

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Applications of Cricket License Company,	)	
LLC, et al., Leap Wireless International,	)	WT Docket No. 13-193
Inc. and AT&T Inc. for Consent to Transfer	)	
Control of Authorizations; Application of	)	File Nos. 0005860676 and
Cricket License Company, LLC and Leap	)	0005860985
Licenceco Inc. for Assignment of	)	
Authorization	)	
	)	

**PETITION TO CONDITION CONSENT OF APPLICATIONS**

Infrastructure Networks, Inc. (“Infrastructure”), by its undersigned counsel, pursuant to the Commission’s Public Notice in the above-referenced proceeding,<sup>1</sup> hereby petitions the Commission to condition consent to the above-referenced applications of Cricket License Company, LLC, et al. and Leap Wireless International, Inc. (collectively, “Leap”) and AT&T, Inc. (“AT&T” and together with Leap, the “Parties”) as set forth herein, by requiring that, following closing, AT&T honor certain leases between Leap affiliates and Infrastructure for their full term, as further discussed below.

**I. INTRODUCTION**

The Parties have submitted applications seeking consent to transfer control of wireless licenses, including AWS, PCS, and associated microwave licenses and international Section 214 authorizations, from Leap Wireless International, Inc. and its subsidiaries to AT&T (the “Transaction”). Among the wireless licenses being transferred are two AWS licenses that Leap

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<sup>1</sup> *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc. and AT&T Inc. for Consent to Transfer Control of Authorizations; Application of Cricket License Company, LLC and Leap Licenceco Inc. for Assignment of Authorization*, Public Notice, DA13-1831 (rel. Aug. 28. 2013).

affiliates have leased to Infrastructure through agreements entered into before the announcement of the Transaction. Infrastructure plans to use this leased spectrum in the very near term to serve critical -- and now unserved -- needs of energy producers in remote areas and has already begun making the sizable investments necessary to deploy this spectrum to serve these needs.

There is no other suitable spectrum available in the same geographic area for Infrastructure's use; indeed, as the attached Exhibit 1 shows, AT&T, Verizon and Sprint already control the vast majority of LTE compatible spectrum in this market.<sup>2</sup> Upon confirmation of the Transaction, AT&T, within the last year, will have acquired LTE compatible spectrum from Guadalupe Valley Telephone (lower 700 MHz) and Leap Wireless (AWS).

Indeed, Infrastructure had a lease deal nearly concluded with Guadalupe Valley Telephone to lease in this region, but AT&T's purchase of the Guadalupe Valley spectrum derailed that lease. Infrastructure therefore started again from scratch to negotiate a lease with Leap -- but now AT&T is again attempting to shut it out.

Exhibit 1 also shows that AT&T holds the second largest spectrum position in this area at 125 MHz, which would increase to 135 MHz if the Transaction is approved. In contrast, Verizon currently holds a 92 MHz position, having recently divested itself of 12 MHz of its Lower 700 MHz spectrum in this market to Texas Energy Networks. Obviously, AT&T has more than its share of spectrum for such a rural market. Thus, if AT&T refuses to honor the Leases, Infrastructure's investment would be wasted -- and neither Infrastructure nor any other competitor would be able to meet its customers' needs in this area. Nor does AT&T need the spectrum; it has more than enough spectrum in these areas already to meet its foreseeable needs.

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<sup>2</sup> The Exhibit specifically shows the break-out for Dewitt County, Texas, which is typical of the carriers' relative holdings in all the rural counties that are subject of the Leases.

Infrastructure is a telecommunications infrastructure company that provides high speed data connectivity for users in critical infrastructure industries, including oil and natural gas exploration and production; water, oil and natural gas pipelines and wells; coal and ore mines; railroads, roads, inland waterways, vital bridges and tunnels; electric generation plants and distribution systems; and municipal traffic, utility and public service systems. Infrastructure controls broadband wireless spectrum covering more than 150,000 square miles in the Texas Panhandle and Eastern New Mexico, Permian Basin and Eagle Ford Shale in Texas, Western Kern County in Southern California and the Bakken Shale in North Dakota. The company offers its users a single, dedicated broadband network that drives an ecosystem of advanced wireless devices founded on 4G/LTE wireless technology for the rapidly evolving realm of machine-to-machine applications. Unlike past technologies, Infrastructure's network uses intrinsically safe, hardened and autonomous field devices.

In addition to serving these core customers, Infrastructure provides opportunities to partner with rural carriers and leverage its network infrastructure in support of the deployment of rural broadband services in contiguous geographic areas. This additional competency allows Infrastructure to make an important contribution to broadband rollout in these underserved areas.

Further detail on Infrastructure's current and planned services, network and related activities can be found at its website at <http://www.infrastructurenetworks.com/>.

In May 2013, Infrastructure entered into long-term AWS spectrum manager lease agreements with STX Wireless License, LLC and Cricket License Company, LLC under call signs WQMP525 and WQGD769, respectively (the "Leases"). Notifications of both Leases were accepted by the Commission on July 2, 2013 with lease commencement dates of July 22, 2013 and expiration dates of December 18, 2021. However, the Leases contain provisions that

allow them to be terminated if control of the underlying spectrum is transferred. Shortly after entering into the Leases, Leap announced that it and AT&T had agreed to the Transaction described above. Leap had not informed Infrastructure of its plans at the time the Leases were executed.

Infrastructure has asked Leap to confirm with AT&T that AT&T will honor the Leases rather than terminating them. However, to date, AT&T has declined to give Infrastructure such assurances. Because the Leases are vital to preserve competition in meeting critical energy infrastructure needs in this geographic area, the Commission should require AT&T to honor the Leases.

**II. ANY COMMISSION CONSENT TO THE AT&T-LEAP TRANSACTION SHOULD BE CONDITIONED ON AT&T HONORING LEAP'S EXISTING SPECTRUM MANAGER LEASES**

As noted above, Infrastructure requests that the Commission condition any consent to the Transaction on AT&T honoring rather than terminating the Leases. Permitting AT&T to terminate the Leases would be contrary to the public interest, resulting in harm to competition, as well as to Infrastructure's critical energy customers' critical needs.

Infrastructure has concrete business plans to serve critical communications infrastructure needs of the energy community in the Texas and Oklahoma markets covered by the Leases (REA005 - Central, Submarket 12, and REA005 - Central, Submarket 17, respectively). These are underserved, rural areas with low population densities. This market, which is part of the Eagle Ford Shale play, is currently experiencing a boom in oil and gas production. Currently, no high quality LTE service offerings are available in these markets from any competitor -- including AT&T. Infrastructure has a full sales pipeline of demand for its unique services in this critical market. Infrastructure not only provides broadband connectivity and Internet access, its

services also vastly improve work site safety and security, and ensure quicker First Responder response. Infrastructure's services also greatly reduce vehicle travel which reduces fuel consumption, traffic on overburdened rural infrastructure and fewer vehicle accidents (which means reduced injuries and fatalities). In addition, Infrastructure has existing relationships to make broadband services available to rural public safety agencies and to provide rural broadband services to geographically isolated consumers where no other broadband services are available. AT&T offers none of these advantages. In short, competition in this space works to bring clear public benefits; but allowing AT&T to gobble up this spectrum will make those benefits evaporate.

Nor does AT&T need this small amount of spectrum in this remote area. Even before this Transaction, AT&T already holds 125 MHz of LTE compatible spectrum in these markets, including 30 MHz of Lower 700 MHz spectrum which is ideal for providing LTE service in rural markets. Verizon currently holds 22 MHz of Upper 700 MHz spectrum but recently sold 12 MHz of its Lower 700 MHz spectrum to a regional provider. Verizon's sale indicates that demand for consumer services in such a sparsely populated area does not require the same depth of spectrum holdings as densely populated markets.

However, the lack of significant communications infrastructure in support of critical infrastructure industries in these markets is a specialized need that neither AT&T nor Verizon has addressed, but that Infrastructure was founded for the very purpose of addressing. As such, Infrastructure's presence in these markets advances the public interest by enhancing competition and providing critical services to an underserved market segment that AT&T has shown no interest in. Without this spectrum, Infrastructure has no short to mid-term options for deploying

its network to provide its planned machine-to-machine communications services to its customers in these areas -- and its customers would have no options for obtaining these services.

Infrastructure has already substantially invested in equipment and materials required to build out and provide coverage in these areas. However, without adequate assurances that AT&T will honor the Leases for their full term, Infrastructure cannot proceed with the investment of time and resources required to build out its telecommunications network in the affected areas. This uncertainty has already caused significant delay and scheduling issues.

Were AT&T to terminate the Leases, it would remove a competitor from this market and leave the critical infrastructure market dangerously underserved. The specialized services provided by Infrastructure are tailored specifically to business clients in the critical infrastructure industry, and as such could not readily be replicated by a traditional consumer-grade wireless services company such as AT&T; and even if they could, AT&T has not stepped up to the plate to do so. Infrastructure's unexcelled expertise in this industry combined with its spectrum holdings and dedication solely to critical infrastructure users uniquely position the company to provide these niche services without sacrificing service quality resulting from bandwidth exhaustion. Preserving this beneficial competition here requires holding AT&T to the Leases.

By contrast, AT&T has no particular incentive -- and no announced plans -- to serve this important market segment. Thus, allowing it to terminate the Leases post-closing would not only affirmatively and substantially harm competition, it would deprive energy producers in these remote areas of Infrastructure's state-of-the-art, highly secure and dedicated services. AT&T's previous spectrum acquisitions have already hindered this healthy and beneficial competition. As noted above, Infrastructure had previously reached an understanding with Guadalupe Valley Telephone (Call Sign WPWV318) for a long term *de facto* lease in the same area using Lower

700 MHz spectrum. Unfortunately, AT&T offered to purchase this spectrum from Guadalupe Valley Telephone before the parties could execute a final lease agreement and did indeed subsequently purchase this spectrum. This delayed Infrastructure's LTE deployment for approximately one year in a market that currently has no high quality LTE services. Infrastructure then approached other spectrum holders and was able to negotiate a lease with Leap Wireless and again began its LTE deployment.

Should AT&T again snatch this spectrum away from Infrastructure, it would delay this competition again, and for some time to come. Given that AT&T already has more than enough spectrum to meet its foreseeable needs in this region, the benefits of allowing it to take this spectrum as well would be trifling if not nonexistent. They would be far outweighed by the harm to competition and the public interest shown above.

### III. CONCLUSION

If allowed to proceed without the condition described herein, this Transaction will result in anticompetitive and public interest harms. Therefore, Infrastructure respectfully requests that the Commission condition any grant of consent in this proceeding by requiring AT&T to honor rather than terminate the Leases for the duration of their term.

Respectfully submitted,

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Dated: September 27, 2013

**EXHIBIT 1**

**AT&T, Verizon and Sprint Spectrum Holdings  
Dewitt County, Texas**

**AT&T Spectrum - DeWitt County Texas**

<b>Radio Service</b>	<b>Frequency (MHz)</b>	<b>Bandwidth (MHz)</b>	<b>Call Signs</b>	<b>Acquired From</b>
Lower 700 MHz	704 - 710	6	WQJU641	
	734 - 740	6		
Lower 700 MHz	710 - 716	6	WPWV318	Guadalupe Valley Telephone
	740 - 746	6		
Lower 700 MHz	716 - 722	6	WPZA239	
Cellular Broadband	824 - 846.5	22.5	KNKN452	
	869 - 891.5	22.5	KNKN945	
AWS - 1	1735 - 1740	5	WQGA787	
	2135 - 2140	5		
AWS - 1	1740 - 1745	5	WQMP525	Leap Wireless (Cricket)
	2140 - 2145	5		
Broadband PCS	1895 - 1910	15	WPOK666	
	1975 - 1990	15		
WCS	2310 - 2315	5	KNLB214	
	2355 - 2360	5		
<b>Total</b>		<b>135</b>		

Verizon Spectrum - DeWitt County Texas

Radio Service	Frequency (MHz)	Bandwidth (MHz)	Call Signs	Divested To
Lower 700 MHz	698-704	6	WQJQ714	Texas Energy Network
	728-734	6		
Lower 700 MHz	746-757	11	WQJQ693	
	776-787	11		
AWS - 1	1720 - 1730	10	WQGB203	
	2120 - 2130	10		
AWS - 1	1730 - 1735	5	WQGB204	
	2130 - 2135	5		
Broadband PCS	1870 - 1890	20	KNLG571	
	1950 - 1990	20	KNLF228	
<b>Total</b>		<b>92</b>		

Sprint Spectrum - DeWitt County Texas

Radio Service		Frequency (MHz)	Frequency (MHz)	Bandwidth (MHz)	Call Signs	
		Start	End			
EBS (new)	A1,2,3	2502	2518.5	16.5	L000009093	Clearwire
	A4	2572	2578	6		
EBS (new)	D1,2,3	2551.5	2568	16.5	L000008635	Clearwire
	D4	2590	2596	6		
EBS (old)*	C1	2548	2554	0	L000002053	Clearwire
	C2	2560	2566	0		
	C3	2572	2578	0		
	C4	2584	2590	0		
EBS (old)*	D1	2554	2560	0	L000002054	Clearwire
	D2	2566	2572	0		
	D3	2578	2584	0		
	D4	2590	2596	0		
EBS (old)*	B1	2506	2512	0	L000002495	Clearwire
	B2	2518	2524	0		
	B3	2530	2536	0		
	B4	2542	2548	0		
EBS (new)	B1	2518.5	2524	5.5	L000002622	Clearwire
	B2	2524	2529.5	5.5		
	B3	2529.5	2535	5.5		
	B4	2578	2584	6		
EBS (old)*	A1	2500	2506	0	L000003391	Clearwire
	A2	2512	2518	0		
	A3	2524	2530	0		
	A4	2536	2542	0		
EBS (new)	BRS1	2496	2502	6	WQLW501	Clearwire
	BRS2	2618	2624	6		
	E1	2624	2629.5	5.5		
	E2	2629.5	2635	5.5		
	E3	2635	2640.5	5.5		
	E4	2608	2614	6		
	F1	2640.5	2646	5.5		
	F2	2646	2651.5	5.5		
	F3	2651.5	2657	5.5		
	F4	2602	2608	6		
	H1	2657	2662.5	5.5		
	H2	2662.5	2668	5.5		
	H3	2668	2673.5	5.5		
Broadband PCS		1910	1915	5	WQKT203	Sprint
		1990	1995	5		
Broadband PCS		1890	1895	5	KNLG365	Sprint
		1970	1975	5		
Broadband PCS		1865	1870	5	KNLH612	Sprint
		1945	1950	5		
				<b>Total</b>	<b>171</b>	

\* not included in spectrum capacity count

## CERTIFICATE OF SERVICE

I, Denise Wood, hereby certify that on this 27th day of September 2013, I have caused a copy of the foregoing **Infrastructure Networks, Inc. Petition to Condition Consent of Application** to be served as specified upon the parties below via electronic mail:

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