Today, Geoffrey Manne , Executive Director of the International Center for Law & Economics, TechFreedom Senior Adjunct Fellow, and Lecturer in Law at Lewis & Clark Law School, and Berin Szoka , President of TechFreedom, issued this statement on Senator Kohl's letter urging the DOJ and FCC to "carefully scrutinize" the pending wireless spectrum deal between Verizon Wireless and a consortium of cable companies:

It's groundhog day in antitrust-land. Sen. Kohl's letter urges the DOJ and FCC to do what they are already doing: scrutinizing Verizon's purchase of spectrum the cable companies aren't using, along with related joint marketing agreements.

Sen. Kohl sent a similar letter to the FTC last fall seeking an immediate investigation into Google's business practices. It's hard to see what such letters add, as we discussed at the time. Antitrust law, at its best, rests on an economic analysis of consumer welfare. It's something the politicians should leave to the expert economists and lawyers at the DOJ and FTC—and, ultimately, the courts.

Of greatest concern, Sen. Kohl asks the FCC to exceed clear limits on its legal authority where he urges the agency to "seriously consider taking action" to prohibit the joint agreements. As we have detailed elsewhere , a competition review of the proposed transaction by the FCC is outside the scope of its mandate. Section 310(d) of the Communications Act allows the agency to review only the transfer of licenses, not the overall transaction. Even there, the FCC may not compare this transaction to some hypothetical alternative, as Sen. Kohl urges the agency to do.

Ranking Member Lee's letter to the agencies, by contrast, is appropriately restrained—not urging a particular outcome on the agencies, but merely expressing his views and deferring to their expertise. As Sen. Lee notes, "it is improper for government to pick winners and losers in the marketplace." Antitrust is a form of regulation, and like all regulation, it should be applied only with extreme caution under well-developed legal and economic doctrines, and never politicized.

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