

Today, the Department of Justice approved Verizon's purchase of radio spectrum from cable companies that had considered using it to build their own wireless network but ultimately decided not to do so. The deal went through only after the parties agreed to a number of conditions, including a restriction of several commercial agreements that accompanied the deal.

"This deal is great news for consumers," said [Berin Szoka](#), President of [TechFreedom](#). "The more spectrum is put to use, the more we'll ease the coming 'spectrum crunch.' The DOJ seems to have agreed that, because of the under-utilization of the spectrum in its current hands, and, with its imposed conditions, the lack of incentive or ability of the parties to raise prices, consumers will benefit from this transfer.

"It seems," noted [Geoffrey Manne](#), Executive Director of the [International Center for Law & Economics](#), "that the DOJ and FCC have appropriately divided their review of the deal, with the DOJ considering the competitive effects of the commercial agreements and the FCC assessing whether the spectrum license transfers are in the public interest. Congressional leaders and many self-appointed consumer advocates had demanded that the FCC evaluate the commercial agreements. But doing so would violate Section 310(d), which authorizes the agency to evaluate only license transfers."

TechFreedom and ICLE raised this concern about the FCC's authority in [joint comments](#) on the FCC's review in March. The FCC was strongly and [repeatedly pressured](#) to violate [Section 310\(d\)](#) by Verizon's competitors, most notably T-Mobile and Sprint, as well as by regulatory activist groups like Public Knowledge and Free Press. In May, Sen. Herb Kohl sent a [letter](#) asking the FCC to evaluate the commercial agreements, and similar letters followed in July from [Senator Franken](#) and [thirty-two Congressional Democrats](#).

Manne raised another concern: "I'm troubled by the DOJ's imposition of conditions on the merger based on speculative, future harms," referring to the DOJ's assertion that the "the Commercial Agreements also unreasonably restrain future competition for the sale of broadband, video, and wireless services to the extent that the availability of these services as part of a bundle, including a quad-play bundle, becomes more competitively significant. The DOJ has ample authority to address such concerns if they ever become non-conjectural. Merger review conditions should be narrowly targeted at real, identifiable problems. Otherwise, government risks hamstringing companies today in ways that can unintentionally hamper future innovation and thus harm consumers."

Szoka and Manne are available for comment at media@techfreedom.org.