

# AntitrustConnect Blog

## Department of Justice Requires Verizon, Cable Companies to Revise Marketing Agreements to Resolve Antitrust Concerns

Jeffrey May (Wolters Kluwer) · Thursday, August 16th, 2012

The Department of Justice will not challenge a proposed acquisition by Verizon Wireless of a significant portfolio of wireless spectrum licenses from a consortium of four cable companies and the subsequent transfer of a significant amount of that spectrum to T-Mobile USA; however, the parties will be required to modify separate marketing agreements to settle charges that they would, if left unaltered, harm competition by diminishing the companies' incentive to compete. Verizon is one of the nation's largest providers of wireline telecommunications services, including both video and broadband services as well as bundles that contain those products.

The U.S. Department of Justice and the State of New York filed a complaint today in the federal district court in Washington, D.C. against Verizon and four of the nation's largest cable companies—Comcast Corporation, Time Warner Cable Inc., Bright House Networks, LLC, and Cox Communications, Inc.—challenging a series of commercial agreements that allow them to sell bundled offerings that include Verizon Wireless services and a cable company's residential wireline voice, video, and broadband services. At the same time, a proposed consent decree was filed, which if approved by the court would settle the charges.

In parts of the mid-Atlantic region, Verizon offers fiber-based voice, video, and broadband services under the trade name "FiOS," in competition with at least one of the cable companies. In New York City, Philadelphia, and Washington, D.C., the commercial agreements would result in Verizon Wireless retail outlets selling two competing "quad-play" offerings: one including Verizon Wireless services and a cable company's services and the other including Verizon Wireless services and Verizon FiOS services, according to the government's complaint. In addition, the agreements contain a variety of mechanisms that are likely to diminish Verizon's incentives and ability to compete vigorously against the cable companies with its FiOS offerings. The agreements allegedly harm the the parties' long-term incentives to compete insofar as they create an exclusive sales and product development partnership of potentially unlimited duration.

According to the Justice Department, the cable companies would be collectively restricted to one wireless partner, Verizon Wireless, and the participants in the joint technology venture would be restricted to that forum—and limited to working with the partners in that venture—for integrated wireline and wireless product development. Moreover, Verizon Wireless's ability to sell Verizon's FiOS product is restricted to the currently planned FiOS footprint, even if in future years Verizon contemplates further FiOS expansion.

## Proposed Consent Decree

The proposed consent decree includes provisions that seek to maintain Verizon's incentives to aggressively market FiOS against the cable companies in the areas in which both services are available and to ensure vigorous competition in the future. Verizon Wireless would be prohibited from selling the cable companies' cable services in areas in which Verizon offers FiOS service.

Verizon also would be prohibited from selling the cable companies' cable services in areas that it is likely to offer such services in the near term; however, Verizon has publicly stated that it does not presently intend to build FiOS beyond the areas it has committed to local authorities to build.

With respect to provisions in the commercial agreements that allow the defendants to develop integrated wireline and wireless telecommunications technologies through a research and development joint venture, Joint Operating Entity LLC, the proposed consent decree would require the defendants who are members of the JOE to withdraw from the JOE by December 2, 2016. The Justice Department explained in its Competitive Impact Statement that "the longer that would-be competitors collaborate with one another on a joint venture, the less likely they are to compete against one another." Defendants would be permitted to petition the United States for permission to continue to participate in the JOE.

The proposed consent decree would place other limits on the joint venture to ensure that the agreements will not dampen the companies' incentives to compete against one another going forward. Upon dissolution of the joint venture, members would receive a non-exclusive license to all the joint venture's technology, and each may then choose to sublicense to other competitors.

The proposed consent decree also would limit exclusivity provisions. Verizon Wireless would be prohibited from enforcing any exclusivity provisions of the commercial agreements that would bar any of the cable companies from selling wireless services on behalf of a carrier other than Verizon Wireless after December 2, 2016. The parties also would be prohibited from modifying the commercial agreements without prior written approval of the Justice Department.

The case is *U.S. v. Verizon Communications Inc.*, No. 1:12-cv-01354. The [complaint](#), [proposed consent decree](#), and [competitive impact statement](#) are available on the Department of Justice website.

## Federal Communications Commission Response

The Justice Department said in announcing the settlement that it reached its decision after a closely coordinated investigation with the Federal Communications Commission (FCC).

FCC Chairman Julius Genachowski said in a [statement](#) that the deal should be approved in light of the conditions imposed by the Justice Department. "Verizon Wireless has undertaken an unprecedented divestiture of spectrum to one of its competitors, T-Mobile, and has committed to accelerate the build-out of its new spectrum and enhance its roaming obligations," Genachowski commented. "In addition, the companies' commercial agreements will be modified to, among other things, preserve Verizon's incentives to build out FiOS, increase wireless competition, and ensure that the proposed IP venture is pro-consumer and that its products cannot be used in anti-competitive ways."

## Lawmaker Concerns

Earlier this year, lawmakers in both houses of Congress called on the Federal Communications Commission (FCC) and the Department of Justice to carefully scrutinize the “integrated” agreements between Verizon and the four cable companies. The Senate Judiciary Committee’s antitrust, competitive policy, and consumer rights subcommittee held a hearing on March 21, at which the legislators grilled representatives of Verizon Communications, Inc., and Comcast Corp., about the plans of four cable companies to sell spectrum to Verizon Wireless and enter separate marketing agreements between the parties. The subcommittee members raised concerns that the deals could lead to less competition and higher prices. Chairman Herb Kohl (Wisconsin) and Sen. Al Franken (Minnesota) repeatedly questioned how the proposed spectrum sale and marketing agreements would impact consumer choice and infrastructure investment and whether companies that work together would ultimately decide to rein in technology development.

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