

## Consumer Federation of America



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**Contact: Mark Cooper  
(301) 807-1623**

### **CFA COMPETITION ANALYSIS PROVIDES A ROADMAP FOR THE FCC AND THE DOJ TO OPPOSE THE VERIZON-CABLE SPECTRUM SALE AND COLLABORATIVE AGREEMENTS A “Collaborating Duopoly” in Broadband Will Raise Prices, and Slow Innovation**

Washington, D.C. – Based on extensive analysis of the *Antitrust Guidelines for Collaborations Among Competitors* as well as the *Horizontal Merger Guidelines* published by the Department of Justice (DOJ) and the Federal Trade Commission, the Consumer Federation of America (CFA) has concluded that the pending transactions between Verizon and the nation’s dominant cable companies run afoul of US antitrust law and the Communications Act, because they will dramatically lessen competition and are against the public interest. In comments filed today with the Federal Communications Commission (FCC) and submitted to the Department of Justice, the CFA identified a dozen reasons that may force federal authorities to oppose the deal

“If this were a merger, it would be a slam dunk court case,” Dr. Mark Cooper, CFA’s Director of Research said. Cooper continued, “These “collaborative” joint ventures are basically dressed up non-competes, which the *Antitrust Guidelines* make quite clear can be anticompetitive and unacceptable.

#### **A DOZEN REASONS WHY ANTITRUST AND COMMUNICATIONS LAW REQUIRE THE DOJ AND THE FCC TO OPPOSE THE VERIZON-CABLE TV SPECTRUM SALE & COLLABORATIVE AGREEMENTS**

<u><b>Market Factors</b></u>	<u><b>General conditions that favor allowing</b></u>	<u><b>Characteristics of the Verizon-SpectrumCo agreements that dictate opposition</b></u>
1. Market Structure	Unconcentrated	Highly concentrated (wireless), Very highly concentrated (Cable, Broadband)
2. Collaborator Market Shares	Small	Very large
3. Thresholds: Safety Zone	Safe Harbors: Market :20% combined share Research: 3 or more not in collaborative	Far outside safe harbor Cable 75%, Broadband 90%, Voice 90%, Wireless 35% Lack of competitors
4. Entry	Easy	Extremely difficult, compounded by sale of spectrum
<u><b>Collaborative Agreement Details</b></u>		
5. Actual/potential competition between collaborators	Little	Substantial head-to-head competition (video, broadband, WiFi, private line)
6. Impact on competition	Procompetitive Strengthens weak competitors	Replaces existing 3 <sup>rd</sup> party competition Strengthens dominant firms, concentrates spectrum holdings
7. Assets devoted to venture	Insignificant	Cross marketing crown Jewels (wireless, video)
8. Control of assets	Independent	Most Favored Nation clauses Exclusives, Sharing crown jewel assets
9. Duration	Short	Very Long
10. Incentives	Neutral	Reduced competitive intensity Mutual Retail Price Maintenance diminishes price competition Cross marketing of highly profitable Products Other restrictive conditions

11. Facilitation of Collusion	No	Strategic assets favor, collaborators, disadvantages 3 <sup>rd</sup> parties Back haul, private line, special access, data roaming Sharing super sensitive information
<b><u>Potential Mitigating Factors</u></b>		
12. Efficiency gains	Procompetitive, Cognizable Unique (transaction specific) Variable cost	Anticompetitive, Doubtful Less harmful alternatives available Fixed Cost

A review of antitrust practice and rigorous application of the *Guidelines* to the publicly available evidence makes it clear that the Verizon-SpectrumCo agreement is a wolf and not a sheep and should be rejected.

“Responding to the FCC’s request for commenter to ‘not repeat arguments already raised, in the docket,’” Cooper added, “we scoured the record for a comprehensive competitive analysis and the critical data, like local market shares on which it relies and could find none.”

In a white paper accompanying CFA’s comments, entitled *The End of the End of Competition in Digital Access Service: The Verizon-Cable Spectrum Sale and Collaborative Agreement Mark the Final Failure of the 1996 Telecommunications Act to Provide Effective Competition in Local Communications Markets*, CFA notes that digital connectivity is both the present – and the future – of communications service. Local digital connections are the on ramps by which American consumers and businesses reach the national and global telecommunications networks. In the swaths of the country where Verizon is the incumbent wireline local telephone company, Verizon and the collaborating cable companies are the number one and number two dominant providers of local digital connectivity. And even outside the Verizon wireline footprint, the collaborators are likely to be in the top three providers of digital connectivity, signaling significant market failure and consumer harm.

“The systematic competition analysis based on antitrust guidelines, which the FCC has used in past reviews of joint ventures, makes it clear that the impact the proposed transaction would have on consumers and competition serves as a more than adequate foundation on which the FCC review can stand as well,” Cooper added. “Under the *Communications Act*, the FCC must ensure that the transaction promotes the public interest, which is much broader than protecting competition under the antitrust laws. It must promote competition and achieve other social goals like universal service. Because the joint venture has been intertwined with a transfer of spectrum, the transaction must be subject to a full public interest review.”

“Local connectivity has unfortunately devolved into a duopoly of cable and the local telephone company. Failure to oppose the “collaborative agreements” between Verizon and the cable industry will further collapse the communications markets, immediately invite AT&T to propose an even more anticompetitive transaction. This will signal an about-face for thirty years of bi-partisan, pro-competitive federal policy, the reversal of the *Telecommunications Act of 1996*, and the innovation, investment and jobs from which this country has immensely benefited – all at a time America can least afford it.” Cooper concluded.

The CFA report, *The End of the End of Competition for Digital Access Service*, can be found at: [www.consumerfed.org/pdfs/Studies.CFA.VZ-SpectrumCo.7.9.12.pdf](http://www.consumerfed.org/pdfs/Studies.CFA.VZ-SpectrumCo.7.9.12.pdf)

The Comments to the FCC can be found at: [www.consumerfed.org/pdfs/Comments.CFA.VZ.SpectrumCo.FCC.7.9.12.pdf](http://www.consumerfed.org/pdfs/Comments.CFA.VZ.SpectrumCo.FCC.7.9.12.pdf)

*The Consumer Federation of America is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.*