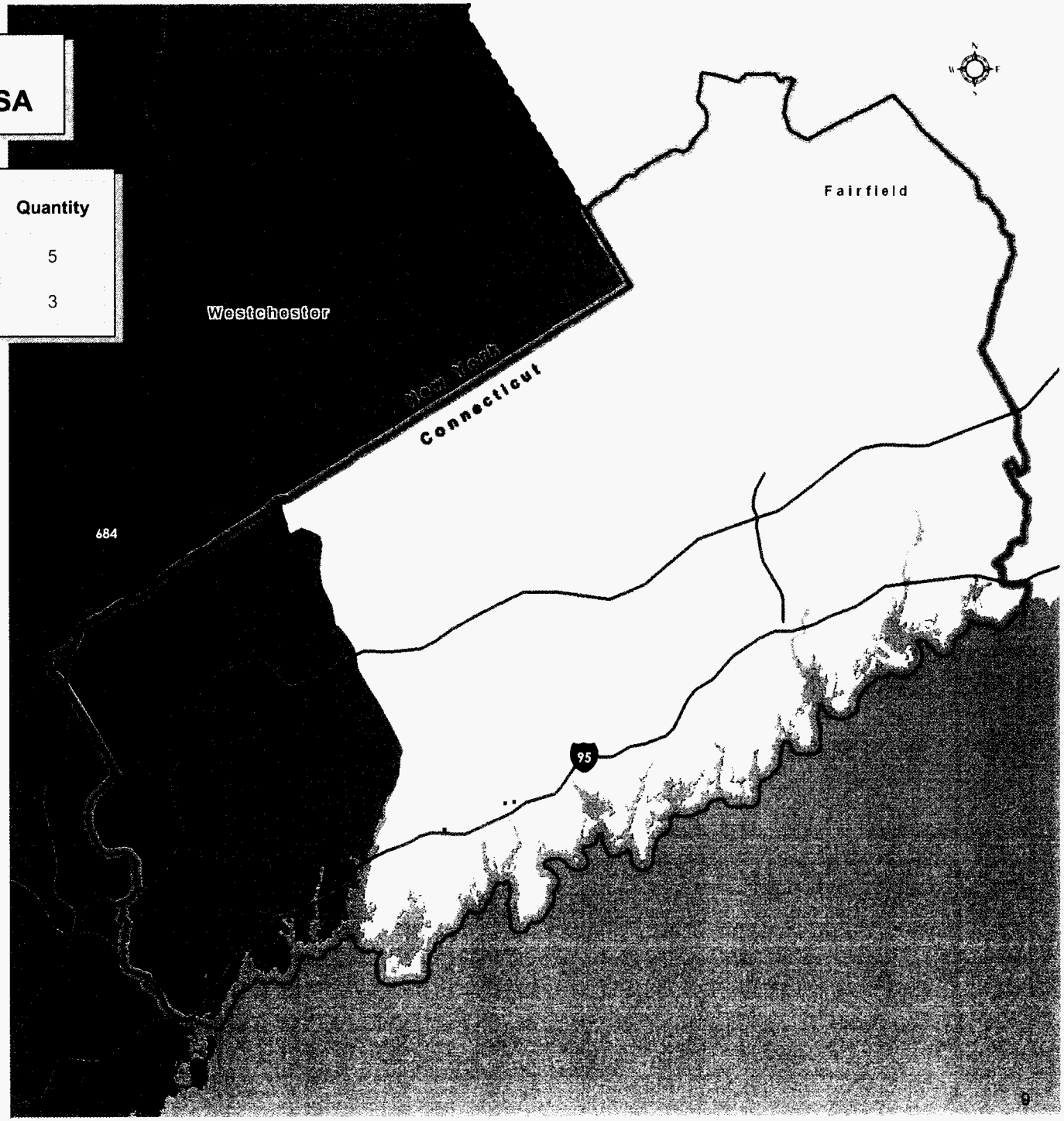
Category	Quantity
CLEC appearances	1,329
CLEC appearances in SBC Territory	930
CLEC appearances in Verizon Territory	399



- 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



- State Boundary
- County Boundary
- Interstate Hwy
- MSA/Study Boundary
- Verizon Serving Territory
- SBC Serving Territory
- Verizon Sites in SBC Territory
- SBC Sites in Verizon Territory

POST-MERGER ENTRY: AN ILLUSION

- 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.

- 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.

- "[T]he value of the [Bell produced competitive fiber] maps…is undermined by several shortcomings." For instance, they fail to indicate capacity or whether the fiber is being used to offer a wholesale service. "[T]hese maps are only minimally relevant…" (TRRO, n. 445)

- In Triennial Review proceedings, AT&T and MCI have detailed the enormous barriers to construction of local network infrastructure.

- 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.

CONCERNS OF BUSINESS CUSTOMERS

- SURVEY OF FORTUNE 1000 CUSTOMERS CONDUCTED THIS SUMMER FOR ACTEL BY THE CENTER FOR SURVEY RESEARCH & ANALYSIS AT THE UNIVERSITY OF CONNECTICUT FINDS:

- Just about all telecom managers of Fortune 1000 companies who are customers of AT&T and/or MCI are aware of the proposed mergers.
- 85% of these telecom managers believe the recent experience of increased competition has been very beneficial.
- Of the telecom managers who have formed opinion, they believe -- by a 2 to 1 margin -- that their companies will be harmed by the mergers, and they are concerned that, if the mergers are consummated, competition will decrease, leading to higher rates and lower quality of service.

- These findings are buttressed by various investment analyst reports, and concerns about lack of competition extend to smaller business customers. For instance, a June, 2005 report from Bear Stearns states that: "As the mergers are finalized, we expect competition in the SME market to slow down…pricing is likely to stabilize and possibly rise over time."

PROPOSED REMEDIES TO ALLEVIATE IDENTIFIED HARMS

- Ensure UNE availability and pricing reflect harm from exit of AT&T and MCI
  - CAP UNE pricing
  - Remove AT&T and MCI as collocators and recalculate UNE List
  - Freeze further UNE delisting
  - Remove DS1 loop and transport caps
- Ensure rates, terms & conditions for special access circuits reflect pre-merger market conditions
  - Alternative remedies of 11.25% reinitialization or commercial negotiations with "baseball" arbitration
- Adopt Fresh Look for AT&T and MCI Customers