Consumers Union
Nonprofit Publisher of Consumer Reports

Consumer Federation of America

Statement of
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On Behalf of
Consumers Union
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The Consumer Federation of America

On
SBC-AT&T and Verizon-MCI Mergers
Remaking the Telecommunications Industry
Part II

Senate Judiciary Committee
April 19, 2005

The recent wave of proposed mergers in the telecommunications industry — SBC attempting to gobble up AT&T, and Verizon trying to swallow MCI — mark the ultimate demise of the era during which consumers were led to expect more and more choices and lower prices for local, long distance, wireless, and the new Internet-based services exploding on the market.

Consumers Union (CU),[1] the nonprofit publisher of *Consumer Reports* magazine, and the Consumer Federation of America (CFA)[2] believe that if not rejected or dramatically altered, these mergers could set the marketplace back to a world more akin to deregulated monopoly than competition.

SBC CEO Ed Whitacre promised the House Energy and Commerce Committee last month, "I don't think there's any question there will be more competition, not less." But as we show, telecommunications competition is as sturdy as a house of cards, because the competition that exists is dependent on the generosity of the big Bells and giant cable companies. From local and long-distance, to wireless, to VoIP, to broadband, big Bell companies are blocking access to their networks and thwarting competition before it can even begin.

But regardless of whether these mergers are approved, the telecommunications marketplace is broken and needs to be fixed. Congress must immediately rewrite the 1996 Telecommunications Act, to jumpstart the vigorous competition necessary to bring down prices and increase choices for consumers.

With the appropriate competition-promoting regulatory policies and tough antitrust enforcement, our nation's telecommunications market could head towards an era of competitive unlimited local, long-distance calling and high-speed Internet services for as little as $40 a month. Unfortunately, misguided regulation and mergers like the ones proposed here between SBC and AT&T and Verizon and MCI, are making this low-cost competitive market an impossibility.

The Current Marketplace Serves Big Telephone Companies —Not Consumers

Anyone who has passed economics 101 knows the basic dynamics of a marketplace; when companies vigorously compete against one another, they have incentives to beat the competition through lower price and are driven to make the investments necessary to improve quality or develop new services. The market forces firms to invest and price aggressively, for fear of falling behind. Vigorous competition ensures that we all pay fair prices for the goods and services we enjoy. Unfortunately, the telecommunications marketplace is anything but competitive.

Rather than competing with one another for each customer, the telecom giants got even bigger by merging with one another, resulting in less and less competition. As these large companies acquired a larger and larger footprint, it became harder and harder for new entrants to gain a toehold in the market. Today, the result is a concentrated market that is far

from the economic vision of vigorous competition. And the proposed SBC-AT&T and Verizon-MCI mergers, if approved, will be the final nails in the coffin of the local competition experiment the Congress launched in the 1996 Telecom Act.

In their statements and filings, the merging parties fantasize about competition and present nationwide data that purports to show that telecommunications markets are highly competitive. This approach to market analysis is simply wrong. Telecommunications markets are still essentially local markets. In order to provide telecommunications services, one must have a last mile technology to distribute the service to the consumer and a middle mile medium to aggregate traffic and deliver it to large national and international communications and Internet networks. These last- and middle-mile facilities are the bottlenecks through which all telecommunications must flow. These are the bottlenecks that the incumbent local exchange carriers (ILECs) like Verizon and SBC have leveraged to maintain their market power over customers. These are the bottlenecks that competitive local exchange carriers (CLECs), AT&T and MCI foremost among them, were trying to break down. When the analysis moves from this macro-level to take a more granular view of real product and geographic markets, the impact of the merger becomes even uglier from the consumer point of view.

Today, consumers have at most two choices for their telecommunications services: the local telephone company or the cable company. In as much as one third of the country, consumers have no such choice. Even where there is a duopoly, this is hardly the vigorous competition that forms the basis of the economic ideal; in fact, *Business Week* has called this a "cozy duopoly."[3] "Cozy duopolies" do not serve consumers well. They do not compete vigorously on price or innovate, bringing benefits (lower prices and new goods and services) to consumers. Rather, each protects its own base (phone or cable service), generally staying out of the other's service territory. They bundle services (e.g., phone or cable with broadband) in order to keep potential competitors (such as satellite, which lacks a viable broadband service) at bay. As a result, to get a variety of good marketplace choices and prices, consumers must buy extra services – DSL tied to local phone service, or cable modem service tied to a cable video package. In order to get the benefits of this "bundle-only" competition, the average household must double or triple its spending.[4]

CU and CFA believe that these mergers should be stopped or substantially modified. But regardless of whether this occurs, the telecommunications marketplace is fundamentally broken and needs to be fixed. The vigorous competition Congress had envisioned during passage of the 1996 Telecom Act has failed to materialize. Congress must take action to correct fundamental errors that have occurred as a result of the FCC's implementation of the Act. Rather than the abundance of competition that the Bells claim they face, we see a vastly different marketplace – one where the technologies supposedly competing against the Bells simply do not compete. For example:

- **Local phone "competitors."** CLECs were supposed to bring competition to the marketplace after passage of the 1996 Act. But SBC and Verizon litigated, stymied,

and strangled local voice competition until it has almost completely withered. As a result, the CLECs that were supposed to offer so much competition to the dominating Bells are dying in droves.[5] Born as local monopolies, the Bell companies have remained anti-competitive to the core. Once the 1996 Act was signed into law, the Bell companies immediately set out to bulk up their local monopolies into regional monopolies through mergers and acquisitions. In the end, they never competed in one another's regions as envisioned by Congress, and they never fulfilled the promises they made during their pervious mergers. This will only get worse if these mergers are approved.

- **Long distance.** SBC and Verizon have run a brutal bait-and-switch game with long distance service. After having been allowed to re-enter the long-distance market because policymakers determined local markets were open – a finding that was overwhelmingly based on the availability of UNE-Ps – they launched a vigorous campaign to eliminate the availability of UNE-Ps. SBC and Verizon's gambit was a success and, as expected, the competition is drying up.

- **Voice over Internet Protocol.** SBC and Verizon often point to new technologies, such as Voice over Internet Protocol (VoIP) as the source of the supposedly great level of competition, but these are actually quite limited. Given that 70 percent of households don't have broadband service and therefore cannot take advantage of VoIP calling,[6] VoIP is not yet an effective competitor to the traditional wired phone service. And VoIP has other problems with it; it does not have reliable 911 service that does not work when the power goes out. Even worse, SBC, is blocking access from VoIP providers to enhanced 911 networks. And SBC, Verizon and BellSouth are hindering VoIP competition, as we describe in the Broadband section.

- **Wireless.** Two critical factors limit the ability of wireless services to effectively compete with traditional services. First, even with a big bucket of minutes, wireless costs about ten cents a minute for the typical pattern of use of local calls – five times as much, on a per-minute basis, as local flat-rate dialtone, which is the staple of local service. Wireless is also less reliable than wireline and has limited access to the 911 system. Second, Cingular and Verizon Wireless, the nation's two largest cell phone companies, are owned by two large Bells – SBC (with BellSouth) and Verizon, respectively – and therefore have little incentive to compete with their own wireline affiliates. Through mergers and acquisitions, as well as their brand name prominence, SBC and Verizon are each the leading wireless supplier within their respective local market.[7] If competition is to come from wireless companies, SBC and Verizon should be willing to accept limits to the amount of licensed spectrum they own, and allow more unlicensed spectrum to be given to innovators.

- **DSL Broadband.** Making matters worse, SBC and Verizon (as well as BellSouth) also use an anti-competitive bundling tactic to ensure that VoIP can never effectively compete with their basic local voice services. Neither Verizon nor SBC will sell a

consumer DSL on a stand-alone basis, what is known as "naked" DSL. Both force consumers to buy their voice service in order to get a DSL line. So a consumer who wants to buy VoIP from a competitor has to pay for local service twice.

In March 2005, the *New York Times* reported on the problems of bundling DSL with local wireline phone service, citing numerous examples of DSL customers like Justin Martikovic, who rely on wireless phones for normal calling, never using the wireline phone that he pays $360 a year to keep connected. He is not alone—there are thousands more who, like him, "have to pay for a service I'm never using."[8] Tacking on local phone service to a DSL bill raises the monthly price from $20-$40 (which are often only for a limited trial period and for those willing to sign a one-year contract) to $50-80 (See Exhibit 1). This practice mirrors cable, which sells broadband for $40-60, so long as you purchase its television service bringing your total to $80-100 every month. Both telephone companies and cable operators force consumers to buy bundles of services – to pay twice – if they want to purchase VoIP service from a competitor.

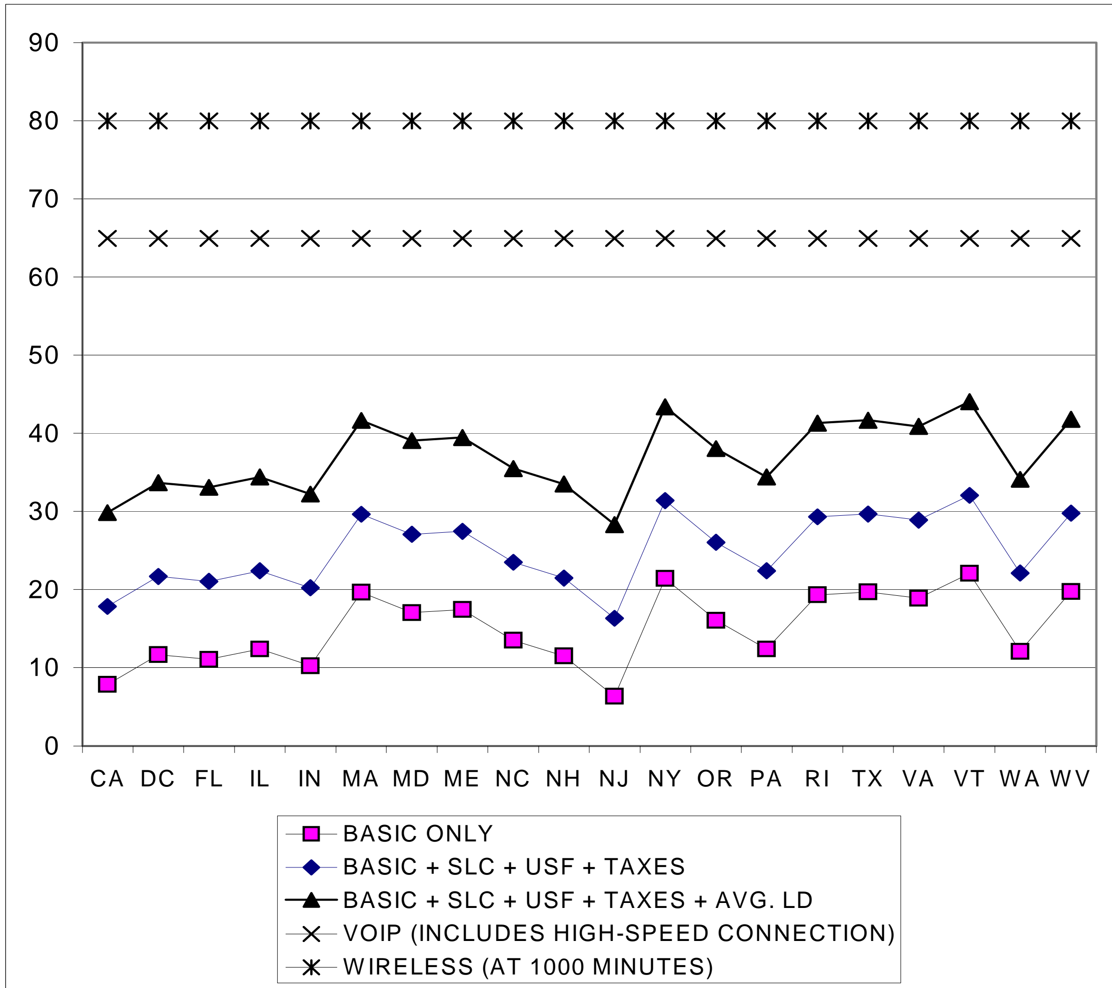
• **Community Broadband Internet Providers.**

Communities not well-served by telephone companies and cable operators should be able to deploy their own digital infrastructure. Many communities have only a single broadband provider or a cable - telephone company duopoly. In these communities, rates remain high and service remains poor. As the market becomes more concentrated, the threat of municipal entry becomes necessary to promote competitive services such as voice or video over the Internet. A new study released by CFA, CU, and other public-interest groups shows that community Internet providers, or even the threat of municipal entry, could provide the competition necessary to keep rates low and quality of service high.[9]

For example, community Internet providers are charging lower prices than Bell DSL service providers are charging: $16 in Chaksa, Minnesota, $20 in Rio Rancho, New Mexico, Moorhead, Minnesota and Lompoc, California, and an estimated $15 in Philadelphia. And if consumers want it, they can pay an additional $25 for unlimited local and long distance VoIP service—a significant monthly savings. In other words, today's market conditions could have evolved to a world where broadband and unlimited local and long-distance calling are available nationwide for as little as $40 a month. The SBC and Verizon mergers plus wrong-minded regulatory policies are almost certain to make this lower-cost, more competitive market disappear before it ever gets a chance to take hold and spread.

But SBC and Verizon do not merely oppose these networks. They actively fight community efforts by misleading consumers and policymakers about economic operation and effects. When they fail, they move their efforts to state legislatures to

EXHIBIT 1: LOWEST PRICED ALTERNATIVES FOR TELEPHONE SERVICE



Sources: Billy Jack Gregg, *A Survey of Unbundled Network Element Prices in the U.S.,* February 2005; Verizon Application, *Declaration of Husser, et al*., Exhibit 2. State prices are statewide averages. Wireless assumes 400 minutes at the average cost of $.10 per minute

block towns, cities and counties from deploying broadband networks—work the companies should be doing more of themselves.

The more competitors they gobble up and the bigger these companies get, the less incentive they have to devote resources to competing in the marketplace for consumers, and they have greater incentive to prevent other entities from competing with them. And even when a community provides Internet service, it doesn't mean that private investment from companies like SBC and Verizon runs away. A recent economic study shows that these municipal broadband networks don't crowd out private investment and competition,[10] while another new study analyzes a community

with municipally-operated broadband, which has had significantly faster economic growth compared to matched communities.[11]

If Congress does not fundamentally realign the telecom marketplace, we are headed on a dangerous path. The lack of competition has consequences for all of us. The United States has slipped from third in the world in broadband to thirteenth.[12] Americans pay more per megabit for broadband than a dozen countries around the world. Penetration of the Internet in households has stagnated. But it's not just broadband—we're failing to connect households even with dial-up Internet access. Half of all households with incomes above $75,000 per year have broadband, yet half of all households below $30,000 do not even have dial-up Internet access at home.[13] Families of color are particularly hard hit by the digital divide; white households are fifty percent more likely than Black or Hispanic households to have Internet access at home and twice as likely to have high speed access.

Horizontal Consolidation: These Mergers Make the Telecommunications Market Worse

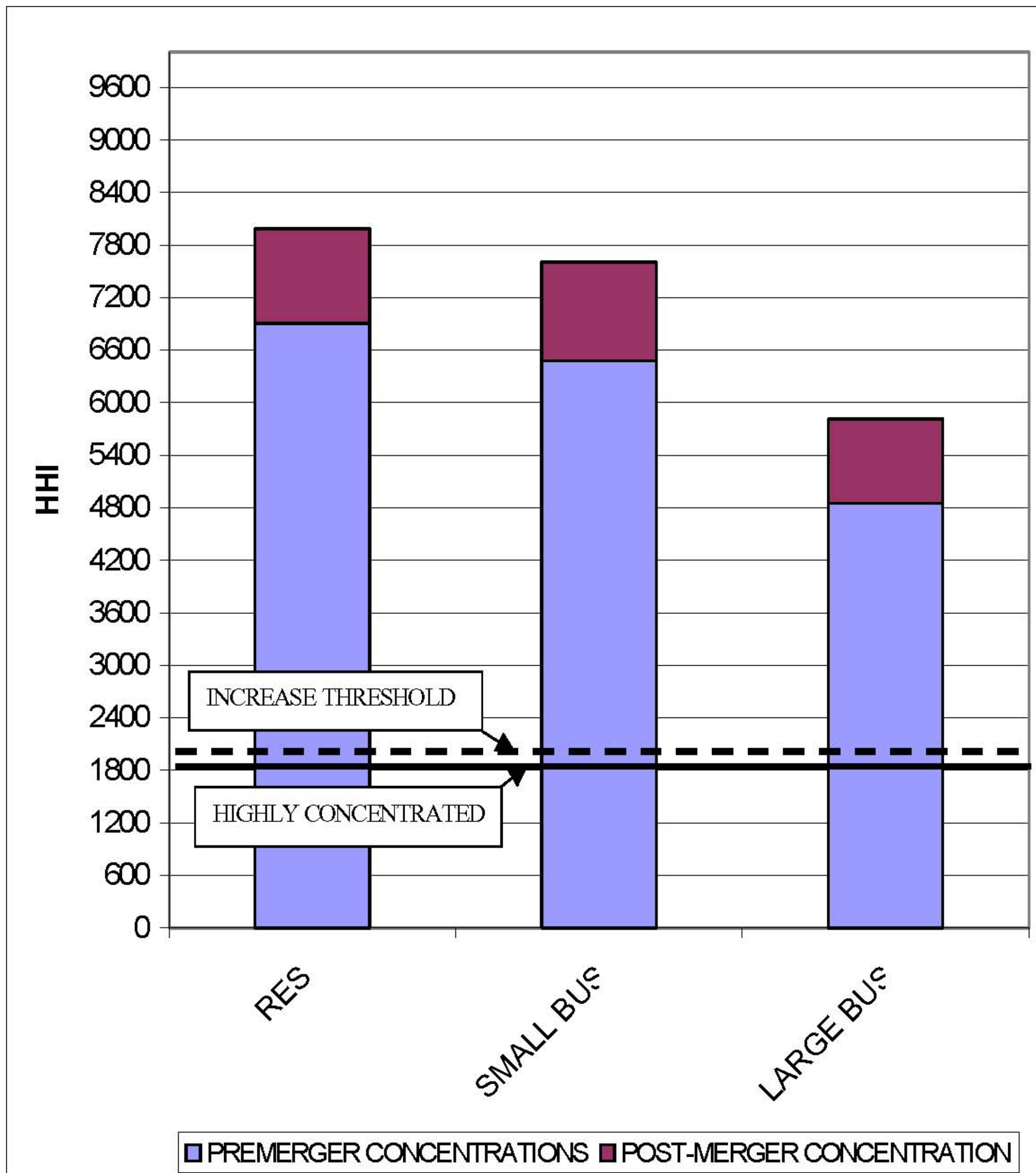
The SBC/AT&T and Verizon/MCI mergers will have a deep impact in important telecommunications sectors like the local and long-distance residential and business markets.

Today, pre-merger, SBC and Verizon have about an 80 percent residential market share of local telephone service in their regions,[14] and that number will increase as a result of the latest acquisitions and the decision of the Federal Communications Commission to eliminate unbundled network element platforms (UNE-P), which allowed AT&T and MCI to compete in local markets. By buying up their largest competitors and eliminating the last vestige of competition, the market shares of these two behemoths in their regions will likely exceed 90 percent in the residential sector.

Although the merging companies have failed to voluntarily provide meaningful information on product and geographic markets, state commissions have begun the process investigating the impact of the SBC/AT&T merger and the severe problems it will cause are becoming clear.[15] As the Committee well knows, merger analysis starts by evaluating industry structure with a measure of concentration know as the HHI (Hirschman, Herfindahl Index). A market with an HHI of more than 1,000 is considered concentrated and any merger that raises the HHI by more than 100 points in such a market is suspect. A market with an HHI above 1800 is considered highly concentrated and any merger that raises concentration more than 50 points is suspect. By these standards, these mergers anti-competitive impact will be extremely large.

A dominant firm with a local telephone service market share of 80 percent would ensure an HHI of 6400. But in California, the concentration ratio for residential customers today, before the merger, is just over 6900 (see Exhibit 2). The SBC/AT&T merger will increase the concentration in the California residential market to 90 percent, creating an HHI of 8100.

EXHIBIT 2:
IMPACT OF THE SBC-AT&T MERGER ON CALIFORNIA LOCAL MARKETS COMPARED TO DOJ/FTC MERGER GUIDELINES



Source: "Protest of the Utility Reform Network, Utility Consumer's Action Netowrk, Disability Rights Advocates, Consumer Union of the U.S., Inc., The Greenlining Institute, and Latino Issues Forum," *In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. (AT&T) for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454), to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation,* before the Public Utilities Commission of the State of California, Application 05-02-027, February 28, 2005, Exhibit 2

The two corporations each already has about a 40 percent market share in the residential long-distance market within their regions, but if this merger is approved, this will increase substantially to an estimated 70 percent.[16] In fact, if these mergers go through, the telecommunications market will look a lot like the old days of "Ma Bell" before AT&T was broken up. SBC and Verizon will have about a 90 percent market share in residential local wireline,[17] 70 percent in long distance,[18] and 40-50 percent in wireless.[19] They will have the incentive and opportunity to squeeze out competitors that need access to the local or interstate "long-haul" networks.[20]

And if VoIP is a competitive threat, these mergers will add to the problems outline above, and remove the two largest potential VoIP competitors from the market where they are needed most – in the home service territories of the two largest Bells. AT&T will no longer exist to compete against SBC's wireline business in SBC's service territory. The same holds for MCI, which will no longer compete against Verizon's wireline business in Verizon's service territory.

The big business service market appears to be only barely more competitive, and again these mergers would exacerbate the already-significant problems in this market segment. On average, these two companies have about a 75 percent market share for medium and large business customers.[21] These two proposed mergers, if allowed to go through, will increase the in-region market share substantially to the 80 percent range, since AT&T and MCI are such large players in the market and because of the geographic pattern of competition.[22] These regional fortresses would also anchor their dominance over national corporate accounts.

The HHI in the large business segment is just under 4900. A dominant firm with a market share of 70 percent would cause the HHI to be at least 4900. The merger would raise the HHI in the California large business market to over 5800.

Given this increasingly consolidated market for wired services, and especially considering the demise of competitors to the Bells – CLECs – it is critical for policymakers to consider the geographic distribution of the SBC and Verizon markets when analyzing these two mergers. MCI had its most intense competitive presence in Verizon's service territory; the Verizon-MCI merger will eliminate Verizon's most vigorous in-region competitor.[23] The situation with SBC-AT&T is similar. AT&T has a large presence in SBC's service territory. If these mergers go through, policymakers will effectively be allowing SBC and Verizon to buy market power that eliminates their strongest in-region competitors.

Vertical Integration: The Proposed Mergers Will Harm Competition

These mergers also pose severe problems because they would allow the companies to control many of the critical inputs into the market, making it that much more difficult for competitors to obtain access to such inputs. Specifically, AT&T and MCI are large providers of Internet and interstate transport (backbone). As independent companies, their interest is in maximizing traffic. SBC and Verizon are large purchasers of Internet and interstate backbone services. As unaffiliated buyers, they make up a large portion of the market. From a competition standpoint, it is important to keep SBC and Verizon, which need the Internet and

interstate backbone services as inputs, separate from AT&T and MCI, which provide this critical input. Otherwise, SBC's and Verizon's competitors will have difficulty gaining this input and are more likely to go out of business.[24]

The result of these proposed mergers – called "upstream vertical integration" in the parlance of economics – would therefore likely have a dramatic impact on the market for Internet and interstate backbone traffic. SBC and Verizon would have an incentive to abuse their control over those assets to diminish competition for their retail businesses, rather than maximize the revenue flowing over those assets.

As a vertically integrated entity, both of the resulting behemoth companies would have an incentive to maximize profits by using their leverage in the form of a price squeeze. Unfortunately, the opportunity to run a classic price squeeze will be readily available in the form of excessive access charges. The regional Bell companies have been overcharging for access, particularly special access that was prematurely deregulated by the FCC. AT&T and MCI were the leading critics of the access charge system. Should these mergers go through, those who profit from those overcharges will have swallowed those who sought lower access charges that drive down prices for consumers. These mergers should not be allowed to proceed until access charges are reformed.

This prediction is no paranoid delusion, but the logical extension of SBC and Verizon's current activities. In Court cases like *Brand X*[25], regulatory proceedings such as the wireline proceeding, and petitions to the FCC, SBC and Verizon both support the elimination of the obligation to interconnect and carry traffic on just, reasonable, and nondiscriminatory rates terms and conditions. They are buying the assets that provide critical inputs for their competitors, but at the same time they are seeking the right to discriminate against those competitors. These mergers would undoubtedly exacerbate the price-inflating, anti-competitive dangers that already exist in today's market.

If these mergers are not blocked or substantially altered by the Antitrust Division of the Department of Justice and the FCC, these regional Bells will become regional Behemoth Bells that swallowed up their original parent company (AT&T) and its main competitor (MCI), leaving consumers almost no better off than they were before the old Bell monopoly was originally demolished.

The magnitude of the two pending mergers is indisputable (see Exhibits 3a and 3b). The number 1 (Verizon) and number 4 (MCI) companies in terms of total industry revenue are proposing to merge into a segment leader with one-third of the total industry revenue. The number 2 (SBC) and number 3 (AT&T) firms in the industry are proposing to merge to form a company that would have one-quarter of the total revenue. These two industry leaders would account for over half of all revenue. The third largest company would be less than a quarter the size of the industry leader. It also has a substantial joint venture with the number two firm.

EXHIBIT 3: TOTAL TELECOMMUNICATIONS REVENUE MARKET STRUCTURE

EXHIBIT 3 (a): PRE-MERGER TOTAL REVENUES REVEAL A MODERATELY CONCENTRATED MARKET WITH TWO LARGE LOCAL COMPANIES, SBC AND VERIZON AND TWO LARGE LONG DISTANCE COMPANIES, AT&T AND MCI, WHICH ARE ALSO THE LARGEST LOCAL COMPETITORS

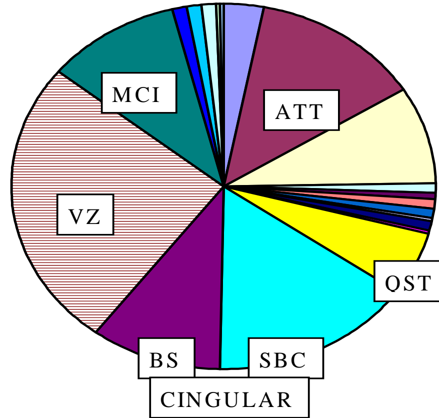


EXHIBIT 3 (b): POST MERGER (SBC-AT&T, VERIZON-MCI) TOTAL REVENUES ARE HIGHLY CONCENTRATED AND THE INDUSTRY IS DOMINATED BY TWO LARGE PLAYERS

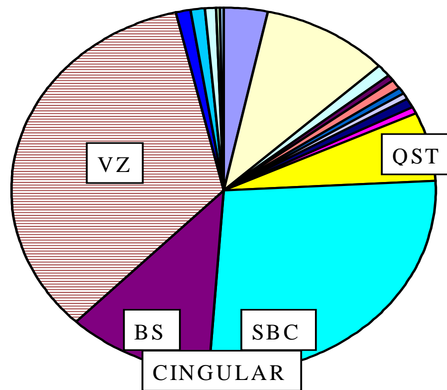
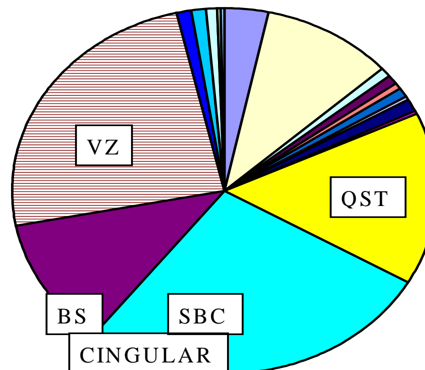


EXHIBIT 3 (c): A QWEST-MCI MERGER CAUSES A MUCH SMALLER INCREASE IN CONCENTRATION AND LEAVES A THIRD LARGE PLAYER IN THE MARKET



FEDERAL COMMUNICATIONS COMMISSION, *STATISTICS OF COMMUNICATIONS COMMON CARRIERS, 2003-2004*, TABLES 1.1 AND 1.2.

As a result of the competitive dangers described by CU and CFA, we believe the Antitrust Division of DOJ and the FCC should reject these mergers – or do massive surgery to minimize the harm that would result from these transactions. Specifically, we believe SBC and Verizon should be required to offer their broadband services on a stand-alone basis under reasonable prices, terms and conditions to ensure that consumers can purchase VoIP without paying twice for local phone service. In addition, Verizon and SBC should be required to divest substantial network equipment at a reasonable price to potential competitors who would otherwise be unable to serve consumers and businesses in local markets as a result of these proposed mergers. Finally, we believe it is critical that SBC and Verizon abide by detailed non-discrimination requirements which are essential to ensure a competitive market for applications and new services that rely upon the merging parties' networks to reach consumers.

Implicitly and explicitly, the question frequently arises as to what would happen if the mergers are not approved. Indeed, this question came up explicitly during a hearing before the House Energy and Commerce Committee. In the case of MCI, there is a ready answer. It would likely be acquired by a second suitor, who has offered a higher acquisition price per share. It is appropriate to ask, therefore, what the impact of that merger would be. Exhibit 3c shows the results graphically. It is quite apparent that the competitive impact of a Qwest-MCI merger would be much less severe. The Qwest-MCI merger increases the concentration by only one-sixth as much as the Verizon-MCI merger, less than 100 points. It also produces a much more balanced industry structure, with three large firms. Measured by the routine Merger Guidelines, even if it was approved after an SBC-AT&T merger, it would not violate the threshold for closer scrutiny at the national level.

The Failure of Previous Mergers to Create Competition—Why New Mergers Won't Help

America was promised a national competitor in 1998 when SBC merged with Ameritech. Their actions did not match their words, and SBC was fined millions by the FCC for blocking competition and it closed sales offices in new markets outside its regional territory almost as soon as they opened. These promises made, promises broken are nothing new in the telecommunications industry.

These two proposed mergers represent a double dose of anticompetitive chutzpah that spells disaster for consumers.

- Within their regional market, first the Bells made life so miserable for competitors that they go into bankruptcy or throw up the hands in despair. Then the Bells say should be allowed to buy up our largest local competitors, because they really aren't very good current or potential competitors.

- When competing head-to-head with other companies outside their region, they flip the argument around, with the same result. In order to secure

approval of their previous mergers, which eliminated the potential competitors the proposed to buy up, the Bells promised to compete out of their home regions, but they did not try very hard and have not done very well. So the Bells say, since we cannot be considered really good competitors now or in the future, we should be allowed to buy up the companies we were supposed to compete with.

The failure of competition becomes an excuse for the further re-consolidation and reintegration of the market, which eliminates the vestiges of competition and makes new entry into the market more difficult.

How Congress Can Mend a Broken Market

The failure of the "cozy" duopoly to provide affordable broadband service is at the bottom of the decline of America from third in broadband penetration to 15th in the world.[26] The culprit for the digital divide is not population density or spendthrift government subsidies; rather, it is the lack of competition and the abuse of vertical market power. With lagging broadband penetration, innovation in the applications layer—the services that use the physical connection—has gone abroad. Jobs follow the exit of innovation.[27] The precipitous decline in leadership has been widely noted in well respected rankings, as recently reported in the Harvard Business Review.

> Harvard Business School's Michael Porter, for instance, ranked the United States as the world's most competitive nation in his initial 1995 Global Innovation Index. According to Porter's projections, by 2005, the U.S. will have tumbled to sixth among the 17 member countries of the Organization for Economic Co-operation and Development (OECD) – trailing (in order) Japan, Finland, Switzerland, Denmark, and Sweden. The 2004 Globalization Index developed by A.T. Kearney and published in *Foreign Policy* ranks the United States seventh behind Ireland, Singapore, Switzerland, the Netherlands, Finland, and Canada.[28]

There are obviously many causes of this decline, but it is interesting to note that eight of the nine countries ranking ahead of the U.S. in this list have higher levels of penetration of broadband than the U.S.

To promote innovation and competition, Congress should look to these key principles:

- **Nondiscriminatory Interconnection and Carriage.** Congress must clearly establish that the monopoly Bells and cable companies must let competitors use their infrastructure at a reasonable cost. This non-discriminatory interconnection ensures that telecommunications services will be available on a ubiquitous, affordable service for the broadband services that are necessary in the information age.

Congress clearly defined telecommunications service in the 1996 Act, regardless of the facility used. The FCC ignored this language and invented a new definition to let cable operators escape from the obligation of nondiscrimination. It is seeking to let the telephone companies evade the obligations as well. Congress should remove from the FCC the ability to abrogate the most basic right of nondiscriminatory treatment.

- **Community Access to the Public Airwaves.** Congress must reaffirm the interconnected principles of community-based provision of local services, which has been part of our heritage since the founding of the Republic, and public ownership of the airwaves, which has been recognized for almost eighty years. When Congress says that "any entity" should be allowed to provide communications services, it should mean any entity, including communities and counties—not just the ones that the Bell or cable behemoths want.

  Unlicensed spectrum, which is the transmission medium that supports Wi-Fi and community Internet applications, must be expanded. The practice of licensing the public's spectrum for exclusive use by a single entity was adopted eighty years ago in a response to weak technologies that could not handle interference well. Technological progress over the past century is enabling more spectrum to be shared for multiple purposes free from problems of interference. Congress should encourage expanded use of unlicensed spectrum for public benefit.

- **Universal Service.** Congress must give much more precise and updated meaning to the goal of universal service, which has been the cornerstone of the communications marketplace for seventy years. The FCC must be required to take this goal seriously and not cut advanced telecommunications services off from universal service by misclassifying them as information services.[29] Sometimes traditional values are the best. The balance that this nation struck between private investment and public obligations has worked remarkably well since the founding of the Republic. The merger trend in the telecommunications marketplace threatens these principles by consolidating power in the hands of a few giant corporations who have shed most of their public interest obligations. We need to return to those traditional public interest values.

- **Re–opening Local and Long Distance:** The 1996 Telecom Act allowed the Bell operating companies to re-enter the long distance business in their home territories only after their local markets were found to be irreversibly open to competition. Based upon the availability of Unbundled Network Element Platforms (UNEP), the FCC concluded that this condition had been met, then it eliminated UNE-P, under pressure from the Bells and the courts. It can no longer conclude that the markets are irreversibly open. The Bells refuse to make alternatives that available that which would re-open local markets to competition. Their ability to acquire new long distance customers – including

both marketing and acquiring existing long distance companies – should be frozen until they do.

Given the troubling track record of the regulatory authorities and the behavior of the cable and telephone "cozy duopolists," it is imperative that in its review of the Telecommunications Act of 1996, Congress takes a critical look at the communications landscape. Congress should update policies to ensure the existence of competitive markets and provide as little room as possible for the FCC to flout the will of the Congress.

Unless antitrust officials and federal regulators block or substantially alter the SBC/AT&T and Verizon/MCI mergers, consumers are likely to face fewer choices and higher prices for broadband, local and long-distance telecommunications services. CU and CFA call for vigorous enforcement of our nation's competition policies to prevent the recent explosion in telecommunications choices and technology from being undermined by market consolidation. However, even without these mergers, more needs to be done to bring vibrant competition across all communications sectors to bring down consumer prices and expand marketplace choices. Now is the time for Congress to repair current flaws in telecommunications policy.

Endnotes

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to Provide consumers with information, education and counsel about good, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Report*s, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 4 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.
[2] The Consumer Federation of America is the nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power an cooperative organizations, with more than 50 million individual members.
[3] Yang, Catherine, "Behind in Broadband," *Business Week,* September 6, 2004
[4] *A Nation Online*, (Washington, D.C.: National Telecommunications Information Administration, September 2004), Current Population Survey Data Base, for subscription to specific services. Zimmerman, Paul R., *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service* (Washington, D.C.: Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission) for local and long distance bills. Bundle prices are from visits to web sites of major carriers. Comparisons based on average basic local plus average long distance. Cable modem service costs about $45 per month. DSL service costs about $30. However, the local phone companies serving 85 percent of the nation require DSL customers to also take voice, making the basic connectivity costs for a high speed line that will support VOIP even more expensive. *UNE Fact Report 2004, Prepared for and Submitted by BellSouth, SBC, Qwest, and Verizon, In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, October 2004. Federal Communications Commission, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service*, 2004.
[5] Cooper, Mark, *Stonewalling Local Competition: The Baby Bell Strategy to Subvert the Telecommunications Act of 1996* (Consumer Federation of America, January 1998); *Competition At The Crossroads: Can Public Utility Commissions Save Local Phone Competition?* (Consumer Federation of America, October 7, 2003)
[6] Cooper, Mark, *Expanding the Digital Divide and Falling Behind in Broadband Falling Behind in Broadband,* (Consumer Federation of America and Consumers Union, October 2004), shows that penetration of the Internet into homes has stalled below 60 percent, while just over half of all Internet households have broadband.
[7] Letter to Michael Powell, September 16, 2004.
[8] Richtel, Matt "Dangling Broadband from the Phone Stick," *New York Times,* February 2, 2005.
[9] Consumer Federation of America, Consumers Union, Media Access Project, Free Press, "Connecting the Public: The Truth About Municipal Broadband," April 11, 2005.
[10] Ford, George, "Does Municipal Supply of Communications Crowd-Out Private Communications Investment? An Empirical Study," Applied Economic Studies, February, 2005.
[11] Ford, George and Thomas Koutkey, "Broadband and Economic Development: A Municipal Case Study from Florida," Applied Economic Studies, April 11, 2005.
[12] *Expanding the Digital Divide*., Thomas Bleha, "Down to the Wire," *Foreign Affairs,* May/June 2005.
[13] *Expanding the Digital Divide.*
[14] Federal Communications Commission, *Local Telephone Competition: Status as of June 31, 2004*, December 2004, Tables 6, 11, show this figure at just over 80 percent of SBC and just under 80 percent for Verizon. This is prior to the impact of the UNE-P decision. Facilities-based competition accounted for only about one-fifth of total competition (Local Competition, Table 10). Most of this competition was in the medium or large business market.

[15] "Protest of the Utility Reform Network, Utility Consumer's Action Netowrk, Disability Rights Advocates, Consumer Union of the U.S., Inc., The Greenlining Institute, and Latino Issues Forum," *In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. (AT&T) for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454), to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation,* before the Public Utilities Commission of the State of California, Application 05-02-027, February 28, 2005.
[16] See note 4 above.
[17] *Local Telephone Competition*, Tables 6, 11.
[18] Precursor, *Telecom Vital Statistics: Pillars of the Bell 2005 Competitive Respite Thesis,* January 24, 2005, put Verizon and SBC long distance market shares at close to 40 percent at year-end 2004, and predicted a gain of another 10 percent, without the mergers. AT&T and MCI national market shares were approximately 30 percent and 20 percent, respectively, as reported in Industry Analysis and Technology Division, *Trends in Telephone Service* (Washington, D.C.: Federal Communications Commission, May 2004), p. 9-5. Because of their respective geographic foci, the in-region market share of the long distance companies being acquired respectively is likely to be higher than the national average. Thus, a 70 percent residential market share is a cautious estimate.
[19] Consumer Federation of America and Consumers Union, Letter to Chairman Michael Powell, September 16, 2004.
[20] See Cooper, Mark, *The Public Interest in Open Communications Network* (Washington, D.C.: Consumer Federation Of America, July 2004), Chapter IV, for a discussion of past anticompetitive practices of telephone companies against CLEC and ISPs. For a discussion of the problem of vertical leverage against intermodal competitors see "Petition to Deny of Consumer Federation of America and Consumers Union," *In the Matter of Application for the Transfer of Control of Licenses and Authorizations from AT&T Wireless Services Inc., and Its Subsidiaries to Cingular Wireless Corporation,* WT Docket No. 04-70, May 3, 2004 and "Reply of Consumer Federation of America and Consumers Union," *In the Matter of Application for the Transfer of Control of Licenses and Authorizations from AT&T Wireless Services Inc., and Its Subsidiaries to Cingular Wireless Corporation,* WT Docket No. 04-70, May 20, 2004.
[21] *Local Telephone Competition*, Tables 6 and 11.
[22] Richtel, Matt "Valuing MCI in an Industry Awash in Questions," *New York Times,* February 2, 2005, C-4, puts AT&T's national market share for the "corporate telecommunications market" at 15 percent and MCI's at 12 percent.
[23] That the geographic overlap of assets is more concentrated in specific regions and products than the national average has been noted in the press accounts of the proposed mergers. Almar Latour and Dennis K. Berman, "Qwest Presses Its Bid for MCI," *Wall Street Journal,* February 4, 2005, C-4, the *Wall Street Journal* described Verizon and MCI as follows: "A tie-up between Verizon and MCI also could face cultural challenges: The companies have been fierce competitors and have been at loggerheads in court." The map accompanying Matt Richtel, "Valuing MCI in an Industry Awash in Questions," *New York Times,* February 2, 2005, C-4, shows a concentration of MCI data centers in the Northeast.
[24] The vertical problem in the cable video and high speed Internet markets are discussed in Cooper, Mark, *Cable Mergers and Monopolies: Market Power in Digital Communications Networks* (Washington, D.C.: Economic Policy Institute, 2002), Chapters 4 and 5; see also The Public Interest in Open Communications Networks, Chapter IV; Petition to Deny and Reply, not 9 above.
[25] *National Cable & Telecommunications Association, et. al. v. Brand X*, Nos. 04-277 & 04-281.
[26] International Telecommunications Union, *The Portable Internet*, Septermber 2004, p. A-32, gives the complete list of nations.
[27] Richard Florida, "America's Looming Creativity Crisis," *Harvard Business Review,* October 2004.
[28] Florida, p. 3.
[29] "Brief for the Respondents States and Consumer Groups in Opposition to Petitioners," *National Cable & Telecommunications Association, et. al. v. Brand X*, Nos. 04-277 & 04-281.