

The U.S. Department of Justice **seems to be the only thing standing between** ([http://www.washingtonpost.com/blogs/post-tech/post/doj-holds-up-verizon-cable-deal-on-competition-concerns/2012/07/12/gJQAXwTigW\\_blog.html](http://www.washingtonpost.com/blogs/post-tech/post/doj-holds-up-verizon-cable-deal-on-competition-concerns/2012/07/12/gJQAXwTigW_blog.html)) the \$4 billion sale of spectrum from the cable companies' Spectrum Co. to Verizon Wireless, according to multiple news reports. Both the *Washington Post* and the *Wall Street Journal* are reporting that the FCC is in favor of the deal, but the bigger competitive issue remains on the table at the Department of Justice.

A spokesman for the FCC notes that the FCC is still looking at both the spectrum and the competitive issues associated with the deal. Those competitive elements are the marketing agreements and the Joint Operating Entities that the cable companies and Verizon would form, could mean for consumers. I think both would be bad (<http://gigaom.com/broadband/verizons-spectrum-deal-with-cable-is-the-end-of-broadband-competition/>) , with the **Joint Operating Entities being potentially worse** (<http://gigaom.com/2012/02/23/the-dirty-secret-inside-verizons-cable-spectrum-buy/>) for consumers as the cable providers and Verizon seek to control technology that they could use to cut other players out of consumer's homes — to the consumer's detriment.

The marketing agreements create a shadow joint-operating entity (JOE) between Verizon and the cable companies. This JOE is worrisome to those of us who realize that getting Verizon in a room once a month with the executives at the nation's largest cable companies could lead to agreements about technology, deployment strategies and R&D that will

be controlled by the large ISPs. The fear is that this organization will be able to slowly stifle new innovations for Internet services or even devices attached to wireline networks by creating technologies and standards that are only available to the JOE participants. Perhaps others might be able to license those technologies, but there's no guarantee of that, or that the JOE would do so for a fair and reasonable amount.

Verizon's expanding its fiber-to-the-home empire has goaded the cable companies to constantly boost their broadband speeds, but if the deal get approved that competitive dynamic disappears. It also means cable companies might not sign partnerships with smaller, or hungrier wireless companies such as T-Mobile or Sprint.

So far, the idea is that the DoJ and/or the FCC could put some conditions on the JOE to prevent collusion among the cable companies and Verizon as well as [try to extract concessions \(http://gigaom.com/broadband/verizons-cable-spectrum-mash-up-evil-genius-or-simply-genius/\)](http://gigaom.com/broadband/verizons-cable-spectrum-mash-up-evil-genius-or-simply-genius/) related to guaranteed speed improvements, but those conditions would then require dogged enforcement and only last so long.

If there is any doubt in the regulators' minds that this deal is primarily about airwaves, they should put the kibosh on the marketing and joint operating entity associated with the deal and

watch the cable companies renege on the deal. Nationwide licenses with 20 to 30 MHz of spectrum for \$4 billion is pretty cheap. My hunch is if the marketing agreements and JOE were killed, we'd see the cable companies try to back out and get the true value of those airwaves.